

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**December 10, 2008**

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

ABSENT: Ms. Cockey, Ms. English, Mr. Kenney, and Mr. Franco, Secretary

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

On motion by Mr. Fleischer, seconded by Mr. Whipple, the **Minutes of the September 17, 2008** regular meeting were adopted, as modified, Ms. Holloway abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Eleonora Elvins, 1 Dodd Street** was adopted, Mr. Fleischer, Ms. Holloway, and Mr. Rubenstein abstaining:

WHEREAS, Eleonora Elvins, as owner, did make application to the Board of Adjustment of the Township of Montclair, to remove an existing sunroom at the rear of the dwelling and construct a one-story addition in its place, on property designated as Lot 12 in Block 4404 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-45C(1)** for a side yard setback less than 6 feet from the easterly side property line; and

WHEREAS, the applicant submitted floor plans and elevations prepared by a builder for the applicant, a property survey, and a photograph of the rear of the dwelling; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 19, 2008, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One Family Zone, measuring 35 feet in width and 150 feet in depth. The property contains a 2½-story single-family dwelling that has a 1-story section at the rear which leads to a glass-enclosed sunroom and a wood deck at the rear.

2. On October 21, 1987, the Board of Adjustment approved a variance application to construct the sunroom with a minimum easterly side yard setback of 2.3 feet. The sunroom is aligned with the easterly side wall of the dwelling and the easterly side yard setback increases slightly to 2.4 feet at the rear corner of the sunroom due to the slightly angled position of the dwelling.

3. The existing sunroom is proposed to be removed and a one-story addition is proposed in its place. The existing wood deck would remain. The existing dwelling has a nonconforming easterly side yard setback of 2.3 feet as measured to the southeasterly corner of the 1-story section of the dwelling. The proposed addition is aligned with the easterly wall of the dwelling, the same way that the sunroom is aligned with the dwelling, and would also have a minimum side yard setback of 2.3 feet, which requires a variance.

4. The Board determined that the variance requested could be approved. The proposed addition is aligned with the existing easterly side wall of the dwelling, and although it would extend approximately 1 foot further into the rear yard than the existing sunroom, it would not encroach any closer to the easterly side property line. The subject property is also narrow in width, which makes it difficult to comply with the side yard setback requirements, and the proposed addition would not have negative impact on nearby properties.

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

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

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

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

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Kevin & Jane O'Leary, 165 Summit Avenue** was adopted, Mr. Fleischer, Ms. Holloway, and Mr. Rubenstein abstaining:

**WHEREAS**, Jane and Kevin O'Leary, as owners, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a 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 15 in Block 2606 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey dated December 6, 1997, and a plot plan, floor plan, and elevations prepared by Geoffrey Gogan, Architect, Planner, A.I.A., dated May 2008; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on November 19, 2008 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 70 feet in width and 13,839 square feet in area. The property contains a 2½-story single-family dwelling and a driveway leading to a location in the rear yard where a detached garage had existed. The detached garage was recently demolished after it was struck and damaged by an automobile that was driving along a driveway on the church property that abuts the rear of the subject property.

2. The previously existing garage had a nonconforming easterly side yard setback of 1.57 feet and a nonconforming rear yard setback of 2.37 feet. A detached garage is proposed in the same area of the rear yard as the existing garage and the footprint would be enlarged by approximately 1-foot in width and 1-foot in length to measure 22 feet in width by 22 feet in length. The easterly setback is proposed to be increased by 6 inches to 2.07 feet, and the rear setback is proposed to be increased by 8 inches to 3.04 feet.

3. Variances are requested in that a minimum side yard setback of 6 feet is required from the easterly side property line and a lesser side yard setback is proposed, and in that a minimum rear yard setback of 6 feet is required and a lesser rear yard setback is proposed. A conforming height of 15 feet is proposed. The proposed garage complies with all other zoning requirements.

4. The Board determined that the application can be approved since the location of the proposed garage is consistent with that of the previously existing garage, and is also similar to that of many existing detached garages in the neighborhood. Furthermore, the nonconforming setbacks are being slightly improved and there would be no detriment to any nearby property. The Board also considered the fact that

increasing the easterly side setback any further could potentially harm a large existing Oak tree near the garage.

**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 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 Jane and Kevin O'Leary 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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **First Montclair House, Corp., 56 Walnut Street** was adopted, Mr. Fleischer, Ms. Holloway, and Mr. Rubenstein abstaining:

**WHEREAS**, First Montclair Housing Corporation, Inc., as owner and applicant with respect to property located at 56 Walnut Street, Montclair, New Jersey (hereinafter "the subject property"), did make application to the Montclair Township Board of Adjustment (hereinafter "the Board") for use variances and site plan approval to construct a wooden arbor and add two additional parking spaces on the subject property, designated as Lot 4 in Block 4308 on the Montclair Township Tax Map and located in the R-4 Zone; and

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

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to permit construction of a wooden arbor which constitutes an expansion of the preexisting nonconforming use contrary to Montclair Township Code Section 347-112.

2. A variance pursuant to N.J.S.A. 40:55D-70d(2) to add two additional parking spaces which constitutes an expansion of the preexisting nonconforming use contrary to Montclair Township Code Section 347-112.

3. An exception from Montclair Code Section 281-9F which requires off-street parking areas which adjoin a residential district to be screened.

**WHEREAS**, the applicant submitted a site plan, Sheet A-1 revised through September 17, 2008, Sheets A-2 and A-3 revised through September 5, 2008 and survey dated September 22, 2005 prepared by the Mylan Architectural Group and roof and arbor framing plans, Sheets S1 and S2 dated May 28, 2008 prepared by Allied Engineering Associates; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on November 19, 2008 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 situated on the northerly side of Walnut Street has frontage of 237.54 feet and lot area of 1.93 acres. The subject property contains a building of varying heights which contains a 131 unit senior citizen residence. The existing use exceeds the maximum permitted residential density in the R-4 Zone (28 units per acre). There is an existing driveway and parking areas on the westerly side of the building and a landscaped yard exists on the easterly side of the building.

2. At the public hearing, a parking plan marked as Exhibit A-1 depicting the existing 42 parking spaces (including 7 barrier free) on site. Under the current zoning ordinance, a minimum of 66 parking spaces would be required. The application seeks to add two standard parallel parking spaces in the existing parking lot located in the northwesterly corner of the subject property for a total of 44 parking spaces. The additional two parking spaces will bring the number of parking spaces closer to conformity with the Ordinance and addresses on-site parking demand.

3. The application proposes a wooden arbor measuring 10 feet 8-3/4 inches in height and 53 feet 8-3/4 inches long to be located 7 feet to the east of the existing building. Solar panels would be mounted on top of the arbor to be used in conjunction with solar panels proposed on the roof of the three story section of the building.

4. The Board determined there are various purposes of zoning and special reasons in support of the grant of the use variances including that it promotes the appropriate use of land and the general welfare (N.J.S.A. 40:55D-2a), encourages senior citizen community housing construction (N.J.S.A. 40:55D-2l) and promotes utilization of renewable energy sources (N.J.S.A. 40:55D-2n).

5. Pursuant to Condition 1 below, the applicant is providing some screening of the parking area along the northerly property line. Additional screening is impracticable and would exact undue hardship upon the applicant and granting of the

exception is reasonable and within the general purpose and intent of the Site Plan Ordinance.

6. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

**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 First Montclair Housing Corporation, Inc. for site plan approval, exception and variance relief pursuant to N.J.S.A. 40:55D-70d(2) is hereby approved subject to the following conditions:

1. The applicant shall replace the existing chain link fence with a wood stockade fence adjacent to the five parking spaces at the northerly property line.

2. The applicant shall post an inspection escrow with the Township in the amount of \$300 to cover the inspection of the proposed improvements as recommended in the Board Engineer's correspondence dated October 28, 2008.

**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. Fleischer, seconded by Mr. Susswein, the **2009 Schedule of Regular Meetings** was adopted. The Board discussed the extension of time requested for the application of **Boris Schaefer, 26 Oxford Street**. The approved variance expired on November 15, 2008. The applicant is requesting a one year extension of time so that the approval would expire on November 15, 2009. On motion by Mr. Fleischer, seconded by Mr. Susswein, the request was approved.

The application of **Wallwood Gardens, Inc, 400 Orange Road** was adjourned to the April 15, 2009 regular meeting of the Board, at the applicant's request, subject to the condition that the applicant complete public notice for the April 15, 2009 date. The Board was granted an extension of time on the application. The Board also requested that the applicant be present on April 15, 2009 even if the applicant is seeking a further adjournment at that time, so that Board members questions on the status of the application could be addressed. The application of **Immaculate Conception High School, Codey Field - 267 Orange Road** was adjourned to the January 21, 2009 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 **First Evangelical Lutheran Church, 153 Park Street** was adjourned to the January

21, 2009 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.

James Pryor, Esq., attorney for **Omnipoint Communications, Inc., 153 Park Street**, was not yet present, so the Board delayed the discussion on the selection of special meeting dates for that application.

Chair Harrison called the application of **Nicole Peaks & Wolfgang Damm, 120 Elm Street**. Ms. Peaks was sworn and described the property and the application. The property contains a 2½-story single-family dwelling and a detached garage in the rear yard. The existing garage is in poor condition and will be demolished. The existing garage measures approximately 19 feet wide by 18 feet deep, and has a nonconforming northerly side yard setback of 3.15 feet at its closest point, and a nonconforming rear yard setback of approximately 3.5 feet. The proposed garage is larger than the existing garage, measuring 20 feet by 20 feet. A setback of 3.5 feet on the rear and northerly side yard setback is proposed. A conforming height of 15 feet is proposed.

The Board questioned Ms. Peaks concerning the roof gutters and downspouts on the proposed garage. No questions and comments were offered from the public. The Board discussed the application and determined that the variance requested could be approved since the location of the proposed garage is consistent with that of the previously existing garage, and is also similar to that of many existing detached garages in the neighborhood. Furthermore, the nonconforming northerly side yard setback is being slightly improved and there would be no detriment to any nearby property. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved, subject to the following condition:

1. The downspouts on the proposed garage shall be directed away from the rear and northerly side property lines.

Chair Harrison was recused and Vice Chair Fleischer called the application of **Omnipoint Communications, Inc., 153 Park Street** for the purpose of scheduling special meeting dates. James Pryor, Esq., attorney for the applicant, and Terry Thornton, Esq., resident of 160 Park Street, and objector to the application were present. After some discussion, a special meeting date of February 11, 2009 was selected to continue the application. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the application of **Christopher & Linda Baxter, 228 Watchung Avenue**. The applicants were present, but only Rebecca Gelman, Architect was sworn. She described the property and the application. The property is a corner lot located at the intersection of Watchung Avenue and Fairmount Avenue. The property contains a 2½ -story, single-family dwelling with a detached garage in the northwest corner of the lot accessed by driveways from Watchung Avenue and Fairmount Avenue. The property has 60 feet of lot frontage on Watchung Avenue, 150.43 feet of lot frontage on Fairmount Avenue, and measures 8,949 square feet of area. The applicants propose to construct a two-story addition at the rear of the dwelling. The addition is the full width

of the dwelling, and aligns with the existing easterly and westerly side walls of the dwelling. The required minimum front yard setback along Fairmount Avenue is 30 feet 3 inches, which is based on the average front yard setback of the 2 nearest principal structures on Fairmount Avenue. The existing dwelling is located approximately 7 feet 7 inches from the front property line on Fairmount Avenue, which is nonconforming. The rear unroofed porch, which is to be demolished, is located slightly closer at 7 feet 4 inches. The easterly side wall of the proposed addition would have a setback of 7 feet 1 inch from Fairmount Avenue, and a variance is requested. The slight reduction in the front setback is due to the angled position of the dwelling and the Fairmount Avenue front property line. The proposed addition complies with all other zoning requirements. The existing curb opening and the driveway from Fairmount Avenue would be relocated further to the north to accommodate the addition.

The Board questioned Ms. Gelman. The Board discussed the application and determined that the application can be approved. The existing dwelling is small in size and requires additional living space to accommodate modern family living and the existing placement of the dwelling on the corner lot creates difficulty in complying with the front setback requirement from Fairmount Avenue. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved, Chair Harrison and Mr. Rubenstein voting against the motion.

Chair Harrison called the continuation of the application of **MetroPCS New York, LLC, 641 Bloomfield Avenue**. Renu Shevade, Esq. appeared as attorney. Fahd Kananth, PE, was recalled and was still under oath. He stated that he examined 10 Crestmont Road and 415 Claremont Avenue as the Board suggested, as well as 163 Bloomfield Avenue, Verona.

Marked into evidence was:

A-3 Base Map with 4 overlays including:

-  overlay depicting the coverage from existing/approved sites;
-  overlay depicting the potential coverage from 10 Crestmont Road;
-  overlay depicting the potential coverage from 415 Claremont Avenue;
-  overlay depicting the potential coverage from 163 Bloomfield Ave, Verona;

Mr. Kananth stated that based on his analysis, 10 Crestmont Road is a good location for antenna installation as it provides coverage to the east filling in a portion of their coverage gap, but that it would require an additional antenna installation site to fill in southerly parts of their gap. He stated that 415 Claremont Avenue does not currently have any antennas on it. He stated that it would provide less overall coverage than 10 Crestmont due to its shorter height, and that it also leaves a significant section of their coverage gap uncovered to the south. He stated that although 163 Bloomfield Avenue, Verona is a 6-story building, the signals would be blocked towards the east due to the fact that the site sits on lower terrain on the other side of the ridge.

The Board questioned the witness extensively. He stated that he would need to go back and see if the approved installation at 36 Hawthorne Place could be modified to

provide the coverage that is lacking in the 10 Crestmont Road and 415 Claremont Avenue coverage simulations. Chair Harrison called for questions from the public. Dan Prochilo, Montclair Times, inquired about the potential additional antennas at 36 Hawthorne Place, the coverage gap depicted on Exhibit A-3, as well as questions about the analysis used and the carrier itself.

Ms. Shevade requested that the application be continued at the next meeting so that they could look into the Board's concerns and granted the Board an extension of time. Chair Harrison announced that the application will be continued at the January 21, 2009 regular meeting and that no further notice would be given.

The Board took a short recess. The Board briefly discussed the remaining items on the agenda. James Pryor, Esq., attorney for the application **Omnipoint Communications, Inc, 36 Hawthorne Place** requested that the Board consider adjourning the application to a later date. The Board discussed a special meeting date and Chair Harrison announced that the application would be heard at a special meeting on January 28, 2009. No further notice will be given. The Board was granted an extension of time.

Chair Harrison called the application of **B & L Grant Street, Inc, 3 Grant Street**. Lenny Khrakovskiy, owner, and James Mastronardy, PE PP, were sworn. Mr. Mastronardy stated his qualifications and described the application for variances and site plan approval to construct an off-street parking area for 3 vehicles on the subject property. The property is located in the R-4 Three-Story Apartment Zone on a corner lot at the intersection Grant Street and Bay Street. The property measures 5,000 square feet in area, with 50 feet of frontage on Grant Street and 100 feet of frontage along Bay Street. The property contains 2 separate buildings, one of which is a 6-unit three-story building known as 80 Bay Street, and the other is a 3-unit three-story building known as 1 Grant Street. 3 Grant Street was the address of a one-story single-family dwelling that existed in the location where the parking area is proposed, and was recently demolished after receiving approval from the Historic Preservation Commission in an application that also included other work on the property.

Mr. Mastronardy stated that the existing total of 9 dwelling units on the property is considered a nonconforming use because the permitted residential density on the property is 3.21, or 3 dwelling units. The proposed parking area constitutes an expansion of the nonconforming use and a variance is requested in that the existing nonconforming use on the property is not permitted to be expanded, increased, or enlarged. The applicant has proposed two site plan alternatives for the 3 parking spaces, identified as Alternative Scheme 'A' and Alternative Scheme 'B'. The key differences between the 2 plans are: the position of the parking space closest to the street, the width of the curb opening and the driveway apron, the width of the driveway, and the ingress and egress of the parking space closest to the street. A variance is requested in that off-street parking must be set back a minimum distance of 4 feet from property lines, with the intervening space appropriately landscaped, and one of the parking spaces is set back 2 feet from the northerly side property line. A variance is also requested in that no off-street parking area shall be located within 6 feet of any

principal building, and 2 of the 3 parking spaces abut the building at 1 Grant Street, and 2 of the 3 parking spaces are 3 feet away from the building at 80 Bay Street. Waivers are requested to allow a setback of 2 feet from the northerly side property line for one of the proposed parking spaces; to allow a width of 13.7 feet for the two-driveway as opposed to the minimum of 18-feet required; and to allow a length of less than 22 feet for the 2 parking spaces that abut the building at 1 Grant Street, which are proposed at 18 feet in length. An exception from NJRSIS requirements is requested in that that only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than 90 degrees.

The Board questioned Mr. Mastronardy. Mr. Khrakovskiy stated that there is no overnight parking permitted on the neighborhood streets and that there are no public parking facilities nearby. He also stated that the 3 parking spaces proposed would be assigned to the smaller building on their property that contains 3 dwelling units, and the 6-unit building would not have assigned parking spaces on the site. No questions or comments were offered from the public. The Board discussed the application. The Board determined that Alternative Scheme 'B' could be approved. The plan provides some off-street parking in an area where a one-story dwelling unit was removed. The addition of parking coupled with the removal of a building and the landscaping that will be added, is beneficial to the property and the neighborhood. The size of lot limits the ability to provide any more parking and justifies the bulk variances, waivers, and exceptions as presented in Alternative Scheme 'B'. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved, Ms. Holloway voting against the motion, subject to the following conditions:

1. The site shall be constructed in accordance with Alternative Scheme 'B'.
2. The parallel parking space adjacent to 1 Grant Street shall be a minimum of 22 feet in length.
3. The applicant shall comply with the approval of the Historic Preservation Commission dated July 19, 2007.
4. The applicant shall comply with the requirements contained in the Board Engineer's letter dated November 29, 2008.

Chair Harrison called the application of **210 Highland Partners, 210 Highland Avenue**. David Maran, Esq. appeared as attorney for the applicant. Martin Schwartz, principal shareholder of 210 Highland Partners, was sworn and described the application to construct a single-family dwelling on the vacant lot. The subject property was previously before the Board at meetings held on September 22, 2004, October 20 2004, and December 15, 2004, and an application for variances to construct the dwelling was approved subject to conditions by a Resolution dated January 19, 2005. Following the approval of variances on January 19, 2005 no construction occurred on the site. The zoning ordinance was subsequently amended on July 12, 2005 to include a limitation of 2½ stories for single-family dwellings in the R-0 Mountainside Zone. This zoning requirement became applicable to the dwelling that was yet to be constructed,

and has become an additional variance required for the proposed 3-story dwelling. On June 21, 2006 the Board of Adjustment granted an extension of time on the previously approved variances through February 10, 2007 that was requested by the previous applicants. The question of the additional variance required for the number of stories was unaddressed at that time, and the variance required for exceeding 2½ stories remained applicable. No construction occurred during this period of time through February 10, 2007 and the variance approvals expired.

Mr. Schwartz stated that they under contract to purchase the subject property, and that on May 21, 2008, they requested an extension of time on the previously approved variances which had expired. At that time the applicant and the Board were informed of the required variance for exceeding 2½ stories. The Board of Adjustment granted an extension of time on the expired variances through February 10, 2009, which was conditioned upon a review of the plan to conform to the January 19, 2005 approval, plus the interplay between the approved variances and any new variances requested. On July 19, 2008 an application was filed for a variance pursuant to *N.J.S.A. 40:55D-70c* from **Montclair Code Section 347-33A(2)** in that the proposed dwelling exceeds 2½ stories. The applicant also requested an additional extension of time on the previously approved variances to run concurrently with the expiration date of the presently requested variance for exceeding 2½ stories should it be approved.

The Board questioned Mr. Schwartz. Chair Harrison called for questions from the public. Bill Kaplan, 214 Highland Avenue asked about the previously approved variances. Are Tsirk, 205 Highland Avenue asked about the potential damage to his property if blasting occurs. Jerry Czin, 206 Highland Avenue asked questions about potential damage caused by blasting and excavation.

Eric Maran was sworn and stated his qualifications as an Architect and described the property and the application. The subject property is a vacant interior lot located in the R-0 Mountainside Zone. The applicant proposes to construct a single-family dwelling with an attached three-car garage at the basement level. Several retaining walls and a driveway are also proposed on the property. The plan submitted with the application is consistent with what the Board had previously reviewed in the prior application, and is compliant with certain modifications and conditions imposed by the Board in the January 19, 2005 approval relating to retaining wall height, the driveway, and the limit of disturbance. The proposed dwelling is a 3-story home with a basement, first floor, and second floor. The proposed dwelling has a flat roof and a stairway bulkhead is located on the roof. A variance is requested in that the proposed dwelling exceeds 2½ stories. Based on the existing and proposed grade levels around the proposed dwelling, the proposed building measures 27 feet 11 inches in height, measured as defined by the zoning ordinance. The proposed height is below the 35-foot maximum height permitted. The proposed dwelling does not require any other variances.

Marked into evidence were:

- A-1 Letter from the Board Engineer, dated October 7, 2005 referencing his approval of a PPE plan Sheet 3, Grading and Utility Plan, dated October 5, 2005
- A-2 Letter from PPE dated October 6, 2005, referencing the requested revisions by the Board Engineer to Sheet 3, Grading and Utility Plan, dated October 5, 2005.
- A-3 Scale model of the proposed dwelling prepared by Smith Maran Architects.
- A-4 Photographs of existing dwellings in the neighborhood
- A-5 Rendering of the dwelling as seen from a northeasterly perspective
- A-6 Drawing depicting the average building height calculations
- A-7 Copy of the plot plan with calculations indicating a conforming principal building width of 62 feet 2 inches, and principal building coverage of 12.07%

The Board questioned Mr. Maran. Chair Harrison called for questions from the public. Bill Kaplan, 214 Highland Avenue asked how the front setback compares to the front setback of his dwelling and also inquired about the height calculation. Are Tsirk, 205 Highland Avenue asked that he be included on any notice that is required if blasting occurs. Maria Czin, 206 Highland Avenue asked questions about potential damage caused by blasting and excavation. Jerry Czin, 206 Highland Avenue asked questions about potential damage caused by blasting and excavation. Mr. Schwartz provided some information from his perspective on the potential need for blasting and stated that they are not at that stage yet and that they would comply with applicable legal requirements. Chair Harrison called for comments from the public. Jerry Czin, 206 Highland Avenue, was sworn, reiterated his concerns over blasting and stated that the applicant should be responsible for the cost of inspections prior to and after whatever blasting occurs. Bill Kaplan, 214 Highland Avenue was sworn and stated his concern over potential damage to large trees on his property and his dwelling that could be caused by blasting or construction.

The Board discussed the application. The requested variance to exceed 2½ stories is justified due to the steep topography of the property. In order to comply, the applicant would need to excavate deeper into the existing grade on order to bury more of the basement level at the front and sides for the proposed dwelling. This would cause excessive site disturbance and would have a negative effect on the nearby properties. Furthermore, the design of the proposed dwelling is in keeping with that of many other dwellings in the neighborhood and the 3-story design would not have a negative impact on the neighborhood. On motion by Mr. Fleischer, seconded by Mr. Susswein, the application was approved, subject to the following conditions:

1. The applicant shall comply with the conditions of the January 19, 2005 approval as follows:
  - a) A formal parking space shall not be established in the front yard.

b) Any trees that are not removed on the subject property, as well as trees on the neighboring properties located at 206 Highland Avenue and 214 Highland Avenue, within 25 feet of the property line which are of a diameter of 6 inches or greater that do not survive within a year after the Certificate of Occupancy is issued for the proposed dwelling, shall be replaced by a like kind tree, which will not have to be the same size as the tree being replaced.

c) The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

d) Any central air-conditioning units placed on the property shall conform to the requirements of the zoning ordinance.

2. Condition 3 from the January 19, 2005 approval shall be amended to include 205 Highland Avenue in the notifications required 7 days in advance of any tree removal or construction of the dwelling and shall read as follows:

a) The applicant shall, 7 days in advance of any grading or blasting, notify the Montclair Water Bureau and all property owners within 200 feet. The applicant shall also, 7 days in advance of any tree removal or construction of the dwelling, notify the Montclair Water Bureau, the immediately adjoining property owners located at 206 and 214 Highland Avenue, as well as the property owners across the street located at 205 and 209 Highland Avenue.

3. The applicant shall comply with the requirements of the Board Engineer's last letter dated October 7, 2005, which is a final approval of site engineering plans dated August 8, 2005, that included a revised Grading and Drainage Plan, dated October 5, 2005.

4. The previously approved variances are extended and shall expire concurrently with the expiration date of the variance being granted with the current application.

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