

MINUTES OF THE BOARD OF ADJUSTMENT
October 17, 2007

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

ABSENT: Vice Chair Fleischer, Mr. Haizel, and Mr. Franco, Secretary

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

On motion by Mr. Whipple, seconded by Mr. Susswein the **Minutes of the March 21, 2007** regular meeting were adopted as modified, Ms. Cockey and Ms. English abstaining.

On motion by Mr. Whipple, seconded by Ms. English, the following Resolution memorializing the decision for the application of **Mountain Avenue Partners, LLC, 77 Upper Mountain Avenue** was adopted as modified, Chair Harrison, Ms. Cockey, Ms. Holloway, Mr. Rubenstein, and Mr. Susswein abstaining:

WHEREAS, Mountain Avenue Partners, LLC, owner of property located at 77 Upper Mountain Avenue, designated as Lot 1 in Block 1502 on the Montclair Township Tax Maps, filed an application with the Board of Adjustment of the Township of Montclair for variances associated with a proposal to construct an addition onto the rear of the single family dwelling on the property, a front yard parking area, and a fence or a retaining wall and fence combination along the front and rear property lines.; and

WHEREAS, the applicant applied for the following variances pursuant to N.J.S.A. 40:55D-70c;

1. A variance from **Montclair Code Section 347-33B(2)** to permit a setback of less than 50 feet from Alpine Street for the proposed addition; and
2. A variance from **Montclair Code Section 347-34B** to permit an off-street parking area between the dwelling and Upper Mountain Avenue; and
3. A variance from **Montclair Code Section 347-27B(2)** to permit a 7-foot tall fence along a section of the Alpine Street front property line and a section of the rear property line that also does not meet the requirement of an open fence design; and
4. A variance from **Montclair Code Section 347-27.1F** to permit a retaining wall and fence combination along the rear property line that will exceed the maximum permitted height of 4½ feet along a section of the rear property line; and

WHEREAS, the applicant submitted a property survey, dated August 21, 2002, and architectural plans prepared by John Reimnitz, Architect, P.C., dated May 25, 2007,

and landscape plans, prepared by Sigrid Morgan, Landscape Architecture, dated July 13, 2007; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 15, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

WHEREAS, at the meeting, the applicant submitted revised architectural plans dated August 13, 2007, and a revised landscape plan dated August 15, 2007; 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 Upper Mountain Avenue and Alpine Street, and is located in the R-0 Mountainside Zone. The lot measures 42,666 square feet in area; the frontage width measures 167 feet on Upper Mountain Avenue and 244.13 feet on Alpine Street. The property contains a single-family dwelling with an attached garage at the rear of the dwelling. The existing driveway has an opening on Upper Mountain Avenue and an opening on Alpine Street.

2. An addition is proposed at the rear of the dwelling that would contain interior living space on the ground floor and the first floor. The addition also contains a new attached 2-car garage at the ground floor that would replace an existing attached garage, and a terrace that is proposed at the first floor level.

3. The required front yard setback from Alpine Street for the proposed addition is 50 feet. The existing dwelling has a nonconforming Alpine Street front yard setback that measures 39.58 feet at the existing front corner of the dwelling and 42.37 feet at the existing rear corner of the dwelling. The proposed addition is slightly recessed from the existing rear corner of the dwelling and is set back 42.88 feet from Alpine Street, and the front setback gradually increases to approximately 46 feet at the rear corner of the addition.

4. The Board determined that the requested front yard setback variance can be approved since it is based on the location of the existing dwelling, and the proposed front yard setback is greater than that of the existing dwelling and increases towards the rear of the addition.

5. The existing driveway that leads into the property from Alpine Street and passes in front of the dwelling would be eliminated. The existing driveway entrance on Upper Mountain Avenue would be utilized for the new driveway configuration. A paved area for guest parking is proposed to be located between the dwelling and Upper Mountain Avenue.

6. The Board determined that the variance for the front yard parking area could not be granted because there is enough space on the property to design a fully

conforming parking area for guests, and no information was provided to demonstrate that the proposed location of this parking area is beneficial to an adjoining property owner or the public.

7. A 7-foot tall fence that includes a lattice top section is proposed for a length of 170 feet along the Alpine Street front property line and length of 8 feet along the rear property line near Alpine Street. This proposed fence exceeds the maximum permitted height of 4½ feet in this area of the lot and also does not comply with the requirement of an open fence design.

8 The Board determined that, with certain modifications such as setting the fence back and providing landscaping in front of the fence, this variance could be approved considering the unique characteristics of Alpine Street, such as the topography of the area, the visibility of the rear yard, as well as the fact that there are no sidewalks on Alpine Street and no homes have their main front entrance on Alpine Street.

9. At the meeting, the applicant eliminated the variance required for the fencing forward of the rear corner of the proposed addition along the southerly side line, which is limited to 4½ feet in height and must be of open design.

10 The revised landscape plans submitted at the meeting depicted a retaining wall with a maximum height of 4 feet along the rear property line, with a 4-foot tall solid fence in the ground set back 1 foot from the top of the retaining wall. This results in a maximum combined height of 8 feet in an area of the lot where the maximum combined height is limited to 4½ feet. The applicant offered to replace the solid wood fence at the top of the retaining wall with an open fence to reduce the impact to the adjoining property.

11. The Board determined that the requested variance for the combined retaining wall and fence height along the rear property line could not be granted, since there is sufficient space on the property to design a fully conforming option that would achieve the objective of the applicant and not have a negative affect on the adjoining property; and

WHEREAS, the Board, based on the foregoing findings, for the variances requested to permit a parking area between the dwelling and the street and to permit a fence and retaining wall combination that exceeds the maximum height permitted along the rear property line, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, for the variances requested to permit a parking area between the dwelling and the street and to permit a fence and retaining wall combination that exceeds the maximum height permitted along

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

WHEREAS, the Board, based on the foregoing findings, for the variances requested for the Alpine Street front setback of the proposed addition and the height and design of the 7-foot fence in the Alpine Street front yard, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, for the variances requested for the Alpine Street front setback of the proposed addition and the height and design of the 7-foot fence in the Alpine Street front yard, concluded that that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of N.J.S.A. 40:55D-70c(2)

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the variances requested to permit parking between the dwelling and Upper Mountain Avenue and to permit a retaining wall and fence combination exceeding the maximum height allowed along the rear property line are hereby denied; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the variances requested for the front setback of the addition from Alpine Street and the height and design of fences in the Alpine Street front yard are hereby approved subject to the following conditions:

1. The 7-foot fence in the Alpine Street front yard shall be setback from the property lines a sufficient distance to allow for landscaping on the subject property in front of the fence.

2. The location of any central air conditioning units on the property shall conform to the zoning ordinance.

3. The applicant shall comply with the requirements of the Board Engineer's letter dated June 14, 2007.

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

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Boris Schaefer, 26 Oxford Street** was adopted, Ms. English, Mr. Rubenstein, and Mr. Whipple, abstaining:

WHEREAS, Boris Schaefer owner of property at 26 Oxford Street, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a westerly side yard setback less than required pursuant to Montclair Code Section 347-46A(2)(a) and a rear yard setback less than required pursuant to Montclair Code Section 347-46A(3) in connection with the construction of a detached garage on property designated as Lot 19 in Block 4307 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a floor plan and elevations for the proposed detached garage, and a property survey dated April 20, 2007; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 19, 2007 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an interior lot located in the R-1 One Family Zone, measuring 60 feet in width and 9,600 square feet in area and contains a 2½-story single-family dwelling. The driveway on the property leads to an existing concrete slab in the ground at northwesterly corner of the rear yard. A plastic shed is presently located on a portion of the concrete slab and would be removed from the property.

2. The applicant proposes to construct a new detached garage on the existing concrete slab. The Sanborn Map indicates that a garage previously existed in the location of the concrete slab, and the testimony of an adjoining property owner to the rear at 53 Cambridge Road, also confirmed that fact.

3. The footprint of the concrete slab measures 18 feet in width by 18 feet in length and the proposed garage would have the same dimensions. Variances are requested in that side and rear setbacks of 6 feet are required, and a westerly side yard setback of 3.7 feet and a rear yard setback of 2.9 feet from the northwesterly corner and 3.0 feet from the northeasterly corner of the garage are proposed. A conforming height of 13.5 feet is proposed and all other zoning requirements are met.

4. The Board determined that requested variances could be granted since the existing concrete slab is being utilized and the location and size of the proposed

garage matches that of the garage that previously existed on the property. Additionally, and particularly in terms of the requested side yard setback variance, the proposed garage is similar to many existing detached garages in the neighborhood.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Boris Schaefer is hereby approved, subject to the following conditions;

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

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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Bethany and Michael Russo, 143 Walnut Street** was adopted, Ms. English, Mr. Rubenstein, and Mr. Whipple, abstaining:

WHEREAS, Bethany and Michael Russo, owners of property at 143 Walnut Street, did make application to the Board of Adjustment of the Township of Montclair for variances from Montclair Code Section 347-51 pursuant to N.J.S.A. 40:55D-70c to allow side yard setbacks less than permitted, a rear yard setback less than permitted, and a principal building coverage greater than permitted, in connection with a proposed addition onto their dwelling on property designated as Lot 14 in Block 3202 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicants submitted a property survey, prepared by Richard Hingos Inc., dated July 28, 2005, and a plot plan, floor plans, elevations dated July 18, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 19, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The subject property is an interior lot located in the R-2 Two-Family Zone, measuring 25 feet in lot frontage width and 2,087 square feet in lot area. The subject property contains a 2-story single-family dwelling with no on-site parking.

2. A second floor addition, measuring 16.5 feet wide by 12 feet long, is proposed over the existing one-story section at the rear of the dwelling. The proposed addition would not extend over the one-story mudroom entrance at the rear of the dwelling, but would have a cantilevered section that extends 3.5 feet beyond the existing one-story section of the dwelling along the easterly side of the dwelling.

3. The existing dwelling is positioned at angle on the lot and has nonconforming side yard setbacks of 0.5 feet at the westerly front corner of the dwelling and 4.89 feet at the easterly rear corner of the two-story section of the dwelling. For the proposed addition, side yard setbacks of approximately 3.5 feet from the westerly side property line, and 4.5 feet from the easterly side property line are proposed, where 6 feet and 10 feet are required.

4. The rear yard setback requirement for the subject property is 33.65 feet. The existing dwelling has a nonconforming rear yard setback of approximately 24 feet as measured to the one-story mudroom at the rear of the dwelling and the proposed addition has a rear yard setback of approximately 28 feet at its closest point.

5. The subject property has an existing nonconforming principal building coverage of approximately 30.2 percent, where the maximum permitted is 25 percent. A principal building coverage of approximately 31.9 percent is proposed.

6. The Board determined that the variances requested are justified based on the small size of the lot and the placement of the dwelling on the property. The decrease in the easterly side yard setback from 4.89 feet to approximately 4.5 feet is minimal and is dictated by the angled position of the dwelling. The rear yard setback of the addition is greater than the existing rear yard setback and the increase in principal building coverage is also minimal considering the relative sizes of the lot, the dwelling, and the addition.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variances could be granted without substantial

detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Bethany and Michael Russo is hereby approved; and

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

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Jacques and Lauren Lapeyrolerie, 18 Hitchcock Place** was adopted, as modified, Ms. English, Mr. Rubenstein, and Mr. Whipple, abstaining:

WHEREAS, Jacques and Lauren Lapeyrolerie, as owners, did make application to the Board of Adjustment of the Township of to construct an inground swimming pool on property designated as Lot 52 in Block 2904 on the Township tax map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicants sought variances pursuant to N.J.S.A. 40:55D-70c(1) as follows:

1. A variance from Montclair Code Section 347-22D to allow a swimming pool in a front yard; and

2. A variance from Montclair Code Section 347-46C to allow accessory structures, such as the proposed swimming pool and the associated mechanical equipment for the pool, to be located between the main building and the curb of the street on which the building fronts; and

3. A variance from Montclair Code Section 305-6B, pursuant to Montclair Code Section 305-14, to allow the distance between the street on which the property fronts and the inside face of the pool to be less than the existing distance between the street line and the main front wall of any structure on such property; and

WHEREAS, the applicants submitted a property survey prepared by Koestner Associates, dated May 10, 2007, which has the location of the proposed pool and associated equipment depicted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 19, 2007, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is a through lot with frontages of 60 feet along Hitchcock Place and 60.47 feet along Hilltop Place. The subject property measures 8,718 square feet in area, is located in the R-1 One Family Zone, and contains a 2-story single-family dwelling with a driveway along the easterly side of the dwelling that is accessible from Hitchcock Place.

2. As a through lot, the subject property has front yards on Hitchcock Place and Hilltop Place, no rear yard, and two side yards on the easterly and westerly sides of the lot. There is no access to the subject property from Hilltop Place.

3. An inground swimming pool is proposed to be located in the southerly front yard between the dwelling and Hilltop Place. The proposed pool measures 16 feet wide by 32 feet long. The mechanical equipment for the pool is located 10 feet from the dwelling, between the dwelling and the pool.

4. The through lot condition for the subject property and other lots on Hitchcock Place was caused by the creation of Hilltop Place along the rear of these lots as a result of a major subdivision that was approved several years ago.

5. The proposed location of the swimming pool and associated equipment is appropriate given the fact that the southerly yard between the dwelling and Hilltop Place functions as the rear yard for this property and the other through lots on Hitchcock Place. The subject property is also higher in elevation relative to Hilltop Place, which along with existing vegetation and fencing, obscures its visibility and minimizes any negative impact on the neighborhood.

WHEREAS, the Board, based on 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 zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the

benefits of the deviation would substantially outweigh any detriment and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Townships of Montclair, that the within application of Jacques and Lauren Lapeyrolerie, for variances is hereby approved subject to the following conditions:

1. The pool shall otherwise comply with all of the location requirements contained in Montclair Code Section 305-6.

2. No existing trees shall be removed to install the pool barrier fence depicted on the plan.

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

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Marie Carnivale, 5 Rutgers Place** was adopted, as modified, Ms. English, Mr. Rubenstein, and Mr. Whipple, abstaining:

WHEREAS, Marie Carnivale, as owner of property at 5 Rutgers Place, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to allow a rear yard setback less than required pursuant to Montclair Code Section 347-45D in connection with a proposed addition onto the rear of her dwelling on property designated as Lot 14 in Block 4801 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey, prepared by Richard Hingos Inc., dated November 19, 2001, and a plot plan, floor plans, and prepared by Fox Architectural Design PC, dated August 9, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 19, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, and measures 70 feet in lot frontage width and 7,964 square feet in lot area. The subject property contains a 1½ story single-family dwelling with an attached one-car garage.

2. An addition to the first and second floors of the dwelling is proposed at the rear of the dwelling. The rear yard setback requirement is 34.13 feet for the subject property, and the proposed addition would have a rear yard setback of 25.82 feet and a variance is requested

3. The plans submitted to the Board also depicted a new deck at the rear of the proposed addition. The deck had a rear setback of 13.82 feet and the proposed principal structure coverage including the deck was 27.08 percent, where a maximum of 25 percent is permitted. At the hearing, the applicant indicated that the deck would not be constructed, which significantly improved the proposed rear setback encroachment and also reduced the proposed principal structure coverage to approximately 22.8 percent, which eliminated the variance required from Montclair Code Section 347- 45E.

4. The Board concluded that the rear setback variance requested for the proposed addition is justified based on the placement of the dwelling on the property, which has a large front yard setback of slightly over 50 feet, excluding the open porch and attached garage, relative to the lot depth of 113.77 feet.

5. The Board considered the fact that the large property to the rear of the subject property, which extends beyond the Municipal boundary and does not contain a building in Montclair, is likely to remain vacant due to the physical and environmental constraints on that property that would make development of that property in Montclair difficult.

6. The Board also determined that the impact of the proposed addition on neighboring properties is minimal as it is in keeping with the nonconforming rear yard setback of the property located immediately to the west of the subject property.

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

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

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

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 application of **Wallwood Gardens, Inc., 400 Orange Road** was adjourned to the December 12, 2007 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application.

The application of **Craftco, 14 North Willow Street** was adjourned to the December 12, 2007 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the variance application of **Ken Abrams, 17 Wayside Place**. Mr. Abrams was sworn and described the application. The property is an interior lot located in the RO Mountainside Zone and contains a single-family dwelling with an attached garage at ground level on the rear elevation. The property measures 65.74 feet in frontage width and contains 21,487 square feet in lot area. An addition is proposed at the southerly rear side of the dwelling at the second floor level for a master bathroom. The proposed addition would be directly above an existing section of the dwelling and no increase is proposed to the dwelling footprint. The grade level of the subject property is lower on the southerly side and rear of the dwelling, which causes the dwelling to have 3 stories along these areas of the dwelling. The proposed addition at the southerly rear side of the dwelling is at the third story of the dwelling and a variance is requested. The existing dwelling has a nonconforming southerly side yard setback of 9.91 feet, as measured to the rear corner at the southerly side of the dwelling. The proposed addition is aligned with the existing section of the dwelling below it and a variance is requested. The maximum permitted width of the principal structure on the property is 42.7 feet. The existing dwelling has a nonconforming width of approximately 43.25 feet. The proposed addition adds massing to the nonconforming width of the dwelling, and a variance is requested.

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The Board determined that the variances requested can be approved. The proposed addition is aligned with the existing southerly side and rear walls of the dwelling and does not increase the height of the dwelling. The number of stories is a function of the existing topography and large mature evergreens on the southerly adjoining property effectively screen the applicant's dwelling from view. On motion by Mr. Whipple, seconded by Mr. Rubenstein, the application was approved.

Chair Harrison called the variance application of **Valley 29 Associates, LLC, 29 Valley Road**. Michael Stahl, property owner was sworn. He stated that he and his wife are the only members of the corporation that owns the subject property. He described the application. The property is an interior lot located in the "center area" of the C-1

Central Business Zone and contains a 2½ story building. A freestanding sign is proposed in the front yard of the property for the photography studio business that will be located on the first floor. No other signage is proposed. The sign panel measures 30 inches high by 30 inches wide and will be setback 20 inches from the front property line. The height of the freestanding sign would be 5 feet 11 inches from the ground. The property is also located in the Town Center Historic Business District, and approval was already received for the proposed sign from the Montclair Historic Preservation Commission on September 20, 2007.

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The Board determined that the requested variance for the proposed freestanding sign is acceptable. The building on the subject property is set back approximately 9 feet from the front property line, while the adjoining buildings are at the front property line, which makes the proposed freestanding sign the best option for signage on the property. The size of the proposed freestanding sign is also consistent with what is otherwise permitted in other commercial zones in the Township. On motion by Mr. Whipple, seconded by Ms. Holloway, the application was approved.

Chair Harrison called the variance application of **Mary and Matt Kunka, 393 Highland Avenue**. The applicants and Joseph Turano, builder, were sworn. The applicants and Mr. Turano described the application. The property is an interior lot located in the R-1 One-Family Zone and contains a single-family dwelling with a detached garage located at the rear of the lot. An addition is proposed at the rear of the dwelling that would have a basement, a first floor, a second floor, and an attic. The addition measures 16 feet 9 inches wide by 10 feet long and aligns with the northerly side wall of the existing dwelling. The existing deck stairs at the rear of the dwelling would be relocated to accommodate the addition. The topography of the property slopes downward away from the Highland Avenue, and as a result, the first floor level is more than 6 feet above the adjoining grade level along the rear wall and sections of the side walls of the existing dwelling and the proposed addition, thereby making the basement level at these areas of the dwelling a story above grade, and producing a total of 3½ stories, whereas 2½ stories is the maximum permitted. The height of the dwelling would remain below the 35 foot maximum height requirement and the dwelling would continue to comply with all other zoning requirements. The property is in the Steep Slope area, however, the proposal results in a net increase in impervious coverage of less than 200 square feet, thereby not requiring review for grading and drainage.

The Board questioned the applicants. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The Board determined that the variance requested for exceeding 2½ stories is acceptable since the topography of the lot causes the rear of the first floor of the dwelling to be more than 6 feet above grade where the grade level is naturally lower, which is a typical condition for properties in the neighborhood, and the addition otherwise conforms to all other zoning requirements. On motion by Mr. Susswein, seconded by Ms. Cockey, the application was approved.

Chair Harrison called the variance application of **Georgette & Paul Gitter, 523 Highland Avenue**. Mr. Gitter and Andrew Passacantando, Architect, were sworn. The property is an interior lot located in the R-1 One-Family Zone and contains a single-family dwelling with a detached garage located at the rear of the lot. The property measures 60 feet in frontage width and contains 9,771 square feet in lot area. An addition at the rear of the dwelling is proposed that would have a basement with a 1-car garage, a first floor with a deck on columns, a second floor, and an attic. The existing dwelling contains 2,429 square feet of floor area and the proposed addition would add 1,699 square feet of floor area to the dwelling. The existing detached garage would be removed. The topography of the property slopes downward away from the Highland Avenue, and as a result, the first floor level is more than 6 feet above the adjoining grade level along the rear wall and sections of the side walls of the existing dwelling and the proposed addition, thereby making the basement level at these areas of the dwelling a story above grade, and producing a total of 3½ stories, whereas 2½ stories is the maximum permitted. The height of the dwelling would remain below the 35 foot maximum height requirement and the dwelling would also continue to comply with all other zoning requirements. The design of the existing dwelling, which consists of steep roof gables, was incorporated into the design of the addition, and modifying the roof design in order to reduce the height of the addition would have a negative effect on the overall design of the dwelling.

Marked into evidence were:

- A-1 North side elevation and topographic information
- A-2 Rendering of the dwelling as proposed
- A-3 Photographs of the existing dwelling

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The Board determined that the variance requested for exceeding 2½ stories is acceptable since the topography of the lot causes the rear of the first floor of the dwelling to be more than 6 feet above grade where the grade level is naturally lower, which is a typical condition for properties in the neighborhood, and the addition otherwise conforms to all other zoning requirements. The Board also determined that, although the property is not in the Steep Slope area, the size of the proposed addition would impact the stormwater drainage on the property, and that drywells should be constructed to manage the stormwater runoff produced as a result of the additional impervious coverage. On motion by Mr. Rubenstein, seconded by Mr. Susswein, the application was approved, Ms. Cockey, Ms. English, and Mr. Whipple voting in the negative, subject to the following conditions:

1. The area of the existing detached garage shall be landscaped following its removal.
2. Roof leaders from the rear of the dwelling shall be connected to drywells on the property.

Chair Harrison called the variance application of **Daniel & Yvonne Sargeant, 137 Squire Hill Road**. Mr. Sargeant was sworn and described the application. The property is an interior lot located in the R-1 One Family Zone and contains a 2-story single-family dwelling with an attached garage on the right-hand side of the dwelling. The property measures 58.50 feet in width along its frontage and contains 8,482 square feet in lot area. An existing uncovered front entry stoop and steps would be demolished and a roofed front porch measuring 30 feet wide by 8 feet deep is proposed. The steps for the proposed porch are incorporated into the footprint of the porch and do not project forward from the porch footprint. The required front yard setback for the subject property is required to be no less than the average of the 3 nearest dwellings on the same side of the street, which includes 2 dwellings to the south and 1 dwelling to the north, which is the corner of Alexander Avenue and Squire Hill Road. Mr. Sargeant indicated that he could not obtain property surveys for these properties, so field measurements of the front yard setbacks to the easterly edge of the sidewalk on Squire Hill Road were submitted.

The Board questioned the applicant. After a series of questions and some discussion, it was made evident that the front setback measurements and calculations provided by Mr. Sargeant were inaccurate. Mr. Sargeant requested that the application be adjourned to the next meeting so that he could revise this information for the Board to review. The application was adjourned to the November 14, 2007 regular meeting of the Board. No further notice would be given.

James Sherman, of the Montclair Environmental Commission, addressed the Board. He stated that he is present to inform the Board of Adjustment that the Environmental Commission has forwarded to the Township Council a draft Shade Tree ordinance for their consideration. The Board and Mr. Sherman had a brief discussion about the legal issues with this type of ordinance and what has occurred in other municipalities in New Jersey.

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