

MINUTES OF THE BOARD OF ADJUSTMENT
April 14, 2004

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey, and Mr. Susswein; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Flood

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.

Assistant Secretary Charreun announced that the variance application of **RICA Enterprises, Inc., 137 Forest Street** has been postponed until the May 19, 2004 regular meeting of the Board of Adjustment at the request of the applicant because the mailing of the public notice for the application was not completed. He also stated that no further notice for the application would be published, however, the applicant would be completing the mailing of the public notice for the May 19, 2004 regular meeting of the Board. He continued by stating that the applicant has granted the Board an extension of time for which to act on the application.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the **Minutes of the March 10, 2004** special meeting were adopted as modified, Ms. Cockey abstaining.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the **Minutes of the March 17, 2004** regular meeting were adopted as modified, Ms. Rock-Bailey abstaining.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Kouros Kahoussi, 19 Franklin Avenue** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, Koroush Kahoussi, owner of property at **19 Franklin Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variance pursuant to NJSA40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(1)** and side yard setbacks less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a second level addition onto an existing dwelling on property designated as Lot 11 in Block 1911 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 Oasis Architecture and Planning, P.C., dated December 29, 2003, and a property survey prepared by JMH Associates, dated October 27, 2001; and

WHEREAS, this 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 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 irregularly shaped interior lot and previously contained a 1½-story, single family dwelling. The applicant proposes to legalize a second floor addition that has been constructed onto his single-family dwelling without obtaining building permits and which requires variances for the front yard setback and both side yard setbacks.

2. The existing dwelling on the property has a nonconforming front yard setback of approximately 24.78 feet measured from the northerly front corner of the dwelling, where a minimum of 25 feet is required. The existing dwelling also has nonconforming side yard setbacks of approximately 5.36 feet and 8.02 feet, where 6 feet and 10 feet are required, respectively, in the southerly and northerly side yards.

3. The walls of the second level addition would be aligned with the existing front wall and both side walls of the existing first floor, however, the rear of the second level addition extends further to the rear than the existing first floor below it.

4. The proposed second level addition would not project closer to the front property line than the existing dwelling and the applicant demonstrated that the average front yard setback of the 2 nearest principal dwellings, 2 on each side of the subject property and located within the same block front and zoning district, is not more than 25 feet.

5. The second level addition is aligned with the southerly and northerly side walls of the dwelling, however, due to the irregular shape of the lot and the angle of the side property lines, the extended portion at the rear of the second level addition encroaches closer to the each side property line than the existing first level, and yields reduced side yard setbacks of approximately 4.71 feet and 6.93 feet, respectively in the southerly and northerly side yards.

6. The second level addition meets the height and rear yard setback requirements.

7. Based upon the Board's particular knowledge of local conditions, the proposed second level addition is 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 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 variance application of Koroush Kahoussi is hereby approved.

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. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Michael Melia, 20 Central Avenue** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, **Michael Melia**, owner of property at **20 Central Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70c* for a front yard setback less than that permitted pursuant to **Montclair Code Section 347-51** in connection with the proposed construction of a two-family dwelling on property designated as Lot 12 in Block 1510 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a property survey, prepared by Herbert G. McDonald Associates, Inc., February 2, 2004, a site plan prepared by Remo Engineering, LLC, dated February 2, 2004, and floor plans and elevations, prepared by Avis America, revised to December 16, 2003; and

WHEREAS, this 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; and

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

1. The subject property measures 85 feet in width along Central Avenue, contains approximately 8,274 square feet, and is presently vacant; the previously existing dwelling on the lot, shown on the property survey, has been demolished.

2. The applicant proposes to construct a two-family dwelling and a new driveway and parking area. The lot size is conforming and the proposed dwelling meets

the height, side yard setback, rear yard setback, and off-street parking requirements, but does not meet the minimum front yard setback requirement of 25 feet.

3. A front yard setback of 15 feet, in lieu of the required 25 feet, is proposed for the new dwelling, as measured to the roofed front entry porch. The applicant testified that the average front yard setback of the 3 nearest principal structures on the same side of Central Avenue is approximately 11.36 feet and 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.

4. The applicant indicated that a rear yard setback of 27.84 feet is proposed, and that the additional 2.84 feet, provided above the minimum 25-foot rear yard setback allows for better vehicle maneuvering on the driveway and parking areas.

5. The proposed front yard setback for the new dwelling will generally be in line with the adjacent properties. The general placement of the structure on the lot is consistent with the historic streetscape of this neighborhood, and a structure that met the front yard setback requirement would detract from the overall appearance of the street.

6. Based upon the Board's particular knowledge of local conditions, the proposed front yard setback is 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 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 Michael Melia is hereby 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.

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. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Nextel Communications, 630 Valley Road** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, Nextel of New York, Inc. d/b/a Nextel Communications, did make application to the Board of Adjustment of the Township of Montclair, as amended, to install four panel antennae and three GPS antennae on the roof of the existing building on property designated as Lot 1 in Block 2601 on the Township Tax Map and located in the NC Neighborhood Commercial Zone; and

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

WHEREAS, the applicant submitted a site plan, elevations and details prepared by Malick & Scherer, P.C. dated October 9, 2003 revised through March 2, 2004; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on February 11, and March 17, 2004 at which time it was established that notice was 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 contains a multistory, commercial building upon which four wireless telecommunication carriers have collocated roof top antennae.

2. The applicant proposes to install four panel antennae, three GPS antennae and HVAC condenser on the roof of the existing building as well as a 175 square foot equipment room on the fourth floor loft.

3. The application complies with all the conditional use standards contained in the Montclair Township Zoning Ordinance except that the two panel antennae in Sector 1, the panel antenna in Sector 2 and the three GPS antennae in Sector 3 fail to comply with Section 347-17.1C(4)(c) in that they exceed the height of the parapet wall, penthouse or chimney to which they are attached.

4. Installation of the antennae will eliminate a coverage gap and improve wireless communication service to the applicant's subscribers as per the applicant's FCC license which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law.

5. Based upon the size and central location of the existing multistory commercial building, the proposed roof top location of the site is particularly suited for wireless communication antennae.

6. The proposed antennae and related equipment shall comply with all applicable State and Federal regulation for radiation transmission levels.

7. The visual intrusion caused by the height of the proposed antennae is minimal and will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

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

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Nextel of New York, Inc. d/b/a/ Nextel Communications for a variance pursuant to N.J.S.A. 40:55D-70d(3) is hereby 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.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution will 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 **Montclair Homes, LLC, 10 Mulford Lane** was adopted, as modified, Ms. Rock-Bailey abstaining:

WHEREAS, Montclair Homes, LLC, owner of property at **10 Mulford Lane**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA 40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-39B(1)** in connection with the construction of additions onto an existing dwelling on property designated as Lot 6 in Block 204 on the Township Tax Map and located in the R-O(a) One-Family Zone; and

WHEREAS, the applicant submitted a site plan prepared by PPE Professional Planning and Engineering Corp., revised to February 27, 2004, and architectural drawings on 5 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; and

WHEREAS, this 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 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 contains a split-level, single-family dwelling with an attached garage.

2. The applicant's proposal is to expand the first floor of the dwelling by constructing two additions at the rear of the dwelling and construct a second level addition over the expanded first floor. A new landing and steps would also be constructed at the front entrance.

3. The required front yard setback for the subject property is approximately 75.39 feet due to the greater average front yard setback of the 4 nearest principal dwellings on Mulford Lane, two on either side of the subject property and within the same block front and zoning district. Due to the greater average front yard setback of adjoining dwellings, the existing structure on the property has a non-conforming front

yard setback of approximately 35.48 feet measured from the northerly front corner of the dwelling and approximately 38.20 feet measured from the southerly front corner of the dwelling.

4. The proposed second level addition meets the height, side yard setback, and rear yard setback requirements, but does not meet the required front yard setback of approximately 75.39 feet.

5. The proposed second level addition would be aligned with the existing front wall and side walls of the existing first floor and would not project closer to Mulford Lane than the existing dwelling.

6. The strict application of the zoning ordinance and in particular the required calculation of the required front yard setback causes undue hardship because the lawfully existing home is already in place within the front yard setback and it would be wasteful to tear out the foundation and construct a new one, thereby creating an extraordinary and exceptional situation causing peculiar and exceptional practical difficulties and exceptional and undue hardship.

7. The project provides sufficient open space for residential use and a desirable visual environment in keeping with the surrounding homes, therefore the benefits of the project outweigh any detriments.

8. The applicant demonstrated that the proposed front yard setback, as well as the scale and design of the dwelling, are in keeping with that of the existing dwellings on Mulford Lane and would not have an adverse impact on the surrounding properties.

9. Based upon the Board's particular knowledge of local conditions, the proposed second level addition is consistent with the character of the neighborhood and will not cause substantial detriment to surrounding properties or substantial impediment of the zone plan and zoning ordinance.

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 variance application of Montclair Homes, LLC is hereby 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.

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.

Chair Harrison called the variance application of **Richard Cecere, Erie Street**. John Sherman, agent for the applicant, was sworn and described the application. He described the location of the existing billboard, which is presently used to advertise the applicant's business, and stated that 3 light fixtures are proposed by the applicant to illuminate the billboard sign area. He stated that the proposed lights would shine upwards and only onto to the billboard face and that the intensity of the proposed light fixtures matches that of the existing street lighting in the area. He also stated that New Jersey Transit owns the property that the billboard is located on and that the applicant has submitted with the application a letter indicating the owner's consent to the application. He further stated that the proposed light fixtures would meet all specifications of New Jersey Transit regarding such work.

Marked in to evidence was:

- A-1 Map of the area depicting the existing billboard and properties in the vicinity of the existing billboard

Richard Cecere, retail tenant of a business located at 34 Label Street, also known as 2 Erie Street, and lessee of billboard advertising space at the billboard in question, was sworn. Mr. Cecere stated that the existing billboard presently contains an advertisement for his business located nearby and that the only modification proposed is the addition of 3 light fixtures onto the bottom of the billboard.

The Board questioned the applicant and Mr. Sherman.

Mr. Cecere stated the proposed lights would be placed on timers that would turn on dusk and turn off at sunrise. He also stated that the illuminated billboard would not be visible from Walnut Street.

Mr. Sherman stated that the proposed lights would not shine beyond the billboard face and would not spill over onto nearby properties.

Chair Harrison called for questions and comments from the public.

Howard Silver, resident of 29 Highland and owner of property at 34 Label Street, was sworn and stated his support for the application. He stated that the applicant's business located on his property is good for the neighborhood and that if the proposed illumination of the billboard is beneficial to the applicant's business, it will also be beneficial for the immediate neighborhood.

Una Delaney, 50 Label Street, was sworn and stated that she is opposed to the proposed illumination of the existing billboard and that the applicant's proposal would be a detriment to the neighborhood.

Mr. Cecere questioned Ms. Delaney.

Ms. Delaney stated that an illuminated billboard is not appropriate near a residential area and that the proposal is in poor taste.

Marked into evidence by the applicant was:

A-2 Large photograph of the existing billboard on a board.

Mr. Cecere stated that the proposed lighting is designed to be subtle and that it would provide additional safety in the neighborhood.

Marked into evidence by Ms. Delaney was:

O-1 Photograph of the existing billboard.

The Board questioned Ms. Delaney.

Ms. Delaney stated that she lives on the opposite side of the railroad tracks from the existing billboard and that the existing billboard is not visible from her home.

Claudia Waters, 8 Montclair Avenue, was sworn and stated that she is opposed to the proposed illumination. She stated that she can see the billboard from her backyard and that it is already illuminated enough by the street lighting and that it presently is an eyesore that should not be worsened.

Regine Flimlin, 13 Montclair Avenue and 84 Greenwood Avenue, was sworn and stated that she is opposed to the proposed illumination of the billboard. She stated that she sees the billboard everyday and that it detracts from the aesthetics of the area.

Mr. Cecere questioned Ms. Flimlin.

Mr. Sherman asked Ms. Flimlin to identify her residence on Exhibit A-1.

Mr. Fleischer joined the meeting.

The Board discussed the application.

During the Board's discussion, Mr. Cecere left the meeting with Exhibit A-2.

Mr. Sullivan stated that the application is a use variance and that the applicant must demonstrate special reasons and prove the negative criteria.

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, the variance application was unanimously denied, Mr. Fleischer abstaining.

Mr. Sherman left the meeting with Exhibit A-1.

Chair Harrison called the variance application of **Steve and Sandy Goodman, 22 Berkeley Place**. Steve Goodman, owner, was sworn and described the application. He stated that his property contains a single-car detached garage accessible via a 10-foot wide driveway from North Mountain Avenue. He also stated that when 2 vehicles are parked in the existing driveway, the vehicles are located near the sidewalk along North Mountain Avenue. He stated that the driveway is proposed to be widened in order to accommodate 2 side-by side parking spaces on the driveway at the front of the detached garage. He further stated that the driveway would be widened to a width of 19 feet 6 inches, with a tapered area measuring 18 feet in width at the front of the detached garage in order to avoid an existing tree near the southerly property line. He continued by stating that the proposed design of the parking area on the widened driveway leaves the front portion the southernmost parking space 3-feet away from the southerly property line, where a 4-foot setback is required. He also stated that the driveway would be set back 1 foot 6 inches from the southerly property line for its majority, including a section adjacent to the southernmost parking space.

The Board questioned Mr. Goodman.

Mr. Goodman stated that the driveway would be widened by approximately 2 feet to the north towards his home, by 7½ feet towards the southerly property line at its widest, and by 6 feet towards the southerly property line in the area of the tapering at the front of the garage. He also stated that he would not like to widen the driveway any more than proposed towards his home because his rear yard area is limited. He described the existing landscaping near the proposed driveway and parking area and stated that the 19-foot 6-inch width of the driveway was recommended by the architect who designed the landscape plan for his property.

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

Mr. Goodman stated in closing that many properties in the vicinity of his property have similar parking arrangements to what is proposed and that the proposed parking layout on the driveway would be in keeping with what exists on other properties in the neighborhood.

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 plan shall be revised so that the parking area is set back a minimum of 3 feet from the southerly property line for the full 19-foot length of the parking area.
2. The 3-foot setback of the parking area shall be appropriately landscaped as determined by the Planning Department.

Chair Harrison called the variance application of **Paul Hoerrner, 1 Wendover Road**. Paul Hoerrner and Inez Ascenso-Hoerrner, owners, were sworn. Mr. Hoerrner described the existing detached garage on his property and stated that it is poor condition and that a new detached garage is proposed. He stated that the existing detached garage is approximately 75 to 80 years old, has no foundation, and that a repair is not feasible.

Marked into evidence were:

- A-1 Photograph of an exterior wall of the existing garage
- A-2 Photograph of the interior of the existing garage
- A-3 Photograph of the interior of the existing garage

Mr. Hoerrner stated that he took the photographs approximately a week ago. He also stated that the size and shape of his property does not allow him to construct the proposed detached garage in the same general location as the existing garage with the required 6-foot setbacks in the rear and side yards. He further stated that the garage width would be enlarged from the existing 18½-foot width to 22 feet because the existing width does not meet today's standards for a 2-car garage.

The Board questioned Mr. Hoerrner.

Mr. Hoerrner stated that the garage would have to be reduced from what is depicted on the plans because the overhang of the roof on the easterly side of the garage would project over the property line. He also stated that a 6-foot setback in the rear yard would move the garage footprint more forward than the existing garages on adjoining properties, which would have more of a visual impact on the adjoining property owners than the proposed rear yard setback. Mr. Hoerrner stated that his main priority is to construct a garage suitable for 2 vehicles with a storage loft above and that he would be willing to have a pull-down stair instead of a stairway inside the garage if the Board deemed that necessary in order to reduce the footprint of the garage. He also stated that if the architectural style of the proposed garage has been designed to

match the Dutch Colonial style of his home, and would represent an aesthetic improvement to the property and the neighborhood.

Chair Harrison called for questions and comments from the public.

Ana and Philip Hazard, 227 Valley Road, were sworn. Ms. Hazard stated that they are impacted by the proposed rear yard and side yard setbacks, which are being reduced from the existing setbacks, and that the height of the proposed garage exacerbates the encroachment in the side and rear yard. Mr. Hazard added that the existing width of the garage is suitable for two vehicles and that they are objecting to any further encroachment by the applicants' garage. Ms. Hazard continued by stating that the proposed setbacks create a fire hazard and do not allow sufficient space for maintenance. She also stated that the proposed garage is wider, deeper, and taller than the existing garage and that nothing more than the existing dimensions should be allowed for a rebuild of the garage.

Mr. Hoerrner stated that the detached garage located on 227 Valley Road is located on higher grade than his garage and that the proposed height of his would not negatively impact the owners of 227 Valley Road.

Marked into evidence was:

A-4 Photograph that depicts the applicants' detached garage and the detached garage on 227 Valley Road

The Board discussed the application.

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

1. The proposed detached garage shall have a minimum side yard setback of 2 feet in the easterly side yard and a minimum side yard setback of 3 feet in the westerly side yard.
2. The proposed detached garage shall have a minimum rear yard setback of 3 feet.
3. The proposed detached garage shall be limited to a maximum of 15 feet in height as measured to the ridgeline of the roof.
4. All roof leaders and gutters for the detached garage shall be designed so that all stormwater is discharged only onto the applicants' property.

Chair Harrison called the variance application of **Susan and Desmond Neill, 110 South Fullerton Avenue**. Susan and Desmond Neill, owners were sworn. Mr. Neill described the application to demolish the existing one-family dwelling and construct a new one-family dwelling and the variances requested. He described the structural

engineering report on the existing dwelling, prepared by Roy Dedic & Associates, Inc., dated February 20, 2004, which was submitted to the Board, and stated that based on its conclusions, the existing dwelling needs to be demolished due to its poor structural condition. He addressed the variance for the lot width and stated that the possibility of purchasing land from the adjoining owners was examined, however, it was not feasible to do so due to the location of the existing driveways on the adjoining lots. He further stated that the footprint of the proposed dwelling meets the side yard setback requirements, which reduces the impact of the undersized lot width. He continued by stating that the existing dwelling has a nonconforming side yard setback of approximately 3.4 feet in the southerly side yard, which would be improved as a result of this application.

Mr. Neill continued by addressing the front yard setback variance and stated that a front yard setback of 25 feet is proposed as measured to the columns that support the roof over the front entrance. He stated that the existing dwelling is set back 23.8 feet from South Fullerton Avenue and that the required front yard setback for the property is 33.52 feet due to the average of the 4 nearest principal structures, 2 on each side of the subject lot. He further stated that the required front yard setback is skewed due the existing "through lot" located at 118 South Fullerton Avenue, and also stated that the dwelling immediately to the south has a lesser front yard setback of approximately 22.43 feet.

Mr. Neill stated that he has prepared a revised plan to show more detail for the new driveway, parking area, landscaping and other site details.

Marked into evidence were:

- A-1 Revised Plan, prepared by Desmond Neill, dated April 11, 2004
- A-2 Photograph of the existing detached garage, with notes describing the proposed modifications

Mr. Neill stated that the revised plan depicts the location of the central air-conditioning units and the parking space adjacent to the portion of the detached garage that will remain and be rehabilitated. He continued by describing the landscaping proposed on the property.

The Board questioned Mr. Neill.

Mr. Neill stated that the two-car portion of the existing detached garage would be demolished and a one-car portion would be retained. He also stated that chimneys are proposed on the northerly side of the proposed dwelling rather than the southerly side of the dwelling in order to allow for more window area on the southerly side which receives more sunlight.

Chair Harrison called for questions and comments from the public.

Andrzej Kuhl, 106 South Fullerton, was sworn. Mr. Kuhl asked if the driveway requires a 4-foot setback, and if the southerly side yard setback of the home could be reduced in order to provide some setback for the proposed driveway on the northerly side of the subject lot. Mr. Kuhl continued by stating that the proposed dwelling is an improvement to the property. He further stated that a larger setback should be required for the driveway in order to preserve the existing landscaping along the northerly property line, and that the southerly side yard setback should be reduced to facilitate this due to the fact that the existing southerly side yard setback is approximately 3.42 feet.

The Board questioned Mr. Kuhl.

Karen Allen, 116 South Fullerton, was sworn, and stated her support for the application.

The Board questioned Ms. Allen.

Ms. Allen stated that the driveway for her property is between her home and the southerly side yard of the applicants' property. She also confirmed that she understood that a 4-foot southerly side yard setback for the proposed dwelling would be slightly larger than the existing setback in the southerly side yard.

Keith Martling, 118 South Fullerton Avenue, was sworn, and stated the existing dwelling is in poor condition and stated his support for the application.

Chair Harrison asked Mr. Sullivan if the Board had the ability to reduce the southerly side yard setback of the proposed dwelling from 6 feet to 4 feet without requiring a new public notice for the variance needed for the southerly side yard setback.

Mr. Sullivan stated that the Board could consider a condition that the southerly side yard setback be reduced, as the Chair described, because the most impacted neighbors are present.

The Board questioned the applicants.

Mr. Neill asked if the front yard setback could also be reduced by allowing the main front wall of the proposed home to be set back 25 feet and allowing the covered front porch to project into the 25-foot front yard setback.

Chair Harrison stated that a reduction in the proposed front yard could not be done without a new notice because property owners that may be affected by that modification are not present and may have relied on the plans already submitted in considering the impacts of the application on their properties.

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 footprint of the proposed dwelling shall be shifted to the south by 2 feet, so that a minimum southerly side yard setback of 4 feet is provided.
2. A 3-foot wide planting strip shall be provided along the northerly property line.
3. The driveway shall not be less than 7 feet 8 inches wide.
4. The front yard setback shall not be less than 25 feet, including any covered front porch.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey, the meeting was adjourned.