

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**March 17, 2004**

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Mr. Flood, Mr. Gallardo, Mr. Haizel, and Mr. Susswein; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Vice Chair Fleischer and Ms. Rock-Bailey

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. Gallardo, seconded by Mr. Haizel, the **Minutes of the February 4, 2004** special meeting were adopted.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the **Minutes of the February 11, 2004** regular meeting were adopted as modified.

On motion by Mr. Flood, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Robert Cutrona, Jr., 46 North Willow Street** was adopted:

**WHEREAS, Robert Cutrona**, owner of property at **46 North Willow Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c, in connection with the construction of a driveway partially located on adjoining property at **42 North Willow Street**, to allow for a driveway width less than that required pursuant to **Montclair Code Section 347-102C** on property designated as Lots 23 and 24 in Block 3204 on the Township Tax Map and located in the R-2 Two-Family Zone; and

**WHEREAS**, the applicant submitted a property survey of 46 North Willow Street prepared by Marucci Engineering Associates, LLC, dated April 12, 2003, and a site plan prepared on a copy of the property survey, with no preparer or date indicated, and a signed letter from the owner of 42 North Willow Street, Brenda Deherbert, acknowledging the application; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on February 11, 2004 at which time it was established that notice was properly published and the property owners within 200 feet of the properties in question had been properly served notice; and

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

1. The property located at 46 North Willow Street is an interior lot, measuring approximately 35 feet in width and contains a 2-½ story two-family dwelling, but no driveway or off-street parking area.

2. A paved driveway, measuring approximately 9 feet 7 inches in width at its narrowest point, and partially located on the adjoining southerly property located at 42 North Willow Street, is proposed and would lead to a 36-foot wide by 34-foot deep parking area at the rear of the dwelling at 46 North Willow Street.

3. The testimony of the applicant indicated that a cross-easement has been negotiated and entered into by he and the owner of 42 North Willow Street, which also has no driveway or off-street parking, allowing for common use of the driveway leading to the rear of the subject properties. The testimony of the applicant further indicated that the owner of 42 North Willow Street may apply to construct a parking area in the future on that property for her use, and that the proposed parking area at the rear of 46 North Willow Street would not be shared with the adjoining property.

4. The proposed parking area conforms to the zoning requirements and requires no variances.

5. With respect to the requested variance for a deficient driveway width, the applicant demonstrated that the proposed driveway width would allow for viable and effective ingress and egress of vehicles accessing the parking area.

**WHEREAS**, the Board, based on the foregoing findings, concluded that, with respect to the driveway width, the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance for deficient driveway width 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 N.J.S.A. 40:55D-70C(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that, with respect to the driveway width, 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 for deficient driveway width 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 NJSA 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 Robert Cutrona for a variance pursuant to N.J.S.A. 40:55D-70c to construct a driveway deficient in width and partially located on the adjoining property located at 42 North Willow Street, is hereby approved subject to the following conditions:

1. The cross-easement between the applicant and the owner of 42 North Willow Street shall be reviewed and approved by the Board Attorney and recorded in the Essex County Register's Office.

**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. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Gregory Smith, 214 Park Street** was adopted:

**WHEREAS, Gregory Smith**, as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a southerly side yard setback less than that required pursuant to **Montclair Code Section 347-51** in connection with the construction of an outdoor deck on property designated as Lot 9 in Block 2407 on the Township Tax Map and located in the R-2 Two-Family Residential Zone; and

**WHEREAS**, the applicant submitted a site plan and floor plans prepared by Francis C. Klein and Associates, dated August 28, 2003, that also includes a photocopy of the property survey, prepared by Miller and McGiffert, Engineers, dated March 30, 1944, that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on February 11, 2004 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 with a frontage of 50 feet on Park Street and contains a 2½-story single-family dwelling.

2. The applicant proposes to construct an outdoor deck onto the southerly side of the dwelling, which does not meet the minimum side yard setback requirement of 6 feet in the southerly side yard.

3. The applicant proposes to construct the deck to the southerly side property line and provide no setback from the southerly side property line.

4. The existing enclosed porch on the southerly side of the dwelling is set back approximately 2.09 feet from the southerly side property line.

5. The Board determined that the proposed outdoor deck could be reduced in size and constructed with a minimum southerly side yard setback of 2.09 feet, to

match the existing southerly side yard setback of the enclosed porch, without creating a negative impact on adjoining properties.

**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 FURTHER RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of Gregory Smith for a variance pursuant to *N.J.S.A.* 40:55D-70C(1) and (2) to permit a side yard setback less than the required side yard setback for the proposed outdoor deck is hereby approved subject to the following condition:

1. The proposed deck shall not be constructed closer than 2.09 feet from the southerly side property line.

**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. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Donald Zief, 143 Eagle Rock Way** was adopted:

**WHEREAS**, **Donald Zief**, owner of property at **143 Eagle Rock Way**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for front yard setbacks less than that required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of an addition, an outdoor deck, and alterations to the dwelling located on property designated as Lot 14 in Block 103 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a site plan, floor plans, and elevations, prepared by Fabiano Architects, dated November 24, 2003, and a property survey prepared by Louis R. Puopolo III, dated February 12, 2003, that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on February 11, 2004 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 Eagle Rock Way and Valley Way and contains a 2½-story, one-family dwelling and a detached garage.

2. The existing dwelling on the property has a non-conforming front yard setback of 34.58 feet along the Eagle Rock Way frontage, as measured to the northeasterly corner of the dwelling, due to the greater average front yard setback of 68.25 feet of the 2 nearest dwellings along that frontage.

3. The existing dwelling on the property also has a non-conforming front yard setback of 22.92 feet along the Valley Way frontage, as measured to the northeasterly corner of the dwelling, due to the greater average front yard setback of 50.28 feet of the 2 nearest dwellings along that frontage.

4. The applicant's proposal is to construct a 1½-story addition and an outdoor deck and alter an existing enclosed porch, all of which meet the height, rear yard setback and side yard setback requirements, but do not meet the front yard setback requirements in either front yard of the property.

5. The proposed construction would follow the existing lines of the dwelling and would not encroach further into the front yard setback in either front yard than the existing dwelling.

6. Based on the Board's particular knowledge of local conditions, the proposed addition, outdoor deck, and alterations to the enclosed porch are not inconsistent with the character of the neighborhood and will not adversely impact the public good

**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 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 Donald Zief is hereby approved subject to the following condition:

1. The applicant shall comply with the recommendations of the Board Engineer's letter, dated February 10, 2004.

**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.

Ms. Cockey joined the meeting.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the denial of the variance application of **Theodore Kastner, 7 Garden Street** was adopted:

**WHEREAS, Theodore Kastner**, owner of property at **7 Garden Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a side yard setback less than that required pursuant to **Montclair Code Section 347-46A(2)(a)** in connection with the construction of a one-story addition onto a detached garage on property designated as Lot 13 in Block 3408 on the Township tax map and located in the R-1 One-Family Residential Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Frank W. Koestner Associates, dated April 28, 1988, and a site plan prepared on a copy of the survey, and a floor plan and elevations with no date or preparer indicated; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on February 11, 2004 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 measuring approximately 8,054 square feet and contains a 2½-story single-family dwelling and a detached garage.

2. The applicant's proposal is to construct a one-story addition onto the existing detached garage, that meets the height, rear yard and westerly side yard setback requirements, but does not meet the 6-foot side yard setback requirement in the easterly side yard.

3. The existing detached garage has a nonconforming easterly side yard setback of approximately 3.4 feet. The proposed addition to the detached garage would be aligned with the easterly and westerly walls of the existing garage and an easterly side yard setback of approximately 3.4 feet is proposed.

4. The applicant testified that the proposed addition was placed in the front of the garage due to the existing roofline and that the proposed addition would be utilized as a work shop and storage area for his hobby of restoring guide boats.

5. The applicant failed to demonstrate that the proposed addition could not be constructed onto the westerly side of the existing detached garage, which would not require any variances. Further, the applicant did not demonstrate any hardship with relation to space on his property.

6. Based on the Board's particular knowledge of local conditions, the proposed addition to the detached garage is not consistent with the character of the neighborhood and would adversely impact the public good.

**WHEREAS**, the Board, based on the foregoing findings concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variance could be granted without substantial detriment to 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 did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to 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 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 within application of Theodore Kastner, for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to allow an easterly side yard setback less than required is hereby denied; 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.

Chair Harrison called the variance application of **Kourosh Kahoussi, 19 Franklin Avenue**. Kourosh Kahoussi, owner, and Jonathan Perlstein, Architect, were sworn. Mr. Kahoussi described the second floor addition that has been constructed onto his single-family dwelling. He stated that the original home was too small for his

growing family and that a second floor addition to the dwelling was planned. He stated that he hired a contractor and that the construction of the addition commenced. He also stated that while the construction progressed, he discovered that the contractor had not filed for and received the required building permits and that the contractor had misled and misinformed him. He further stated that once he learned that building permits were not obtained, he fired the contractor and hired an attorney to assist him. Mr. Kahoussi continued by stating that he hired an architect to create plans for the second floor addition in order to receive permits and it was discovered that the project requires variances before they can continue.

Mr. Perlstein stated that the property is pie-shaped and that the footprint of the original dwelling on the property is nonconforming with respect to the front yard setback and both side yard setbacks. He described the second floor addition and stated that variances are required for the front yard and both side yards. He stated that the front wall and side walls of the second floor addition are aligned with the front wall and side walls of the existing first floor below it and that the rear of the second floor addition is designed to extend farther to the rear property line than the rear of the existing first floor. He also stated that no further encroachment is proposed in the front yard and that due to the shape of the lot and the angle of the lot lines, the existing side yard setbacks are reduced for the rear portion of the second floor addition. Mr. Perlstein continued by stating that the Sanborn Map depicts that the front yard setback of the subject property is generally aligned with the front yard setbacks of the existing dwellings on either side of the property.

The Board questioned the applicant and Mr. Perlstein.

Mr. Kahoussi described the timeline of events and construction involving the addition and stated his driveway was unchanged as a result of the addition. He also stated that no central air-conditioning units are proposed.

Mr. Perlstein stated the existing and proposed front yard setback is 24.78 feet and that the 4 nearest dwellings, 2 on either side of the applicant's property, have front yard setbacks of approximately 25 feet.

Chair Harrison called for questions and comments from the public. None were offered.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the variance application was approved.

Chair Harrison called the variance application of **Michael Melia, 20 Central Avenue**. Michael Melia, owner, was sworn and described the application. He stated that the property survey depicts the previously existing dwelling, which has been demolished, and that a new two-family dwelling is proposed on the property.

Marked into evidence was:

- A-1 Written description of proposed dwelling, undated and no preparer indicated, and floor plans and elevations, prepared by Avis America, revised to December 16, 2003

Mr. Melia stated that the rear lot line is irregular in that a section of the rear property line projects inward by approximately 6 feet in an area of the rear yard. He stated that the footprint of the proposed two-family dwelling meets the rear yard and side yard requirements and that the rear yard setback provided is necessary to allow for vehicle movement through the driveway and into the garages and parking area. He also stated that a front yard setback of 15 feet is proposed for the new dwelling and that the average front yard setback of the 3 nearest principal structures is approximately 11.36 feet. He further stated that the previously existing dwelling on the subject property had a front yard setback of approximately 6 feet to the front porch and 11 feet to the dwelling. Mr. Melia stated that each of the dwelling units within the proposed two-family dwelling would contain 3 bedrooms and that a total of 5 off-street parking spaces are proposed, 2 of which would be within attached garages on the first level of the dwelling and 3 outdoor parking spaces. He continued by stating that the height of the proposed dwelling conforms to the ordinance and that the proposed dwelling would have a positive impact on the neighborhood.

The Board questioned Mr. Melia.

Mr. Melia stated that the footprint of the proposed dwelling was reduced by 3 feet in depth in order to provide as much front and rear yard setback as possible and that it cannot be reduced further without negatively affecting the size of the interior rooms. He also stated that the proposed footprint provides a rear yard setback of 27.84 feet, which allows for better vehicle maneuvering on the driveway and parking areas.

Assistant Secretary Charreun stated the zoning ordinance requires that a landscaped screen be provided within the 4-foot setback area of the parking area.

Chair Harrison called for questions and comments from the public.

Sylvia White, 6 Talbot Street, asked what is proposed along the property line between her property and the subject property and what would be constructed near her property line.

Mr. Melia stated that the existing panel fence adjacent to 6 Talbot Street would remain and that additional fencing to match would be continued to screen the driveway and rear yard from 6 Talbot Street.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Flood, the variance application was approved, subject to the following conditions:

1. The height of the proposed dwelling shall conform to the requirements of the zoning ordinance.
2. Any new or replacement fencing on the property shall conform to the requirements of the zoning ordinance.
3. A landscaped screen shall be provided within the 4-foot setback area of the outdoor parking area.

Chair Harrison called the continuation of the variance application of **Nextel Communications, 630 Valley Road**. Richard Schneider, Esq., appeared as attorney for the applicant and summarized the testimony from the previous hearing on the application and described the revised plans, dated March 2, 2004. Mr. Schneider called William F. Masters, Jr., who was sworn and stated his qualifications as a Licensed Professional Planner in the State of New Jersey.

Mr. Masters described the building on the subject property and the existing wireless telecommunications equipment of other carriers on the roof. He stated that the parapet wall measures 50 feet 6 inches above grade and that the top of the existing stealth panels measure 57 feet above grade.

Marked into evidence were:

- A-3 Eight (8) photographs of the existing building on the subject property, on a board, prepared by William F. Masters, Jr., P.P.
- A-4 Four (4) photo-simulations depicting the original proposal, on a board, prepared by William F. Masters, Jr., P.P.

Mr. Masters described Exhibits A-3 and A-4. He stated that the revised plans call for the installation of two 4-foot tall panel antennae within Sector 1, mounted at 57 feet above grade to match the height of the existing stealth panels that screen existing Sprint equipment. He stated that the proposed antennae in Sector 1 would be attached to pipe masts in front of the stealth panels, painted to match the stealth panels, and that the stealth panels would provide a visual backdrop that reduce the visibility of the proposed antennae. He also stated that the previous plan called for the installation of one 8-foot tall antenna that was to be mounted at 62 feet 6 inches above grade and extended above the stealth panels.

Mr. Masters stated that the proposed 8-foot tall antenna in Sector 2, which is to be mounted on a pipe mast at 62 feet 6 inches above grade, remains the same as in the original proposal. He stated that the applicant looked into the possibility of replacing the

proposed 8-foot tall antenna in Sector 2 with two 4-foot tall antennae, which would be mounted at lower heights, and stated that the owner of the property would not allow it.

Mr. Masters described the proposed panel antenna within Sector 3 and stated that it would be mounted onto the existing octagonal chimney at a height not to exceed the height of the chimney and painted to match the chimney. He stated that the previous plan proposed this panel antenna at a height of 62 feet 6 inches above grade and that the revised plan proposes a lower mounting height of 57 feet above grade, which would not exceed the height of the chimney.

Mr. Masters continued by describing the conditional use standards contained in the zoning ordinance and stated that the proposed antennae in Sector 1 and 2 require variances because they exceed the height of the parapet. He stated that although the antennae in Sector 1 require a variance, the spirit of the ordinance is met because these antennae do not exceed the height of the stealth panels and are visually unobtrusive. He also stated that the variance for the antenna in Sector 2 could be justified because the site can accommodate it and because the proposed mounting height is necessary due to the signal blockage caused by the 3-story portion on the easterly side of the building. He stated that the antenna in Sector 3 complies with the ordinance because it does not exceed the height of the chimney to which it is mounted.

Mr. Masters stated that the site is particularly well-suited for the proposed use because the site fills a coverage gap as indicated by the applicant's Radio Frequency Engineer, the site is a collocation site that presently contains existing wireless telecommunications equipment, the site is located on a commercial corridor within a commercial zone near a transit station, and the site contains an existing tall building and does not require the construction of any new structures. He also stated that the applicant's proposal would not result in a substantial detriment to the Master Plan, zoning ordinance, or public welfare.

The Board questioned Mr. Masters.

Mr. Masters stated that Nextel currently has no equipment on the subject property. He also stated that no changes are proposed in the location or number of proposed GPS antennae.

Chair Harrison called for questions from the public for Mr. Masters. None were offered.

Mr. Schneider conducted a redirect of Mr. Masters.

Mr. Masters stated that the visual impacts of proposed antenna in Sector 2 are mitigated by the fact the proposed wireless telecommunications equipment serves the general welfare of the public.

Mr. Schneider called Rosario Cannelli, Radio Frequency Engineer for Nextel Communications, who was still under oath. Mr. Canelli described the modifications to

the plans for Sectors 1 and 3 and stated that there is no change or degradation in coverage as a result of the modifications. He stated that the proposed mounting height for the panel antenna in Sector 2 is required due to the length of the roofline of the 3-story portion of the building, which is an obstruction to signal of the antenna and creates blockage. He also stated that the signal blockage caused by the 3-story portion of the building is an issue for all of the wireless service providers on the rooftop and that the owner of the building denied the applicant permission to install a panel antenna on the Valley Road façade of the 3-story portion of the building.

Marked into evidence was:

A-5 Letter from Jim Franciose, V.P., 630 Valley Road Corp., dated March 12, 2004

Mr. Cannelli stated that future upgrades in service or coverage could be accomplished with additional or upgrades to software and equipment and would not require additional height to the antenna in Sector 2.

The Board questioned Mr. Cannelli.

Mr. Cannelli stated that if the proposed panel antenna in Sector 2 was mounted to the chimney, it would still have to be mounted at 62 feet 6 inches, which would exceed the height of the chimney and require a variance. He also stated that relocating the proposed 8-foot panel antenna in Sector 2 onto the south-facing wall as two 4-foot panel antennae would have a worse visual impact because there are no stealth panels along the south-facing wall of the rooftop.

Chair Harrison called for questions from the public for Mr. Cannelli. None were offered.

Chair Harrison called for public comment. None was offered.

Mr. Sullivan questioned Mr. Schneider.

Mr. Schneider summarized the application. He stated that, as a permitted conditional use, the application meets the positive criteria through obtaining a license from the FCC, and satisfies the negative criteria because benefits of the proposal outweigh the detriments.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the variance application was approved subject to the following conditions:

1. The proposed antennae shall be painted to match the structure to which they are attached.

2. The two panel antennae in Sector 1 shall not exceed the height of the interior stealth paneling.
3. The proposed antenna in Sector 3 shall not extend beyond the height of the chimney.
4. The HVAC condensers mounted on the steel frame attached to the parapet on the roof shall be screened in accordance with the ordinance.
5. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
6. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with the review of this matter.

The Board took a short recess.

Chair Harrison called the variance application of **Montclair Homes, LLC, 10 Mulford Lane**.

Ms. Cockey recused herself for this application.

David Owen, Esq., appeared as attorney for the applicant.

Michael Murphy, owner of property located at 139 Lloyd Road, gave his appearance as an objector to the application. Mr. Murphy was sworn and stated there is a discrepancy in the site grading depicted on the engineering plans and the architectural plans for the subject property. He stated that sheet A-1 of the architectural drawings show substantial grade changes and that the Steep Slope notes lettered B and K on the site plan prepared by PPE are contradictory to each other.

Mr. Owen stated that the subject property is a single-family dwelling, which does not require site plan review and that the applicant is requesting a "C" variance for a front yard setback. He also stated that a Steep Slope review was done by the Board Engineer.

Chair Harrison stated that although Steep Slope review is required for the application, site plan review is not required for the subject property because it is a single-family dwelling. He also stated that the discrepancies in the site grading depicted on the sets of plans do not preclude the Board from hearing the application and that Mr. Murphy's questions regarding the discrepancies in grading are appropriate to ask of the applicant. Chair Harrison also stated that the Board would proceed with the next application on the agenda and would resume this application afterward.

Chair Harrison called the application of **Marlboro Park Partners, LLC, 334 Grove Street**. David Owen, Esq., appeared as attorney for the applicant.

Ms. Cockey rejoined the Board.

Mr. Sullivan explained the application to the Board. He stated that the applicant was denied a Certificate of Appropriateness by the Montclair Historic Preservation Commission on December 12, 2003 to demolish the Marlboro Inn located on the subject property, and that the applicant filed an appeal of that denial with Planning Department on December 29, 2003. He also stated that the applicant was denied a demolition permit by the Construction Official on January 7, 2004 to demolish the Marlboro Inn on the subject property, and that the applicant filed an appeal of that denial with the Planning Department on January 22, 2004. He further stated that the applicant has consolidated the appeals and that the appeals are timely pursuant to the New Jersey Municipal Land Use Law.

Mr. Owen described the appeal application.

Marked into evidence were:

- A-1 Notice of Appeal, dated December 29, 2003, regarding the denial of a Certificate of Appropriateness by the Historic Preservation Commission
- A-2 Notice of Appeal, dated January 22, 2004, regarding the denial of a demolition permit by the Construction Official
- A-3 Planning Department Memorandum to the Zoning Board of Adjustment, dated March 9, 2004

Mr. Sullivan stated that the burden of proof is on the applicant to demonstrate error in any order, requirement, decision, or refusal in the denying of the applicant's request for a Certificate of Appropriateness and demolition permit. He also stated that he has prepared a resolution to affirm the Montclair Historic Preservation Commission's denial of a Certificate of Appropriateness and the Construction Official's denial of a demolition permit.

The resolution was distributed to the Board.

The Board questioned Mr. Owen.

Mr. Owen stated that the applicant was not contesting the findings and decision of the Montclair Historic Preservation Commission and that no testimony would be put into the record.

Chair Harrison stated that absent testimony or other evidence being presented the Board's next action on the matter would be to review and adopt the resolution affirming the denials of the Certificate of Appropriateness and demolition permit.

Chair Harrison called for questions or testimony from the public.

Peter Kaplan, 180 Watchung Avenue, asked what effect the Board's decision would have on future actions by the applicant regarding the Historic Preservation Commission and the potential demolition of the Marlboro Inn.

Chair Harrison stated that the applicant's appeal was correctly before the Board of Adjustment and that based on the records, the Board can deny the appeal and uphold the denials of the Certificate of Appropriateness and demolition permit. He also stated that the Board is legally obligated to act on the application and will take substantive action.

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the appeal was denied and the following resolution was adopted:

WHEREAS, Marlboro Park Partners, LLC, owner of the Marlboro Inn and property located at 334 Grove Street, did make application to the Board of Adjustment of the Township of Montclair pursuant to Montclair Code Section 347-140C(1)(a) and Montclair Code Section 347-141B to appeal the decision of the Montclair Historic Preservation Commission and the administrative officer denying the applicant's request for a certificate of appropriateness and demolition permit to demolish the Marlboro Inn located on the subject property, designated on the Township Tax Maps as Lot 43 in Block 4513 and located in the R-1 One-Family Zone; and

WHEREAS, the matter came on to be heard at a meeting of the Board of Adjustment held on March 17, 2004 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 notice; and

WHEREAS, the Board heard from the applicant's attorney, considered the application for a certificate of appropriateness, the decision of and report of the Historic Preservation Commission, the applicant's appeals of the decisions to deny the certificate of appropriateness and demolition permit, and other exhibits, and established the following findings:

1. The applicant requested that the Board consider the appeal on the basis of the documents and exhibits presented to it.
2. The Historic Preservation Commission's report dated December 12, 2003 sets forth adequate and sufficient grounds for denial of the requested certificate of appropriateness and demolition permit.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the denial of the certificate of appropriateness and demolition

permit are hereby affirmed and the appeal of Marlboro Park Partners, LLC is hereby denied for the reasons set forth in the report of the Historic Preservation Commission dated December 12, 2003.

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

Chair Harrison recalled the variance application of **Montclair Homes, LLC, 10 Mulford Lane**. David Owen, Esq., appeared as attorney for the applicant and described the application.

Marked into evidence were:

- A-1 Proof of Publication of the public notice from the Montclair Times
- A-2 Affidavit of Service from the applicant
- A-3 Cover letter from David Owen, Esq., dated December 24, 2003 and an application form dated December 24, 2003, reflecting the original owner and applicant for the application
- A-4 Cover letter from David Owen, Esq., dated February 26, 2004 and an amended application form, dated February 26, 2004, reflecting the change ownership and applicant for the application
- A-5 Architectural drawings on five sheets, prepared by William G. Brown, Architects, Sheet A-1 dated December 21, 2003, Sheet A-2 dated December 18, 2003, Sheets A-3 and A-4 revised to December 18, 2003, Sheet 5 dated December 19, 2003
- A-6 Site Plan, prepared by PPE Corp., revised to February 27, 2004
- A-7 The Board Engineer's comments, dated March 17, 2004, on the revised plans, prepared by PPE Corp.

Mr. Owen called William G. Brown, who was sworn and stated his qualifications as a Licensed Architect in the State of New Jersey. Mr. Brown stated that the existing front yard setback is approximately 35.48 feet as measured to the northerly front corner and 38.20 feet as measured to the southerly front corner. He stated that the required front yard setback is approximately 75.38 feet, due to the average front yard setback of the 2 nearest principle dwellings on each side of the subject property. He stated that the typical front yard setback in the neighborhood is approximately 30 feet and that the required front yard setback for the subject property is caused by the large front yard setbacks of the 2 dwelling to the south of the subject property, which are through lots.

Mr. Brown described the proposed second level addition and stated that the style of the home would be changed from a split-level design to a two-story design. He stated that the proposed two-story design is more in keeping with the design of the homes in the neighborhood and would be more aesthetically pleasing. He also stated that the existing attached garages on the northerly side of the dwelling would remain and that no grade changes are proposed in the rear or side yards. Mr. Brown referred to Sheets A-2, A-3, and A-4 of his architectural plans and described the proposed floor plans. He stated that the first floor of the dwelling would be enlarged by constructing 2 additions at the rear of the dwelling that would be cantilevered over the existing foundation wall at the rear of the dwelling and that the home would contain 4 bedrooms on the second floor. He continued by stating that a new landing would be constructed with a new front door so that the front entrance would be in line with the entire first floor of the dwelling.

The Board questioned Mr. Brown.

Mr. Brown stated that the front entrance would be modified by constructing 4 new steps at the landing in order to enter the new front entrance doorway. He also stated that the landscaped steps leading to the front door from the driveway are existing.

Marked into evidence was:

A-8 Sheet A-3 of the Architectural drawings, prepared by William G. Brown, revised to December 18, 2003

Mr. Murphy questioned Mr. Brown.

Mr. Brown stated that the architectural drawings reflect approximate grades taken from older plans of the subject property and are not meant to depict site work. He also stated that the site plan prepared by PPE Corp. indicates that there is no site disturbance proposed, therefore, there is no need to incorporate the proposed grades into the architectural drawings.

Marked into evidence were:

O-1 Photograph of the front of the existing dwelling located on the subject property, prepared by Michael Murphy, dated March 13, 2004

O-2 Photograph of the northerly side yard of the existing dwelling located on the subject property, prepared by Michael Murphy, dated March 13, 2004

Mr. Brown described the height of the proposed dwelling as depicted on the plans and at Mr. Murphy's request, Mr. Brown read the purpose and intent of the Steep Slope ordinance into the record.

Chair Harrison called for questions from the public. None were offered.

Mr. Owen called Peter G. Steck, who was sworn and stated his qualifications as a Licensed Professional Planner in the State of New Jersey.

Marked into evidence was:

A-9 Outline of Planning Testimony, prepared by Peter G. Steck, Community Planning Consultant, dated March 17, 2004

Mr. Steck described Exhibit A-9 and stated that the photographs contained within the Exhibit were taken during a two-week time span. He stated that the applicant is requesting a dimensional variance for a front yard setback. He also stated that the proposed second level addition would not be any closer to the street than the existing dwelling and that the proposed side yard setbacks and rear yard setback are conforming. He further stated that no variances are required for the proposed height of the dwelling, that the proposed height of the dwelling is well under the maximum height permitted, and that the structure could lawfully be constructed at a taller height than what is proposed. He also stated that the proposed modifications to the dwelling would match the pattern of development of the existing dwellings in the neighborhood and that the front yard setback variance is caused by the excessive front yards of the 2 dwellings located on through lots on the southerly side of the subject property. He further stated that the required front yard setback would require that the dwelling be constructed further up the sloping terrain, which would have a deleterious effect on the terrain and negatively impact the eastern view of properties on higher ground to the west. Mr. Steck continued by stating that application could be approved without substantial detriment to the Master Plan, zoning ordinance, or public good.

The Board questioned Mr. Steck.

Mr. Murphy questioned Mr. Steck.

Chair Harrison called for questions from the public. None were offered.

Mr. Owen moved Exhibits A-1 through A-9 into evidence.

Mr. Murphy moved Exhibits O-1 and O-2 into evidence.

Chair Harrison called for public comment.

Ken Traum, 24 Mulford Lane, was sworn and stated that he has lived on Mulford Lane for 22 years and stated that the proposed addition enhances the dwelling and improves the neighborhood.

Tony Paluzia, 22 Mulford Lane, was sworn and stated that the dwelling requires updating and indicated his support for the application.

Steve Aspero, 361 Claremont Ave, was sworn and stated that he is the former owner of the subject property. He stated that the dwelling was difficult to sell in its

current design and layout and needs to be renovated. He also stated that the front yard setback is existing, and that the proposed second level addition would beautify the property and enhance the neighborhood. He further stated that no adjoining neighbors are present to object to the application and that the application should be approved.

Mr. Murphy, who was previously sworn, stated that he is seeking to assure that the proposed project at the subject property is done correctly and that it be held to the same exacting standards that all development proposals are held to.

David Owen gave his closing remarks.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Flood, the variance application was approved subject to the following conditions:

1. Any site disturbance shall be limited to an area within 5 feet of the existing structures, walkways, steps, stoop, patios, and driveway on the property and such site disturbance shall result in no more than a 1-foot change in existing grade. The Steep Slope Notes on the site plan shall be amended to reflect this condition.

2. The applicant shall pay all outstanding municipal property taxes.

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