

MINUTES OF THE BOARD OF ADJUSTMENT
October 21, 2009

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

ABSENT: 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. Susswein, seconded by Mr. Kenney, the following Resolution memorializing the Board's decision on the application of **Michael D'Orlando, 401 Upper Mountain Avenue** was adopted, Mr. Fleischer, Ms. English, Ms. Holloway, and Mr. Whipple abstaining:

WHEREAS, Michael D'Orlando, as owner, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA 40:55D-70c from **Montclair Code Section 347-45A(2)** to exceed 2½ stories, and from **Montclair Code Section 347-45C(4)** to exceed the maximum permitted principal structure width, in connection with a proposed addition onto an existing dwelling on property designated as Lot 70 in Block 1801 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey dated December 8, 1999, and a plot plan, floor plans, and elevations, prepared by Lawrence Korinda, Architect, dated July 31, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 16, 2009 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, and measures 50 feet in total lot frontage width. The property shape is an irregular rectangle, and its depth is 266.93 feet at its longest dimension. The property contains a single-family dwelling with a detached garage in the rear yard.

2. The existing detached garage would be demolished. An addition is proposed at the rear and northerly side of the dwelling. The addition would contain a 2-car garage at the basement level and the paved area of the driveway would be extended around the rear of the dwelling to access the new garage.

3. At the hearing, the applicant withdrew the requested variance from **Montclair Code Section 347-45A(1)** to allow the height of the addition to exceed the maximum permitted height of 35 feet. The applicant testified that the height of the addition would comply with the 35-foot height limit.

4. The proposed addition includes an extension of the existing basement level towards the rear to create the garage. A first floor extension is proposed over the garage addition. A second floor and an attic floor extension, each smaller than the floor below it, is also proposed as part of the addition. The first floor level of the addition is more than 6 feet above grade; therefore the basement level garage is counted as a story; the first floor is the 2nd story; the second floor is the 3rd story, and the attic is a half-story. A variance is requested in that a maximum of 2½ stories permitted, and the addition contains 3½ stories.

5. The proposed addition adds 2 feet 4 inches of width to the dwelling on the northerly side. The proposed width of the dwelling, taken from its widest points, which are the southerly edge of the existing wrap-around front porch on the southerly front corner and the northerly side wall of the addition, measures 38.23 feet, or 76.46 percent of the lot frontage width. A variance is requested in that the proposed addition partially widens the dwelling beyond the maximum permitted dwelling width of 32.5 feet.

6. The Board determined that the requested variance to exceed 2½ stories could be granted. The topography of the lot slopes downward at the rear of the dwelling, which causes the first floor of the addition to be more than 6 feet from grade. The location of the addition at the rear of the dwelling and the design of the levels of the addition, where the second floor and attic floor extensions are each smaller than the floor below it, both minimize the impact of the addition and the appearance of the number of stories.

7. The Board also determined that the requested variance to exceed the maximum permitted principal structure width could be granted. The position of the dwelling relative to the angled property side property lines creates difficulty in extending the addition further towards the rear as an alternative, since doing so would create a variance for the minimum required 10-foot side yard setback on the driveway side, and would also negatively impact the usability of the driveway.

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 **Michael D'Orlando** 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. Kenney, the following Resolution memorializing the Board's decision on the application of **Mr. & Mrs. Samuel Givens, 33 Seneca Place** was adopted, Mr. Fleischer, Ms. English, Ms. Holloway, and Mr. Whipple abstaining:

WHEREAS, Mr. & Mrs. Samuel Givens, as owners, 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 347-45B(2)** to permit a front yard setback less than required for a proposed one-story addition onto their dwelling, on property designated as Lot 35 in Block 706 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated April 12, 1989, and a plot plan, floor plans, and elevations, prepared by George A. Held AIA and Associates, dated May 8, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 16, 2009 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 located in the R-1 One Family Zone, on a corner lot formed by intersecting sections of Seneca Place. The property contains a 2½ -story, single-family dwelling with a detached garage and measures 8,100 square feet in lot area.

2. A one-story addition is proposed that would wrap around the northwesterly corner of the dwelling. The plans indicate that the addition would contain an expanded kitchen and a mud room and covered entry.

3. The required front yard setback from the westerly front property line is 25 feet. The existing dwelling has a nonconforming westerly front yard setback of 14.66 feet. The proposed addition would extend 6 feet towards the westerly front property line

and would be set back 8.66 feet from the westerly front property line on Seneca Place, which requires a variance.

4. The Board determined that the variance requested could be approved as submitted. While the subject property is on a corner lot, Seneca Place is not a through street to the north of the subject property and has extremely limited access and visibility to the public. The proposed one-story addition extending into the westerly front yard would also not have a negative impact on any neighboring property due to the configuration of the lots and the dwellings in the immediate vicinity. The applicants also demonstrated that their options in designing any comparable addition are very limited due to the interior configuration of the dwelling and the location of the dwelling on the property.

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 application of **Mr. & Mrs. Samuel Givens** 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. Kenney, the following Resolution memorializing the Board's decision on the application of **John and Kim Burns, 31 Montague Place** was adopted, Mr. Fleischer, Ms. English, Ms. Holloway, and Mr. Whipple abstaining:

WHEREAS, John & Kim Burns, as owners, 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 from **Montclair Code Section 347-51** for a front yard setback less than permitted, for a side yard setback less than permitted, and to exceed the maximum permitted width, in connection with a proposed second floor addition onto an existing dwelling on property designated as Lot 12 in Block 2308 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a property survey dated November 16, 1999, and a plot plan, a floor plan, and elevations, prepared by John Guadagnoli Architect PC, dated July 6, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 16, 2009 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 Montague Place and Midland Avenue and is located in the R-2 Two Family Zone. The subject property contains a 2½-story single-family dwelling and a detached garage at the rear of the lot that is accessed by a driveway from Midland Avenue. The subject property measures 40.90 feet along the frontage on Montague Place, 92.64 feet along the frontage on Midland Avenue, and contains 4,046 square feet in lot area.

2. The applicants propose to construct a second floor addition over an existing one-story section at the rear of the dwelling that would contain two new bedrooms, a laundry room, and a bathroom. A roofed opening along the easterly side wall of the dwelling that leads to a side door for the dwelling would be enclosed with a new wall aligned with the side wall of the rear portion of the dwelling, and the first floor would be remodeled as well.

3. The required front yard setback from Midland Avenue is 25 feet. The existing dwelling has a nonconforming Midland Avenue front yard setback, down to a minimum of 9 feet, as measured to the southerly corner of the one-story section at the rear of the dwelling. The proposed second floor addition is generally aligned with the existing first floor below it, except that the corners of the proposed second floor are recessed, and a variance is requested in that a front yard setback of less than 25 feet is proposed from the Midland Avenue front property line.

4. The existing dwelling has a nonconforming side yard setback of 4.41 feet at the area of the one-story section at the rear of the dwelling where the second floor addition is proposed. The second floor addition would be aligned with the side wall of the first floor below it, and would also be set back 4.41 feet from the easterly side line. A variance is requested in that a minimum side yard setback of 6 feet is required and a lesser side yard setback of 4.41 feet is proposed.

5. The existing dwelling has a nonconforming width of approximately 32 feet, or 78.2 percent of lot frontage width, where a maximum of 26.6 feet, or 65 percent of lot frontage width is permitted based on the frontage width along Montague Place. The proposed addition does not widen the dwelling; therefore the width limitation is applicable to the addition only. The proposed addition itself measures approximately 29 feet in width, or 70.9 percent of lot frontage width. A variance is requested from in that the width of the addition is not permitted to exceed 65 percent of the lot frontage width,

or 26.5 feet, and a greater width of 29 feet, or 70.9 percent of the lot frontage width is proposed.

6. At the hearing, the applicant withdrew the variance for exceeding the maximum permitted principal building coverage of 25 percent of the lot area. The existing principal building coverage is approximately 35 percent of the lot area, which is an existing nonconformity. Based on the parts of the dwelling that would be removed as part of the plan, the nonconforming principal building coverage would be slightly reduced, thereby not requiring a variance.

7. The Board determined that the requested variances for a front yard setback less than permitted, for a side yard setback less than permitted, and to exceed the maximum permitted width for the addition could be granted. The lot is relatively narrow and shallow, and the existing dwelling is already nonconforming to certain zoning requirements. The proposed addition and alterations to the dwelling are either in keeping with the extent of the existing nonconformity or are slight improvements upon the existing nonconformity.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants 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 applicants 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 **John & Kim Burns** 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 Board's decision on the use variance application of **Immaculate Conception High School, Codey Field - 267 Orange Road** was adopted, Mr. Fleischer, Ms. Cockey, Ms. Holloway, and Mr. Burr abstaining:

WHEREAS, Immaculate Conception High School of Montclair, Inc. did make application to the Montclair Township Board of Adjustment for a use variance, bulk variances and site plan approval to demolish the existing field house adjacent to Draper

Terrace and construct a new field house along the easterly side of the property closest to Sears Place on property designated as Lot 21 in Block 3006 on the Montclair Township Tax Map and located in the R-1 Zone;

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to permit construction of a field house which is not a permitted use pursuant to Montclair Code Section 347-41.
2. A variance pursuant to N.J.S.A. 40:55D-70c to permit a rear yard setback from the easterly property line of 26 feet where 171.9 feet is required pursuant to Montclair Code Section 347-45D.
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit a 5 foot high "non-open" fence and gate which exceeds the height limitation of 4.5 feet pursuant to Montclair Code Section 347-27A(2).
4. An exception from Montclair Code Section 281-9I to permit a two-way driveway width of 12 feet where 18 feet is required.

WHEREAS, the applicant submitted a site plan, Sheets C-1 through C-6 dated April 15, 2008 revised through August 25, 2009 prepared by B. F. Langan Consultants, LLC and architectural plans, Sheet A-1 dated October 2, 2006 revised through August 24, 2009 prepared by Dassa Haines, Architectural Group; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on March 18, April 22, June 17, July 8 and September 9, 2009 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 Orange Road and Draper Terrace to the west and abutting the terminus of Sears Place to the north. The property measures 48,000 square feet in area, contains frontage of 272 feet on Orange Road and 205.05 feet on Draper Terrace. The property contains frontage of 19 feet at the terminus of Sears Place. The property is improved with a lawfully existing nonconforming athletic field and field house utilized by Immaculate Conception High School.
2. The existing field house located adjacent to Draper Terrace was originally constructed as a single family home approximately 100 years ago. The two story structure consists of approximately 3,200 square feet and was first used as a field house in 1941. The building is no longer suitable for its intended use based upon the size and arrangement of the rooms, unsuitable rest rooms and lack of handicap accessibility. Moreover, the structure has deteriorated over time and currently is in very poor condition.

3. The existing athletic field is used by the athletic programs of Immaculate Conception High School as well as a number of outside groups including but not limited to a local men's rugby group, Montclair United Youth Soccer, a Glen Ridge lacrosse program and a local boys recreational football league as more particularly described in Exhibit A-12 marked into evidence at the April 22, 2009 public hearing.

4. During the course of the proceedings, the applicant modified the size and location of the proposed field house attempting to address the concerns of the Board and the public related to traffic from Sears Place and tree removal. The field house proposed by the applicant contains a single story consisting of approximately 4,045 square feet with a height of 22 feet 9 inches from grade to the peak of the roof. The revised floor plan depicts two locker rooms with associated showers and rest rooms, a coach's office, a weight room, equipment room, training room, mechanical room, meeting room, two rest rooms accessible from exterior doorways and an enclosed concession area with a service window. Access from Sears Place to the proposed field house will be via a paved turnaround on the property for deliveries and emergency vehicles only. The parking area shown on previous site plans has been removed.

5. The applicant through its professional engineer and land surveyor presented Exhibits A-14 Floodplain Plan, Sheet C-7, prepared by B. F. Langan Consultants, LLC dated June 16, 2009 and Exhibit A-15 Revised Property Survey prepared by Langan Engineering and Environmental Services marked into evidence at the June 17, 2009 hearing. The exhibits depicted the 100 year floodplain and floodway based upon maps prepared by the Federal Emergency Management Agency (FEMA). The exhibits also depicted the flood hazard area and floodway in accordance with the New Jersey Department of Environmental Protection (DEP) approximation method contained in N.J.A.C. 7:13-3.1(a) which is permitted by the DEP for unstudied streams. It was the applicant's position that further study of the hydrology of the brook would not substantially change the delineation of the flood hazard area and floodway and would result in unnecessary expense to the applicant.

6. Based upon the aforementioned delineation, the applicant argued the only feasible location for the proposed field house was on the easterly end of the site outside the flood hazard area. The applicant's engineering expert testified that the DEP would not permit any grading, filling or the construction of structures in the floodway. The applicant's expert further testified that any attempt to locate the building outside the floodway but within the flood hazard area would involve DEP permitting and impractical construction methods whereby the building would either have to be flood proofed or raised one foot above the flood elevation and would substantially increase construction costs. The Board, however, determined it was appropriate for the applicant to explore the possibility of waivers and/or exceptions and set up a pre-application meeting with DEP to review the feasibility of alternate locations and access for the proposed field house. As set forth in Condition 4 herein, the Board requested (1) confirmation that the field house could not be demolished and rebuilt in its current location including the paved area behind the field house; (2) a review of the appropriateness of the approximation method utilized by the applicant and a determination as to whether a full evaluation of the flood elevation would significantly change the flood elevation on the

western side of the field and (3) a review of the feasibility of an access road from Orange Road if access from Sears Place is ultimately denied by the Board.

7. Approval of the requested use variance permitting replacement of the existing deteriorated and outdated field house with a modern visually attractive structure with greatly improved functionality at this location is consistent with the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq. Specifically, approval of the application constitutes appropriate use of the property in a manner which will promote the general welfare (-2a); provides adequate light, air and open space (-2c); provides sufficient space in an appropriate location for the proposed use (-2g) and promotes a desirable visual environment (-2i). The property has a long-standing history of use as an athletic field and field house and approval of the application promotes the general welfare because the site is particularly suited for the proposed use.

8. The Board adopted the conclusions of the applicant's planning witness who found approval of the use variance would be consistent with the intent and purpose of the 1985 Master Plan and 2006 Master Plan Reexamination Report and Zoning Ordinance. Specifically, approval of this unique application provides for the long term preservation of open space and protection of the stream buffer.

9. The Board was cognizant of the concerns of the residents on Sears Place, however, based upon revisions to the plan, the Board determined approval of this application would result in a negligible increase in traffic on Sears Place and thus, would not result in substantial detriment to the neighborhood. Sears Place is currently used to access the parking lot of the existing apartment complex on Lincoln Street. Based upon the limitations imposed herein, the size and scale of the structure would not result in a substantial adverse visual impact on area property owners.

10. The Board did not have the benefit of comments from the Fire Department regarding the adequacy of access to the site for emergency vehicles which will be addressed as part of the site plan review.

11. Based upon the foregoing, the Board determined it was not necessary to reach a determination as to whether or not the proposed field house constituted an "inherently beneficial use" in connection with its relation to a school use.

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.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair, that the within application of Immaculate Conception High School of Montclair, Inc., for a use variance to demolish the existing field house and construct a new field house is hereby approved subject to the following conditions:

1. This approval is subject to site plan approval at which time the Board will consider any bulk variance sought by the applicant.

2. The field house shall not exceed 3,700 square feet as a one story structure and 4,045 square feet as a two story structure. At the time of site plan review, the applicant shall submit alternate plans depicting a one and two story structure.

3. With the exception of the bathrooms that are accessible from the exterior of the building, use of the field house shall be limited to the school owner of the subject property.

4. The applicant shall conduct a pre-application meeting with the DEP to resolve the following issues:

a. Confirm the existing field house cannot be demolished and rebuilt in its current location, including the paved area located behind the existing field house.

b. Review the approximation method used by the applicant's engineer with DEP staff and seek guidance as to whether doing the full evaluation of the flood elevation that would otherwise be required by the Flood Hazard rules is likely to produce a result that would significantly lower the flood elevation on the western side of the field.

c. Can the access road be constructed from Orange Road pursuant to the Flood Hazard regulations if the Board denies the proposed access from Sears Place for public safety reasons?

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 scheduling of special meeting dates to continue the application of **Omnipoint Communications, Inc., 153 Park Street**, was postponed until the November 18, 2009 regular meeting of the Board at the request of the applicant. No further notice would be given. The Board had been granted an extension of time on the application.

Assistant Secretary Charreun stated that **Joseph & Holly Christovao, 22 Macopin Avenue** have requested a postponement of their application to the November 18, 2009 regular meeting of the Board, although they neglected to grant the Board an extension of time. The Planning Department had informed the applicants that the Board would require an extension of time on this date, or the application would be dismissed. The applicants indicated that a written extension of time would be hand delivered to the meeting. Chair Harrison asked the audience if anyone was present for that application. No individual in the audience responded. Chair Harrison stated that the Board would wait for the delivery of the letter from the applicants and make any announcement of a postponement at a later point in the meeting.

Chair Harrison called the application of **John J. Hosay, Jr., 14 Club Road**. The applicant was present and Derek Cox, Architect, was sworn. Mr. Cox described the application for a variance to permit a rear yard setback less than required for a proposed addition onto the first floor at the rear of the dwelling. The property is an irregularly shaped interior lot located in the R-0(a) One-Family Zone. The curved lot frontage of the subject property measures 60 feet in linear length and the property measures 19,260 square feet in lot area. The lot widens significantly towards the rear. The property contains a 1½ story single-family dwelling with an attached garage on the northerly side of the dwelling. On March 15, 1989, the Board of Adjustment granted a rear yard setback variance for additions and a deck. The rear setback requirement at that time was 30 feet. A variance was granted for the rear setback of an attached garage addition on the north side of the dwelling at 16 feet, 2 additions to the first floor at the rear of the dwelling including a cantilevered bay addition at approximately 26 feet and a family room addition at approximately 20 feet, and a deck at 13 feet.

Mr. Cox continued to describe the application. Based on the current zoning ordinance, the rear setback requirement for the subject property is 31 feet, which is 30 percent of the lot depth measured as per the ordinance. Parts of the existing dwelling and deck are located within the current rear yard setback requirement, both as a result of the previously granted variances and the dwelling that existed prior to that. The current plan is to expand the existing cantilevered bay, which is part of the existing kitchen by 31.7 square feet. The bay would be widened from about 10 feet to 17 feet, and extended towards the rear property line by 1 foot. The two corners of the proposed addition would be set back 30.75 feet and 27.55 feet from the rear property line where 31 feet is required and a variance is requested. No other variances are required.

Marked in into evidence was:

A-1 Plans with color prepared by Derek Cox Architecture and Landscape Design, LLC, dated August 13, 2009 and 5 photographs of the subject property

The Board questioned Mr. Cox. Mr. Cox stated that the large hedges at the rear of the property shield view of the rear of the dwelling from the adjoining property to the rear. No questions or comments were offered by the public. The Board discussed the application and determined that the requested variance could be granted. The configuration of the lot and the location of the dwelling on the lot create practical difficulties in conforming to the rear setback requirement. The addition is modest in size and the existing landscaping at the rear property line provides screening of the rear of the dwelling. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved.

Mr. Fleischer arrived at the meeting. Chair Harrison called the application of **Mr. & Mrs. Brian Meith, 106 Edgemont Road**. The applicants were present and George Held, Architect, was sworn. Mr. Held described the application for variances for a front yard setback less than required from Godfrey Road, and for a side yard setback less than required for additions proposed onto the dwelling. The property is a corner lot located in the R-1 One-Family Zone located at the intersection of Edgemont Road and

Godfrey Road. The property measures 7,505 square feet in area and contains a 2½-story single-family dwelling with a detached garage in the northwesterly corner of the lot accessed by a driveway from Godfrey Road. An addition is proposed at the rear of the dwelling that complies with all zoning requirements. On June 15, 2005 the Board of Adjustment granted a side yard setback variance for central air conditioning units. Within the same application, setback variances for a proposed detached garage were denied.

Mr. Held continued to describe the application. The average front yard setback of the 2 nearest dwellings to the west along Godfrey Road is 25.17 feet which is the required front yard setback. The existing dwelling has a nonconforming front yard setback of 24.17 feet to the southwesterly corner of the one-story sunroom along Godfrey Road. A cantilevered bay addition that extends 18 inches closer to Godfrey Road than the sunroom, and a second floor addition directly above the sunroom are proposed. Variances are requested in that a minimum front yard setback of 25.17 feet from Godfrey Road is required and 23.06 feet is proposed for the bay addition, and 24.17 feet is proposed from the southwesterly corner of the second floor addition. A cantilevered bay addition is also proposed on the northerly side of the house that would extend 16 inches into the side yard setback. The existing dwelling has a nonconforming northerly side yard setback of 5.78 feet from the northeasterly front corner of the dwelling. A variance is requested in that a side yard setback of 6 feet is required from the northerly side property line and the proposed bay addition would be set back 4.59 feet from the northerly side property line.

Marked into evidence were:

- A-1 Photographs of the subject property
- A-2 Existing floor plan and elevations, prepared by George A. Held AIA and Associates
- A-3 Plot plan, floor plans, and elevations, with color, prepared by George A. Held and Associates, revised to September 24, 2009

The Board questioned Mr. Held. Mr. Held stated that he did not consider the front setback of other properties on Godfrey Road aside from the two properties required by the zoning ordinance. The Planning staff clarified that the zoning ordinance does not include an allowance for typical bay windows without any floor area, to project into a setback. Kelly Meith was sworn and described the existing interior layout of the first floor rooms. She described how the proposed bay addition in the dining room would allow for normal usage of that room and allow her to use typical dining room furniture. No questions or comments were offered by the public. The Board discussed the application and determined that the requested variance for the Godfrey Road front yard setback could be granted. The proposed bay addition for the sunroom and the second floor addition above the sunroom would not be any closer to Godfrey Road than the dwelling located on the immediately adjoining lot on Godfrey Road. The Board also determined that the requested variance for the side yard setback could be granted. The bay addition for the dining room is a minor enlargement. The impact of the reduction in the side yard setback is mitigated by the architecture and rooflines of the dwelling, as well as the position of the dwelling on the adjoining lot to the north, which is separated from the

subject property by a driveway. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved, Chair Harrison and Mr. Kenney voting against the motion.

Ms. English arrived at the meeting. Chair Harrison called the application of **Maria & John McCullough, 412 Highland Avenue**. The applicants were present, and Richard Jacobs, Architect, was sworn. Mr. Jacobs provided his qualifications and described the application for variances to permit a front yard setback less than required from Windsor Place and to permit a greater principal building lot coverage than permitted to construct a roofed front porch onto the dwelling. The property is a corner lot located in the R-1 One-Family Zone located at the intersection of Highland Avenue and Windsor Place. The property measures 6,705 square feet in area and contains a 2½-story single-family dwelling with an attached garage accessed by a driveway from Windsor Place. The applicants propose to demolish the existing roofed front entry stoop and construct a roofed front porch facing the Highland Avenue frontage, where the front entrance to the dwelling exists. The proposed front porch has dimension of approximately 39.5 feet wide by 9 feet deep and conforms to the front yard setback requirement on Highland Avenue.

Mr. Jacobs continued to describe the application. The required front setback from Windsor Place is 28.75 feet, which is based on the average front yard setback of the 2 nearest dwellings on Windsor Place to the west. The existing dwelling has a nonconforming Windsor Place front yard setback of 15.32 feet, as measured from the northeasterly corner of dwelling. The proposed porch is aligned with the northerly wall of the dwelling and follows the nonconforming Windsor Place front yard setback. A variance is requested in that a minimum front yard setback of approximately 28.75 feet is required from Windsor Place and a lesser front yard setback of 15.32 feet is proposed. The lot measures 6,705.43 square feet in area. The maximum permitted principal building coverage is 25 percent of the lot area or 1,670.5 square feet. The existing dwelling coverage measures 21.16 percent or 1,419 square feet. The total proposed coverage is 1,779 square feet, which equals 26.53 percent of the lot area and a variance is requested.

Marked into evidence were:

- A-1 Photograph of the subject property
- A-2 Photograph of the subject property
- A-3 Photograph of the subject property

The Board questioned Mr. Jacobs. The westerly setback of the dwelling is approximately 7 feet. No questions or comments were offered by the public. The Board discussed the application and determined that the requested variances could be granted. The proposed porch does not encroach any closer than the existing dwelling to Windsor Place and would not negatively impact the appearance of the Windsor Place streetscape. The application does not go against the intent of the principal building lot coverage limitation. The property is relatively undersized and the proposed front porch enhances the appearance of the property. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved.

Chair Harrison called the application of **Frank & Josephine Martone, 229 North Mountain Avenue**. Frank Martone and Todd L. Koenig Architect, were sworn. Mr. Koenig provided his qualifications and described the application for variances for a southerly side yard setback and a rear yard setback less than required for a proposed detached garage. The property is an irregularly shaped interior lot located in the R-1 One Family Zone. The lot measures 90 feet in frontage width and 14,200 square feet in area. The property contains a single-family dwelling with a detached garage in the southeasterly rear corner of the lot. The existing garage is in poor condition and would be demolished. A new garage is proposed of the same exact dimensions in the same exact location as the existing. The foundation and footing of the existing garage is being kept and reused for the new garage. The existing detached garage has a nonconforming southerly side yard setback of 1.4 feet at its closest point and a nonconforming rear yard setback of 1.7 feet. The same nonconforming setbacks are proposed for the proposed garage. Variances are requested in that side and rear yard setbacks of 6 feet are required, and lesser setbacks are proposed. The height of the proposed garage is compliant and no other variances are requested.

Marked into evidence was:

- A-1 Sanborn Map page 49, depicting the subject property and many other properties, with color added to highlight the existing nonconforming location of detached garages

The Board questioned Mr. Koenig. In response to concerns raised by the Board, the applicants agreed to direct all roof leaders from the proposed garage to a drywell or seepage pit located on their property. The applicants also agreed to eliminate the proposed doorway, light fixture, retaining wall, concrete landing, and drainage inlet at the southerly side of the detached garage. No questions or comments were offered by the public. The Board discussed the application and determined that the requested variances could be granted. The fact that the applicants proposed to utilize the existing footing and foundation of the existing detached garage, coupled with the sloping grade of the rear yard, create peculiar and exceptional practical difficulties and exceptional and undue hardship in meeting the required setbacks. Subject to certain conditions, the application would have no substantial detriment to the public good. On motion by Mr. Susswein, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. All roof leaders from the proposed garage shall be directed to a drywell or seepage pit located on the subject property.
2. The proposed doorway, light fixture, retaining wall, concrete landing, and drainage inlet at the southerly side of the detached garage shall be eliminated from the plan.

The Board took a short recess. The letter supplementing the postponement request of **Joseph & Holly Christovao, 22 Macopin Avenue** and granting the Board an extension time was hand delivered by the applicants during the hearing. The continuation of the application was postponed until the November 18, 2009 regular

meeting of the Board at the request of the applicants. The Board had a brief discussion about the fact that the application had not been heard since March 2009 and that there was at least one neighbor who voiced substantive concerns. On motion by Mr. Fleischer, seconded by Mr. Susswein, the applicants were required to complete a full public notice for the November 18, 2009 date.

Chair Harrison called the application of **Falad Properties, LLC, 39-41 North Fullerton Avenue** and **David A. Faloni, Sr. and Molly Cotton, 30 Forest Street** and **Cofal Properties, LLC, 32 Forest Street and 43 North Fullerton Avenue**. Ms. Cockey was recused from the application and left the meeting. David Owen, Esq. appeared as attorney for the applicants. Mr. Owen stated that the issue raised in the Planning Department memorandum regarding the 68th apartment located at 39-41 North Fullerton Avenue would be addressed further by his witnesses at some point during the hearing. Mr. Owen described the application for major subdivision approval, preliminary and final site plan approval, variances, and any other relief necessary.

Mr. Owen called Peter Steck, P.P., who was sworn and stated his qualifications as a Professional Planner. Mr. Steck described the application. An informal gravel surface parking area for approximately 28 vehicles that has existed for the last couple of years without the proper approvals, is located at the rear of the Forest Street lots, that is utilized by residents of 39-41 North Fullerton Avenue and accessed through 43 North Fullerton Avenue. The application seeks to subdivide the Forest Street properties and add the subdivided rear portions of the Forest Street properties to the rear of the property at 39-41 North Fullerton Avenue. The application also seeks approval of a new parking area to be constructed on the proposed enlarged rear yard of 39-41 North Fullerton Avenue. An existing parking area located in the rear yard of 43 North Fullerton Avenue would also be redesigned. The access to both parking areas from the street is through an existing driveway on 43 North Fullerton Avenue. The application follows a rezoning of portions of the said Forest Street properties by the Council of the Township of Montclair in 2005 in order to facilitate more accessory parking for apartment and office uses fronting on North Fullerton Avenue.

Marked into evidence were:

- A-1 Township Ordinance 05-32, which rezoned one entire property and portions of several other properties from R-2 to OR-3
- A-2 Council Resolution, dated June 21, 2005, setting forth reasons for the zone boundary change that is inconsistent with the Township Master Plan
- A-3 Exhibit consisting of several maps and photographs, prepared by Peter Steck, P.P., dated October 22, 2009

Mr. Steck described the subject properties in detail and the background of the rezoning in detail. The rezoning provides an opportunity for the creation of much needed off-street parking for the apartment buildings and office buildings on North Fullerton Avenue. The explanatory Council Resolution was needed because the Master Plan recommended the zoning pattern that existed prior to the rezoning. The property at 45 North Fullerton is a 4-story 26-unit apartment building, commonly owned with 43

North Fullerton Avenue that is not included in the application, although part of the existing driveway and some of the existing parking spaces are at least partially located on 45 North Fullerton Avenue. The house at 43 North Fullerton Avenue is a 3-family dwelling. Mr. Steck described how the existing parking spaces are utilized by the subject properties and 45 North Fullerton Avenue. Some residents of 45 North Fullerton Avenue use the existing parking spaces and would utilize some of the proposed parking spaces. The Board questioned the Mr. Steck. He stated that any access easements and/or agreements to share parking among the North Fullerton Avenue properties could be arranged as a reasonable condition of an approval. Mr. Owen stated that they would need to examine the situation with 45 North Fullerton Avenue as it relates to the relief requested in the current application, and that 45 North Fullerton Avenue would likely be included in a new public notice prior to any subsequent meeting. No questions were offered by the public.

Mr. Owen called Paul Sionas, R.A., C.L.A., who was sworn and stated his qualifications as an Architect and Landscape Architect. Mr. Sionas described the plan in detail. A paved parking area for 23 vehicles would be constructed on the land being subdivided from the Forest Street lots and added to 39-41 North Fullerton Avenue to replace the existing gravel parking area. Within the proposed 23 car parking lot, 8 spaces along the northerly side of the parking area measure 8 feet by 17 feet, and on the westerly side of the parking area 3 spaces measure 8.25 feet by 17 feet, and 1 space measures 9.5 feet by 17 feet. The 11 other spaces, located on the easterly and southerly sides of the parking lot comply with the required dimensions. An aisle width of 24 feet is required for parking spaces at a 90 degree angle. An 18 foot aisle plus a 3.25 foot wide painted area combine to provide a back-up aisle of 21.25 feet for the compact parking spaces numbered 26 and 27, which conforms with the Montclair Site Plan ordinance, but not with the New Jersey Residential Site Improvement Standards. A landscaped setback that is at least 4 feet wide is proposed. A 6-foot tall solid wood fence on the 3 sides of the parking area is also proposed. The landscaping within the setback was described in detail, as well as the existing and proposed fences. Six bollard light fixtures would be utilized which would not be visible to the neighbors. The trash and recycling area for residents of 39-41 North Fullerton Avenue is located in a fence enclosure on 43 North Fullerton Avenue. The proposed dumpster area behind 39-41 North Fullerton Avenue would be only used for larger trash items.

Marked into evidence were:

- A-4 Major subdivision map, color added, prepared by Richard J. Hingos, Inc., dated March 20, 2009
- A-5 Partial topographic survey, color added, prepared by Richard J. Hingos, Inc., dated October 29, 2008
- A-6 Site Plan Details, sheet SP-1, color added, prepared by Sionas Architecture, P.C., dated April 23, 2009
- A-7 Site Plan, sheet SP-2, color added, prepared by Sionas Architecture, P.C., dated April 23, 2009
- A-8 Soil Erosion Plan, sheet SP-3 with color, prepared by Sionas Architecture, P.C., dated April 23, 2009
- A-9 Enlarged portion of the Site Plan, sheet SP-2

Mr. Sionas continued to describe the application. The proposed paved driveway providing access from 43 North Fullerton to the proposed parking area on 39-41 North Fullerton Avenue is a two-way driveway that measures 18 feet in width, which complies with the minimum width requirement for two-way driveways. The existing driveway entrance onto 43 North Fullerton Avenue from the street is utilized to access all of the parking spaces and is used as a two-way driveway as well. The width of this existing driveway does not comply with the 18-foot width minimum. The width varies due to the parking spaces located along the driveway against the southerly side wall of the building at 45 North Fullerton Avenue. Some of the existing parking spaces on 43 North Fullerton Avenue would be modified as part of this plan. Two striped spaces in the southeasterly corner of 43 North Fullerton Avenue would be removed to accommodate a triangular planting bed and the more defined two-way paved access driveway connecting the 2 parking lots. The 7 striped spaces along the southerly side property line would be reconfigured as 5 spaces. The proposed impervious coverage for 39-41 North Fullerton Avenue after the proposed subdivision and the proposed paved parking lot would be 68.19 percent, which complies with the maximum of 70 percent. For 43 North Fullerton Avenue, the impervious coverage would increase from 71.45 percent to 73.62 percent, as a result of the paved driveway replacing a gravel section at the southeasterly corner of the lot, and a variance is requested.

Marked into evidence was:

A-10 Revised impervious coverage calculations for 39-41 North Fullerton Avenue and 43 North Fullerton Avenue, prepared by Sionas Architecture, P.C., dated October 21, 2009

The Board questioned Mr. Sionas. He described the proposed barrier-free parking space in more detail. A private trash hauler currently services the dumpster behind 39-41 North Fullerton Avenue. The trash cans in the fence enclosure are taken to the curb by the superintendent. They would look at improving the pedestrian access to 39-41 North Fullerton Avenue from the proposed parking area. Mr. Owen stated that the fenced trash and recycling area that is located on 43 North Fullerton Avenue would be relocated to be on 39-41 North Fullerton Avenue. No questions were offered by the public. Mr. Fleischer left the meeting.

Mr. Owen called David Faloni, 150 Avon Drive, Essex Fells, who was sworn. Mr. Faloni stated that he has partial ownership in each of the 4 properties involved in the application. He stated he has been involved in ownership of 39-41 North Fullerton Avenue since 1996 and that the 68 dwelling units currently exist in this building. The building at 39-41 North Fullerton was originally constructed in 1925 or 1926 with a total of 61 dwelling units, consisting of 60 two bedroom two bathroom apartments, and a superintendent's apartment at the ground floor level. He stated that from what he can ascertain, it is evident that by 1966, 6 of the 60 two bedroom two bathroom apartments were divided to create 6 additional apartments, increasing the building to 67 dwelling units including the superintendent's apartment. It is also evident that at some point after 1966 but prior to his involvement in the ownership of the property in 1996, an additional apartment was created increasing the total number of dwelling units to 68 in the

building. He stated that while the Township does not recognize the 68th apartment as a lawfully existing dwelling unit in terms of the zoning ordinance, the building has been inspected by the New Jersey State Department of Community Affairs and those records reflect 68 dwelling units.

Mr. Faloni stated that the house at 43 North Fullerton Ave has 3 apartments. This property is also inspected by the New Jersey State Department of Community Affairs, and those records reflect 3 dwelling units. The Board questioned the Mr. Faloni. He stated that he is not very familiar with the 1966 application to Board to convert the building from 67 to 68 dwelling units that was denied. The Board questioned the Mr. Faloni. No questions were offered by the public. Mr. Owen stated that his clients will have to review their options in trying to rectify the discrepancy in the number of dwelling units at 39-41 North Fullerton Avenue, in including 45 North Fullerton Avenue, and in making revisions to improve the plan. Chair Harrison announced that the application would be continued at a special meeting of the Board on December 9, 2009. There would be no requirement for additional public notice. The applicant may complete a new notice if 45 North Fullerton Avenue is included in the application, or if additional variances are requested. The Board was granted an extension of time on the application.

The Board remained in open session for a brief discussion regarding the litigation concerning the previously denied application of **MetroPCS New York, LLC, 641 Bloomfield Avenue**. Mr. Sullivan stated that he has provided the Board with a letter describing the decision rendered by the Court in the matter. He will also be providing further information to the Board as it becomes available. The Board had a brief discussion and Mr. Sullivan answered a few simple questions. Chair Harrison stated that after the Board receives additional information from Mr. Sullivan, a more substantive discussion on the issue can occur at the November 18, 2009 regular meeting in closed session.

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