

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**May 17, 2006**

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

ABSENT: Mr. Haizel and Mr. Mellon, 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. Susswein, the following Resolution memorializing the approval of the application of **Bashir and Pamela Zivari, 51 Myrtle Avenue** was adopted, Mr. Flood and Ms. Holloway abstaining:

WHEREAS, Bashir and Pamela Zivari, owners of property at 51 Myrtle Avenue, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a driveway width less than required pursuant to Montclair Code Section 347-102C and a driveway setback less than required pursuant to Montclair Code Section 347-104, on property designated as Lot 16 in Block 1302 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey, prepared by Almonte Surveying and Mapping, P.C., dated August 16, 2004, and a 3-page set of plans, prepared by the applicants, undated; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 19, 2006 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 subject property is located in the R-1 One-Family Zone and contains a 2½-story single family dwelling with an attached one-car garage at the front of the dwelling. The subject property measures 50 feet in width and contains 13,225 square feet in lot area.

2. The applicants propose to demolish the existing attached one-car garage, which is below grade, and the existing driveway area. The area of the existing driveway and garage would be filled to level the grade and landscaped.

3. A new gravel driveway is proposed that would go through the easterly side yard and lead to conforming gravel parking area for 2 vehicles in the rear yard. A turnaround area is also proposed between the rear of the dwelling and the parking area.

4. The dwelling has an easterly side yard setback of 10.39 feet. A chimney and first floor bay window also exist on the easterly side wall of the dwelling. A width of 8.5 feet is proposed for the driveway as it passes the dwelling and a setback of 0.47 feet is proposed for the driveway from the easterly side property line.

5. Based on the location of the dwelling on the lot, the requested variances for a deficient driveway width and driveway setback are justified. The applicant also demonstrated that the proposed driveway width would allow for viable and effective ingress and egress of vehicles accessing the parking area and that the changes proposed to the property, subject to certain modifications imposed by the Board, represent an aesthetic improvement.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variances requested 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 the applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of 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 Bashir and Pamela Zivari is hereby approved subject to the following condition:

1. The plan shall be revised so that a 4-foot setback is provided for the driveway behind the dwelling, and the 4-foot setback area shall be landscaped to provide screening of the parking area and turnaround area, as required by the zoning ordinance.

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 Ms. Cockey, the following Resolution memorializing the approval of the application of **Anthony Gloster, 8 William Street** was adopted, Mr. Flood and Ms. Holloway abstaining:

**WHEREAS, Anthony Gloster**, owner of property at **8 William Street**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for side yard setbacks less than that required pursuant to **Montclair Code Section 347-51** in connection with the construction a 2-story addition onto the rear of his existing single-family dwelling on property designated as Lot 21 in Block 1511 on the Township Tax Map and located in the R-2 Two-Family Zone; and

**WHEREAS**, the applicant submitted a site plan, floor plans, and building elevations prepared by Lawless & Mangione, Architects & Engineers, revised to November 21, 2005, and a property survey prepared by Pronesti Surveying, Inc., dated November 19, 2001; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on April 19, 2006, 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 23 feet in width and 2,399 square feet in area. The subject property is located in the R-2 Two-Family Residential Zone and contains a 2½-story single-family dwelling. There is no garage on the property and the paved driveway on the westerly side of the dwelling does not lead into the rear yard and is located partially on the adjoining property to the west.

2. The applicant proposes to construct 2-story addition onto the rear of the dwelling. The existing dwelling has nonconforming side yard setbacks of 5.54 feet in the westerly side yard and 0.99 feet in the easterly side yard. The proposed 2-story addition would be aligned with the existing side walls of the dwelling and the same side yard setbacks are proposed. The rear yard setback and height comply with the zoning ordinance.

3. The plans indicate that the footprint of the existing single-family dwelling measures 514 feet in area, including the enclosed front porch, and that the existing dwelling contains a total of 1,423 square feet of floor area, including the basement. The footprint of proposed addition measures 388 square feet in area and the total floor area provided by the addition is 1,552 square feet including the basement, first and second floors, and the rooftop terrace. The dwelling as proposed would contain a total of 2,975 total square feet of floor area.

4. The existing single-family dwelling is small in size, and the proposed addition would provide the space needed by the applicant to accommodate his family.

5. The proposed setbacks for the addition are acceptable given the narrowness of the lot and the fact that the addition would be aligned with the walls of the existing dwelling. Also, the extension of the dwelling into the rear yard, which is conforming, is in keeping with that of the adjoining dwellings.

6. The applicant agreed that the plans would be revised to indicate that no part of the roof overhang or gutters of the addition would hang over the easterly side property line, where the setback of 0.99 feet is proposed. The applicant also indicated that he may seek to extend the driveway further along the side of the dwelling and into his rear yard, which would require an easement and variances for driveway width and setback.

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

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

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within application of Anthony Gloster is hereby approved, subject to the following conditions:

1. No part of the proposed addition, including roof eaves and gutters, shall extend over the easterly side property line.
2. All stormwater leaders shall be directed to the rear yard of the subject property.
3. Should the applicant decide to extend the driveway a further distance towards the rear yard, the Board grants variances from **Montclair Code Section 347-102C** for a driveway width less than 10 feet and from **Montclair Code Section 347-104** for a driveway setback less than 1 feet, which would be subject to the applicant

obtaining and recording an easement to locate the driveway partially on the adjoining property to the west.

**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. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **David and Julie Rowley, Jr., 1 Marquette Road** was adopted as modified, Mr. Flood and Ms. Holloway abstaining:

**WHEREAS, David and Julie Rowley, Jr.**, owners of property at **1 Marquette Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a front yard setback less than required pursuant to **Montclair Code Section 347-45B(2)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-45D** in connection with the construction of a two-story addition that would connect their single-family dwelling to the detached garage in their rear yard on property designated as Lot 70 in Block 3802 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a site plan, floor plans, and elevations, prepared by Lawrence P. Quirk, Architect, dated February 8, 2006, and a property survey prepared by Richard Hingos, Inc., dated November 12, 1998; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on April 19, 2006 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 Marquette Road and Alexander Avenue, and is located in the R-1 One-Family Zone. The subject property contains a 2-story, single-family dwelling and a detached garage in the rear yard and measures approximately 7,300 square feet in area.

2. A 2-story addition is proposed at the rear of the dwelling that would connect the dwelling to the existing detached garage and the result is a 2-story, single-family dwelling with an attached garage.

3. The average front yard setback for the 2 nearest dwellings on Alexander Avenue is 45.76 feet. The existing dwelling has a nonconforming front yard setback of 20.56 feet, as measured to the one-story section located on the southerly side of the

dwelling. The proposed addition would be set back 26.56 feet from Alexander Avenue and a variance is requested.

4. The existing detached garage has a section of it that is set back 21.38 feet from the rear property line, which is conforming for detached garages, however, the proposed addition connecting the dwelling to the garage eliminates the detached garage as an accessory structure and the principal structure setbacks apply. The plans indicate that the new construction would be set back 25.63 feet from the rear property line, which conforms to the principal structure rear yard setback requirement of 25 feet, however, the existing 21.38-foot rear yard setback of the garage does not comply with the 25-foot minimum and a variance is required.

5. The required front yard setback on Alexander Avenue cannot be met on the applicants' property with a reasonable addition, and the new construction is set back further from Alexander Avenue than the existing dwelling. The proposed addition meets the side yard setback requirement of 6 feet and the height also complies with the ordinance.

6. The existing single-family dwelling is small in size, and the proposed addition would provide the space needed by the applicants to modernize the dwelling and accommodate a family.

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

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

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of David and Julie Rowley, Jr. is hereby approved; and

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the denial of the application of **Melih Abdulhayoglu, 1 Watchung Avenue** was adopted as modified, Mr. Flood and Ms. Holloway abstaining:

**WHEREAS, Melih Abdulhayoglu**, owner of property at **1 Watchung Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-33B(2)** in connection with the construction of an attached garage and to allow central air conditioning units to be located between the dwelling and Watchung Avenue, which is not permitted pursuant to **Montclair Code Section 347-34B**, on property designated as Lot 1 in Block 1602 on the Township tax map and located in the R-0 Mountainside Zone; and

**WHEREAS**, the applicant submitted a Grading & Stormwater Drainage Plan, prepared by Michael L. Jurist., revised to December 28, 2005, and floor plans and elevations on 5 sheets, prepared by Christian Designs Limited, Architects, dated June 6, 2006, April 25, 2005, June 21, 2005, and June 23, 2005; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on April 19, 2006 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 Watchung Avenue and Upper Mountain Avenue. The property is located in the R-0 Mountainside Zone, measures 236.22 feet in width along Watchung Avenue, 188.46 feet in width along Upper Mountain Avenue, and approximately 44,356 square feet in area.

2. The subject property contains a single-family dwelling that has had substantial additions built onto it within the last year. The rear area of the dwelling contains the original 3-car garage under the dwelling, which still exists although it has been modified to have 2 garage doors at the present time.

3. The application submitted to the Board pertains to an attached 2-car garage addition that has been partially built without a building permit. The construction of this addition has been stopped by the Construction Official and the applicant is seeking a variance to obtain a permit and continue the work.

4. The proposed attached garage is located on the northerly side of the dwelling. A front yard setback of 50 feet is required from the Watchung Avenue front property line and a front yard setback of 30 feet is proposed. The plan calls for the original garages under the dwelling to be converted to interior space and the existing

driveway would be replaced by a new driveway from Watchung Avenue. A turnaround area is also proposed and is connected to the proposed driveway.

5. The applicant also requested a variance to locate 5 central air-conditioning units between the dwelling and Watchung Avenue, which is only required if the proposed attached garage is denied. This is the case because the location of the attached garage is would be the closer to Watchung Avenue than the location of the central air conditioning units, therefore the units would be behind the most forward point of the dwelling to Watchung Avenue. Should the attached garage be denied, the units would be left between the dwelling and Watchung Avenue, and a variance is requested.

6. The testimony of the applicant and his expert indicated that the proposed location of the attached garage and central air conditioning units is largely based upon the location of the new construction that has already been substantially completed on the dwelling. Further, the applicant did not demonstrate any hardship with relation to space on his property. As a result, any hardship is based on the location of the new construction and is either self-imposed or a result of poor planning.

**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 variances 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 Melih Abdulhayoglu, for variances 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.

On motion by Mr. Fleischer, seconded by Ms. Cockey, the following Resolution memorializing the denial of the application of **American Bank of New Jersey, 120 Watchung Avenue** was adopted, Mr. Flood and Ms. Holloway abstaining:

WHEREAS, American Bank of New Jersey, did make application to the Board of Adjustment of the Township of Montclair for use and bulk variances and site plan approval in connection with its proposal to demolish an existing automobile service station and construct a bank building with two drive-through windows on property designated as Lot 22 in Block 2506 and located in the N-C Neighborhood Commercial Zone;

WHEREAS, the applicant sought the following relief:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to permit a freestanding bank building where a building containing a bank is required to have an equivalent amount of gross floor area occupied by retail, personal service, medical office or restaurant uses pursuant to Montclair Code Section 347-90D.

2. A variance pursuant to N.J.S.A. 40:55D-70c to permit a rear yard setback of 14 feet 4 inches where a minimum of 20 feet is required pursuant to Montclair Code Section 347-95C(3).

3. A variance pursuant to N.J.S.A. 40:55D-70c to permit parking areas and driveways to be set back 3 feet 6 inches from the property line where a minimum of 4 feet is required pursuant to Montclair Code Section 347-96.

4. A variance pursuant to N.J.S.A. 40:55D-70c to allow the paved access area for the barrier-free parking space to be located within the prohibited 10 foot setback required by Montclair Code Section 347-96.

5. A variance pursuant to N.J.S.A. 40:55D-70c to permit 7 parking spaces where a minimum of 11 parking spaces is required pursuant to Montclair Code Section 347-101.

6. A variance pursuant to N.J.S.A. 40:55D-70c to permit a wall mounted sign on the east elevation which does not face a street or municipal parking lot as required by Montclair Code Section 347-110A.

7. A variance pursuant to N.J.S.A. 40:55D-70c to permit each of three wall mounted signs to exceed the maximum 24 inch height requirement pursuant to Montclair Code Section 347-110A.

8. A variance pursuant to N.J.S.A. 40:55D-70c to permit the wall-mounted logo sign to be located outside the building sign location band mandated by Montclair Code Section 347-110A.

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by the Mylan Architectural Group revised through September 30, 2005 as well as a property survey prepared by Stewart Surveying and Engineering LLC dated September 8, 2005; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on February 15, March 29 and April 19, 2006, at which time it was established that notice was properly published and the 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 consists of 9,600 square feet and contains a lawfully existing, nonconforming automobile service station which includes a car and truck rental business.

2. The application proposes to demolish the existing automobile service station and construct a one story building to be utilized as a bank with two drive-through windows, one of which includes a drive-up ATM as well as a walk-up ATM and related site improvements.

3. The primary argument advanced by the applicant related to the benefit that would derive from the elimination of the nonconforming "discordant" automobile service station use and replacement with the proposed bank use. The Board acknowledged the proposed use was superior, however, the applicant did not meet the requisite burden of proof to establish "special reasons".

4. The Governing Body through its Zoning Ordinance has established a clear legislative intent to treat banks differently than retail uses and require an equivalent amount of retail, personal service, medical office or restaurant use in a building. The proposed bank would result in a substantial amount of automobile drive-through use and minimal foot traffic which is contrary to the intent and purpose of the Master Plan and Ordinance which seek to encourage pedestrian traffic in the zone.

5. The subject property is located at the corner of Park Street and Watchung Avenue which is an important location for establishing a use that would promote pedestrian traffic. Approval of this application which would not promote pedestrian traffic would have a long term, substantial adverse impact on neighborhood uses particularly on the north side of Watchung Avenue.

6. The applicant's traffic expert concluded the automobile traffic associated with this use which results primarily from the drive-through windows would not cause substantial detriment to the public good was not adequately supported by a factual basis and thus, was a net opinion and was rejected by the Board.

7. The applicant failed to offer any proof that the subject property could not be developed with a conforming use including the requisite retail component.

8. The plan fails to provide the requisite number of on-site parking spaces in a neighborhood which already suffers from parking problems. Although the applicant indicated it had applied for employee parking permits in the municipal lot, those permits have not been approved and thus, the applicant did not adequately address the parking deficiency.

9. The requested bulk variances relating to setbacks were not related to physical characteristics of the land but were self created by the size of the building, location of the drive-through windows and related improvements.

10. With respect to the requested bulk variances, the applicant failed to prove any public benefit would result from the Board's approval.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant failed to prove the requisite special reasons for the granting of this application; and failed to prove 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;

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 variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1);

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 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 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 American Bank of New Jersey for variances and site plan approval is hereby denied;

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 application of **Christopher G. Rohde, 30 Walnut Parkway**. Mr. Rohde was sworn and stated that he is seeking an appeal of the Planning Department's decision that his proposed central air conditioning units require a variance for a deficient setback. He stated that the existing dwelling has a lawfully

existing nonconforming easterly side yard setback and that the proposed central air conditioning units in the easterly side yard do not add to that nonconformity, and therefore a permit should have been issued. Mr. Sullivan explained the zoning ordinance and the section of the Municipal Land Use Law that deals with existing nonconforming structures and stated that the proposed central air conditioning units do not presently exist and require a variance from the zoning requirements. Mr. Rohde withdrew his request for an appeal of the administrative decision and stated that he would request the variance required.

Mr. Rohde stated that 2 central air conditioning units are proposed along the easterly side of the dwelling. He stated that due to the shape of the dwelling, the units are not visible from the street and that there is no other location on the property to locate the units that would not require a variance. He stated that the westerly side of the dwelling contains a driveway and that the rear wall of the dwelling has 2 garage doors that take up nearly the entire width of the dwelling. He stated that the proposed location is the best location on the property and that due to the angle of the property line, the setback of the proposed units from the easterly side property line would vary slightly from 4 feet 3 inches to 3 feet 9 inches.

Marked into evidence were:

- A-1 Photograph of the rear wall of the dwelling
- A-2 Photograph of the rear wall of the dwelling
- A-3 Photograph of the proposed location along the easterly side of the dwelling

The Board questioned Mr. Rohde. Mr. Rohde stated that the adjoining property to the east is the rear yard of a property that fronts on Oxford Street, which is the next street to the north, and that the proposed units would not impact the residents of that property.

Marked into evidence was:

- A-4 Photograph of the rear yard of the property that adjoins the subject property along its easterly boundary

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Flood, the application was approved, subject to the following condition:

1. The proposed central air conditioning units shall not be wider than 29 inches and shall not be located more than 10 inches from the dwelling.

Chair Harrison called the application of **Roseann Stella, 397 North Fullerton Avenue**. Mr. Whipple arrived prior to any testimony being given on the application. Ms. Stella was sworn and described the application. She stated that she has received a permit to install a central air conditioning unit at the rear of the dwelling at the right side of a stairway at the back of the house. She stated that she is seeking to relocate the unit to the left side of the stairs and that a variance is requested for the setback from the side property line, which would be approximately 4 feet 3 inches, rather than the 6 feet required. She stated that, since her property is a corner lot, the approved location is highly visible to pedestrians and her neighbors and that the proposed location would hide the unit more from the view and that the adjoining neighbor has voiced no objection.

The Board questioned the applicant. Ms. Stella stated that the proposed central air unit measures 34 and 15/16 inches from front to back, 35 inches wide, and that 6 inches of clearance is required from the stairs. She also stated that that the space from the stairs to the side property line measures 92 inches wide.

Marked into evidence were:

- A-1 Photograph depicting the proposed location for the central air unit and the location approved with the building permit
- A-2 Photograph of the view from the proposed location illustrating its hidden view

Ms. Stella stated that it was not possible to screen the unit if it was placed in the approved location because her driveway is too close to that location. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Ms. English, seconded by Mr. Whipple, the application was approved, Chair Harrison voting in the negative, subject to the following conditions:

1. The central air conditioning unit shall continue to be screened by the existing fence, a similar fence, or evergreen landscaping.
2. The southerly side yard setback of the proposed central air conditioning unit shall not be less than 4 feet 3 inches.

Chair Harrison called the variance application of **Matt Purdy and Dale Russakoff, 129 Westview Road**. Matt Purdy and Dale Russakoff were sworn. Ms. Russakoff described the application. She stated that last January a large tree fell and destroyed their detached garage and that they are seeking to rebuild it in the same location with the same dimensions and that they are seeking a variance for the easterly side yard setback, which measures 0.9 feet

The Board questioned the applicants. Mr. Purdy stated there would be no benefit to anyone in enlarging the easterly setback since the neighbor's garage happens to be along the same side line. Ms. Russakoff stated that the space between the garages is unusable and the easterly side neighbors are in favor of the application. She also stated that direction of the pitch of the roof would be switched so that the slope of roof is directed toward the sides of the garage, instead of towards the front and back of the garage as it was previously. She stated that this design is more in keeping with the design of the dwelling and reduces the impact of the garage near the easterly property line. She also stated that roof leaders would be connected to a proposed drywell behind garage, so that no runoff from the roof of the garage would spill onto the adjoining property. Mr. Purdy stated that they prefer not to move the garage an additional foot off of the easterly side property line because it would reduce the amount of usable rear space while increasing unusable space between garages. He also stated that they would be willing to go back to the previous roof direction and redesign the garage so that no part of the roof overhangs over the property line.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved, Mr. Flood voting in the negative, subject to the following conditions:

1. Stormwater collected from gutters and roof leaders on easterly side of the garage shall be directed to a drywell on the applicants' property.
2. The proposed detached garage shall have a minimum easterly side yard setback of 2 feet.

Chair Harrison called the site plan and variance application of **5 Grant Street, LLC, 5 Grant Street**. Robert Pansulla, Esq., appeared as attorney for the applicant and described the application. Mr. Pansulla called James Helb, who was sworn and stated his qualifications as a Professional Engineer and Professional Planner. Mr. Helb described the plans and the variances requested. He described the existing property and stated the 6-unit dwelling is being renovation and that a 12-space parking area is proposed. He stated that the plan complies with RSIS standards in terms of number of parking spaces, parking space dimensions, driveways, and aisle widths. He stated that the site presently drains onto Grant Street and that a proposed underground drainage system is proposed that would be an improvement over the existing site drainage. He also stated that the comments from the Board Engineer's memorandum would be complied with.

Mr. Helb stated that the existing use is a pre-existing nonconformity due to its residential density, and that although the proposed parking is considered an expansion of the nonconforming use, it is a needed improvement. He stated that the proposed parking area is surrounded by paved areas that are less than 4 feet from the property lines, which mitigates the impact of the proposed setbacks. He stated that curbing is

proposed around the perimeter of the parking area and that new chain-link fences are proposed. He stated that no landscaping is proposed within the small setback provided and that solid fences are not proposed because it is important to allow for clear vision through the property for security proposes.

The Board questioned Mr. Helb. Mr. Helb stated that the existing on-site parking is undistinguished and informal. He stated that low lying junipers are the only landscaping that would work in the setback areas due to the need to have a vehicle overhang into the setback. He also stated that the plan would still conform to the RSIS standards if a 4-foot setback was provided with landscaping from the easterly property line.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Flood, the application was approved, subject to the following conditions:

1. The applicant shall comply with comments 2 through 12 from the report from the Board Engineer, dated May 15, 2006.

2. The two (2) westernmost parking spaces, nearest to Grant Street along the northerly property line, shall be eliminated from the plan, and the resulting area shall be landscaped with shrubs that have an ultimate height of no more than 2½ feet and grass or other vegetative groundcover.

3. The easterly parking area setback shall be increased to comply with the 4-foot setback requirement and shall be appropriately landscaped

4. All outstanding property taxes shall be paid.

Chair Harrison called the application of **Wallwood Gardens, Inc., 400 Orange Road** in order to schedule a special meeting. Robert Taylor, Esq., appeared as attorney for the applicant. After some discussion, Chair Harrison announced that the application would be carried to a special meeting to be held on Wednesday, June 14, 2006, at 7:30 p.m. in the First Floor Conference Room and that no further notice would be given. The Board took a short recess.

Chair Harrison called the site plan and variance application of **Robert Martinelli, 1 Essex Way**. Robert Martinelli, owner, and John Guadagnoli, Architect, were sworn. Mr. Guadagnoli described the proposed attached garage addition and the variances requested. He stated that the proposed setbacks would comply with the setback requirements of a detached garage. He stated that the property is odd in shape and the dwelling is in an unusual location and that the area where the addition is proposed is adjoined by the detached garages of neighboring properties. He also stated that a use variance is requested since the dwelling is a lawful three-family dwelling in an R-2 Zone and the addition is considered an expansion of the nonconforming use.

The Board questioned the applicant and Mr. Guadagnoli. Mr. Martinelli stated that the proposed garage is attached with a breezeway because it offered a more aesthetic design since a detached garage would be only 10 feet from the rear of his home. Mr. Guadagnoli added that a detached garage would only create a narrow alley between the home and the garage. Chair Harrison called for questions and comments from the public.

Herbert Lev, 183 Park Street, was sworn, and stated his support for the application.

The Board discussed the application. On motion by Ms. English, seconded by Mr. Fleischer, the requested bulk variance was denied, Ms. Cockey, Mr. Susswein, and Mr. Whipple voting in the negative. On motion by Mr. Fleischer, seconded by Ms. Cockey, the use variance was approved, Mr. Flood voting in the negative. On motion by Mr. Whipple, seconded by Mr. Fleischer, site plan approval was granted, Mr. Flood voting in the negative, subject to the following conditions:

1. The applicants shall comply with comments contained in the memorandum from the Board Engineer, dated May 15, 2006.
2. The proposed two-car garage shall be detached from the dwelling.

Chair Harrison called the application of **Fran Adler, 22 Mulford Lane** concerning property located **131 Lloyd Road**. Ms. Cockey recused herself for this application. Kenneth Traum, Esq. appeared as attorney for the applicant and described the application, which is seeking an appeal of an Administrative Officer's decision and an interpretation of the zoning ordinance. Mr. Traum stated that the application is in regard to the issuance of a building permit for a retaining wall at 131 Lloyd Road and the interpretation of the zoning ordinance as it relates to the plans submitted for that permit. Michael Murphy, owner of 131 Lloyd Road, appeared on his own behalf, and stated his position that the zoning ordinance was interpreted correctly by the Administrative Officer and the permit for the retaining wall was correctly issued.

Mr. Traum described the documents submitted with his appeal. He stated that the existing retaining wall, or the upper wall in terms of the proposed plan, was denied a variance to exist at its present height, and that the owner of 131 Lloyd Road received a permit to construct a new retaining wall in front of the existing retaining wall. Mr. Traum read **Montclair Code Section 347-27.1F** involving terraced walls, and stated that the plans approved for permits do not comply with that section of the ordinance. He stated that the plans show a separation of 4 feet 4 inches from the top of the lower wall to a point on the upper wall where it emerges from the ground it is being buried under. He stated that the ordinance states that the 4-foot separation required by the ordinance should be measured from the top of the bottom wall to the base of upper wall, which is in the ground on an angle and comes within 4 feet of the proposed lower wall. He cited

recent New Jersey case law in which it was found that plantings on a berm were deemed to violate a height restriction and drew parallels to the proposed lower wall as it relates to the upper wall. He stated that the Township Council in adopting the height restriction on retaining wall and sets of terraced retaining had a clear intent to provide sufficient light, air, and space, and that the proposed plan is not in keeping with that intent. He further stated that the Administrative Officer's decision in granting zoning approval for the plans submitted for permits is also not in keeping with the intent of the ordinance. He also stated that since the upper wall is an illegal structure, and the proposed lower wall simply buries half of its height the proposed plan circumnavigates the ordinance.

Mr. Murphy stated that the plan submitted for permits complies with the zoning ordinance. He stated that the proposed lower wall complies with ordinance and renders upper wall legal in height as well, by forming the terracing of walls with the separation required between the sets of walls. He stated that the Board has seen other plans involving terraced retaining walls constructed in this manner and has treated those as lawful. He also stated that during the variance application for the upper wall, witnesses objecting his application stated that the variance for the upper wall should be denied because terraced walls could be constructed, which would comply with the ordinance. Mr. Murphy introduced copies of Exhibits O-6, O-7, and O-8 from the variance application for the upper wall from November 2005, which illustrates this point.

Mr. Traum stated that the copies of the Exhibits introduced by Mr. Murphy do not depict the scenario that is proposed by Mr. Murphy on his plans. Chair Sullivan and Mr. Sullivan both stated that the copies of the Exhibits introduced by Mr. Murphy can not be introduced as evidence because the Board did not rule on those Exhibits and whether they illustrate a conforming terraced set of retaining walls or not.

Mr. Murphy continued and stated that his property is located in one of the steepest part of Montclair, and that retaining walls are typical due to the steep natural grade of properties on the western side of the Township.

The Board questioned Mr. Traum and Mr. Murphy. Chair Harrison called for questions and comments from the public.

Robert Kramer, 18 Mulford Lane, stated that the ordinance very clearly states that the 4-foot separation between sets of terraced retaining walls is to be measured from top of lower wall to the base of upper wall, and that the plans submitted for permits by Mr. Murphy do not comply with the ordinance. He further stated that the ordinance also states that the distance is supposed to be measured horizontally, and that the plan shows that the upper wall is less than 4 feet from the top of the lower wall measured horizontally.

The Board questioned Mr. Kramer.

George Saj, 127 Lloyd Road, stated that he believes the ordinance was interpreted correctly.

Robert Latimer, 49 Lloyd Road, stated that he believes the ordinance was interpreted correctly.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Ms. English, the Board affirmed the issuance of the permit in question and affirmed the Administrative Officer's interpretation of the zoning ordinance.

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