

MINUTES OF THE BOARD OF ADJUSTMENT
May 19, 2004

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

ABSENT: Mr. Flood, Ms. Rock-Bailey, and Mr. Susswein

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.

Mr. Sullivan stated that the public notice for most of the applications on the agenda of this meeting was not published in the official newspaper of the Township, which is required pursuant to NJSA 40:55D-12a, and therefore, the first 4 applications on the agenda would be carried to a subsequent meeting. He also stated that the certified mailing of the public notice would not be required if it has already been done, however, the public notice of the applications must be published in the official newspaper of the Township for the applications being carried.

Assistant Secretary Charreun stated that the Board would not be required to take any action for any of the 4 applications being postponed prior to the next regular meeting held on June 16, 2004.

On motion by Mr. Fleischer, seconded by Mr. Haizel, the applications of **John Falcone, Jr., 25 Plymouth Street**, and **Joel Ackelsberg & Betsy Tessler, 10 Burnside Street**, and **Terence and Margaret Gorman, 16 Edgewood Road**, and **Cornerstone Industries, LLC, 272 Valley Way** were carried to the June 16, 2004 regular meeting of the Board.

Chair Harrison called for questions from the public.

Cal Trevenen, Esq., attorney for **Cornerstone Industries, LLC, 272 Valley Way** asked which application would be heard this evening.

Chair Harrison stated that the public notice for the application of **RICA Enterprises, Inc., 137 Forest Street** had been published in an earlier edition of the Montclair Times because it had been scheduled for the April 14, 2004 regular meeting of the Board, however, the application was adjourned to this hearing by the applicant. He also stated that the mailing of the public notice for that application has been completed and that their public notice is in order to proceed at this hearing.

Joel Ackelsberg, 10 Burnside Street, stated that he might lose his contractor if his variance application is delayed.

Chair Harrison stated that the Board is precluded from acting on an application if the notice is not in order pursuant to the Municipal Land Use Law. He also stated that the Board would recommend to the Planning Department that the public notice be sent to the official newspaper further in advance so that, in the case where it is not published, there may be another opportunity to publish the notice 10 days before the meeting date.

The meeting proceeded and Ms. Cockey joined the meeting.

Assistant Secretary Charreun announced that the **Minutes of the April 28, 2004** special meeting would be adopted at the June 16, 2004 regular meeting of the Board.

While the Board was reviewing the **Minutes of the April 14, 2004** regular meeting, Craig Dickson, Esq., attorney for **Terence and Margaret Gorman, 16 Edgewood Road**, stated that he is certain that the public notice of the meeting was published in the May 6, 2004 edition of the Montclair Times.

Assistant Secretary Charreun stated that the proof of publication was never received from the Montclair Times and that he had searched the classified section of the May 6, 2004 edition of the Montclair Times for the public notice. He then left the meeting momentarily to locate a complete edition of the May 6, 2004 edition of the Montclair Times to determine whether the notice was published in any other section of the newspaper. He returned to the meeting and Chair Harrison announced that the public notice for this meeting was indeed published in the Sports Section of the May 6, 2004 edition of the Montclair Times, and that the Board was set to proceed with all of the applications on the agenda.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the **Minutes of the April 14, 2004** regular meeting were adopted as modified.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the denial of the variance application of **Richard Cecere, Erie Street** was adopted as modified, Mr. Fleischer abstaining:

WHEREAS, Richard Cecere, lessee of existing billboard advertising space located on Erie Street, did make application to the Board of Adjustment of the Township of Montclair to illuminate the existing billboard advertising sign located on property designated as Lot 9 in Block 3307 on the Township tax map and located in the C-2 General Business and Light Manufacturing Zone; and

WHEREAS, pursuant to Montclair Code Section 347-106, the existing billboard is an advertising sign, which pursuant to Montclair Code Section 347-107A is prohibited, rendering the existing billboard advertising sign as nonconforming;

WHEREAS, pursuant to *N.J.S.A. 40:55D-70d*, the applicant requested a variance pursuant Montclair Code Section 347-112, in that advertising signs such as billboards,

are nonconforming and the use of such signs is not permitted to be expanded, increased or enlarged;

WHEREAS, the applicant submitted a rendering of the billboard depicting the proposed light fixtures, prepared by Sherman Associates, dated January 29, 2004, maps of the area in the vicinity of the billboard sign, a specification sheet on the type of lighting fixture proposed, and a letter from the owner of the property, New Jersey Transit, dated April 14, 2004, consenting to the application; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on April 14, 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 with notice; and

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

1. The application contemplates installation of three (3) 150-watt Halophane exterior light fixtures, mounted on the bottom of the billboard sign, and directed upward to illuminate the existing billboard advertising sign.

2. The existing billboard sign is located on New Jersey Transit property located between the pavement strip of Erie Street and the railroad tracks. The applicant proposes to light the side of the existing billboard that faces in a southerly/southeasterly direction, and the rendering depicts that the advertising space on the sign measures 22 feet wide by 10 feet 6 inches tall. The rendering also depicts that the billboard structure reaches 15 feet in height on the left side and 12 feet in height on the right side.

3. The existing billboard sign is visible to a number of residential properties in the vicinity, and the proposed illumination of the billboard sign would have a negative effect on those residential properties.

4. The applicant failed to prove the existing billboard sign was particularly suited for the proposed illumination, as there are a number of other existing billboard signs along New Jersey Transit property in Montclair that are non-illuminated, including a billboard sign on the reverse side of the structure including this billboard sign.

5. The applicant failed to prove that the granting of this application would advance any purposes of the Municipal Land Use Law.

6. Based upon the Board's particular knowledge of local conditions, the within application is inconsistent 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 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; 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 any 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 Richard Cecere, for a variance to illuminate an existing billboard advertising sign 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.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Steve and Sandy Goodman, 22 Berkeley Place** was adopted as modified:

WHEREAS, Steve and Sandy Goodman, owners of property at **22 Berkeley Place**, 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 setback less than required pursuant to **Montclair Code Section 347-104** in connection with plans to widen the driveway and construct a parking area on property designated as Lot 1 in Block 1604 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Bernard Criscenzo, L.S., dated September 16, 1993, and a drawing of the proposed driveway and parking area, with no preparer or date indicated, that depicts the proposed construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 14, 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 Berkeley Place and North Mountain Avenue, measures approximately 8,440.20 square feet in area, and contains a 2½-story single-family dwelling and a one-car detached garage in the southwesterly corner of the property.

2. The applicants' one-car detached garage is accessible through an existing 10-foot wide driveway from North Mountain Avenue.

3. The applicants' proposal is to widen the driveway by approximately 2 feet for the full length of the northerly side of the driveway; the southerly side of the driveway would be widened by 7½ feet towards the southerly property line at its widest and widened by 6 feet towards the southerly property line in the area near the front of the existing garage where the new paving would be tapered away from the property line to avoid an existing tree. The widening of the driveway is proposed in order to provide 2 side-by-side parking spaces in front of the garage.

4. The location of the dwelling on the property, the limited size of the rear yard, and the existing landscaping on the northerly side of the driveway limit the ability of the applicants to widen the driveway more to the north than what is already proposed and to provide the required 4-foot setback from the southerly property line for the proposed parking area in front of the garage.

5. Based upon the Board's particular knowledge of local conditions, and with certain modifications to the plan, the proposed widening of the driveway and parking area setback are consistent 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 applicants 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 applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Steve and Sandy Goodman is hereby 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.

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. Haizel, the following Resolution memorializing the approval of the variance application of **Paul Hoerrner, 1 Wendover Road** was adopted:

WHEREAS, Paul Hoerrner, owner of property at **1 Wendover Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow side yard setbacks less than required pursuant to **Montclair Code Section 347-46A(2)(b)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of a detached garage on property designated as Lot 1 in Block 1605 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richlan, Lupo & Associates, Inc., dated April 17, 2003 and a site plan and elevations prepared by Oasis Architecture and Planning, P.C., dated March 2, 2004, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 14, 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 corner lot, located at the intersection of Valley Road and Wendover Road, measures approximately 10,555 square feet in area, and contains a 2½-story single-family dwelling and a detached garage located in the southernmost area of the property.

2. The applicants' proposal is to demolish the existing detached garage and construct a new detached two-car garage in the same general area, however, with a larger footprint and at a taller height than the existing detached garage.

3. The property survey indicates that the existing detached garage has a nonconforming rear yard setback of 1.32 feet, and nonconforming side yard setbacks of 1.83 feet and 4.26 feet, respectively, in the easterly and westerly side yards of the garage.

4. The proposed garage would measure 22 feet in width by 24 feet in length and contains a second level loft for storage. Side yard setbacks of 6 inches in the easterly side yard, and 2 feet 8 inches in the westerly side yard, are proposed, and a rear yard setback of 1 foot is proposed.

5. The location of the dwelling on the property and the irregular shape of the lot limit the ability of the applicant to construct a detached garage in a location fully conforming to the requirements of the zoning ordinance.

6. Although the applicant demonstrated hardship in constructing a detached garage that would conform to the required side yard and rear yard setbacks, the Board finds that the proposed side yard and rear yard setbacks are too undersized and would have a negative impact on adjoining properties. The Board concluded that the proposed side yard and rear yard setbacks could be enlarged and still allow for the construction of a detached two-car garage.

7. Furthermore, the Board finds that, although the proposed detached garage meets the height requirement of the zoning ordinance, a reduction in the height of the proposed detached garage would help to alleviate the negative impacts of the side yard and rear yard setbacks less than that required.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Paul Hoerrner is hereby 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.

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. Fleischer, the following Resolution memorializing the approval of the variance application of **Susan and Desmond Neill, 110 South Fullerton Avenue** was adopted, as modified:

WHEREAS, Susan and Desmond Neill, owners of property at **110 South Fullerton Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to a lot width less than required pursuant to **Montclair Code Section 347-44**, a front yard setback less than required pursuant to **Montclair Code Section 347-45B(1)**, and a driveway width less than required pursuant to **Montclair Code Section 347-102C** in connection with the construction of a single-family dwelling on property designated as Lot 14 in Block 2109 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey, prepared by JMH Associates, dated February 11, 2004, and a plot plan, floor plans, and elevations prepared by the applicant, Desmond Neill, dated February 12, 2004, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 14, 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 5,483 square feet in area, and contains a single-family dwelling and a detached 3-car garage located in the rear yard.

2. The applicants' proposal is to demolish the existing single family dwelling and construct a new single-family dwelling. The applicants also propose to demolish the two-car section of the detached garage and retain the one-car portion of the detached garage.

3. At the hearing the applicants submitted a revised site plan, dated April 11, 2004, that provided a 2-foot planting strip adjacent to the northerly property line, and which reduced the minimum width of the new driveway from 8 feet 6 inches to 6 feet 8 inches. The revised plan also depicted a parking space of conforming dimensions adjacent to the one-car detached garage, which eliminated the variance required from **Montclair Code Section 347-102B**, and also depicted a 4-foot landscaped setback for

the parking space, which eliminated the variance required from **Montclair Code Section 347-104**.

4. Based on the testimony of the applicants, and the testimony of the adjoining neighbors on each side of the subject property, the Board concluded that the southerly side yard setback of the proposed dwelling could be reduced from the 6 feet minimum required to 4 feet, in order to provide a 3-foot wide landscaped planting strip along the northerly property line adjacent to the new driveway and also to provide a minimum driveway width of 7 feet 8 inches.

5. This modification to the plan requires a variance to be granted from **Montclair Code Section 347-45C(1)**, in addition to the variances required for lot width, front yard setback, and driveway width, and was deemed appropriate given the fact that the existing dwelling has a southerly side yard setback of approximately 3.42 feet and the driveway of the adjoining property to the south is located along the southerly property line of the subject property. Furthermore, the adjoining neighbors most impacted by the modifications to the plan were present at the hearing and were able to provide testimony regarding the modifications to the plan.

6. Based upon the Board's particular knowledge of local conditions, and with the proposed modifications to the plan, the proposed dwelling and related site improvements are consistent 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 applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Susan and Desmond Neill is hereby 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.

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.

Assistant Secretary Charreun left the meeting momentarily to telephone **John Falcone, Jr., 25 Plymouth Street**, who had left the meeting.

Chair Harrison called the variance application of **Joel Ackelsberg and Betsy Tessler, 10 Burnside Street**. Joel Ackelsberg, owner, and Peter Wilcox, Architect, were sworn. Mr. Wilcox described the proposed addition at the rear of the dwelling and stated that it would contain additional floor area for the existing kitchen. He also stated that the proposed addition is relatively small in size and would be set back further from the northerly side property line than the existing dwelling. He continued by stating that the proposed addition provides the minimum space needed by the applicants and would not negatively impact any adjoining properties.

Mr. Ackelsberg stated that he has discussed his plans with his neighbors and stated that he had not received any objections.

The Board questioned the applicant and Mr. Wilcox.

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 Ms. Cockey, the variance application was approved.

Chair Harrison called the variance application of **Terence and Margaret Gorman, 16 Edgewood Road**. Craig Dickson, Esq., appeared as attorney for the applicant. Mr. Dickson called Terence Gorman, owner, who was sworn and described the proposed addition and a prior minor subdivision application in which his property was involved. He stated that the space provided by the proposed addition would accommodate the needs of his growing family and that the addition has been designed to be in keeping with the design of the dwellings in the neighborhood.

The Board questioned Mr. Gorman.

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

Mr. Dickson called Andrew Blysak, who was sworn and stated his qualifications as a Licensed Professional Architect in the State of New Jersey. Mr. Blysak stated that the plans were prepared under his supervision.

Marked in to evidence was:

A-1 Existing floor plans and photographs of the dwelling, on 1 sheet, prepared by Parette Somjen, Architects, dated March 4, 2004

Mr. Blysak described the existing dwelling and site conditions and stated that the existing dwelling is smaller in size than many of the existing dwellings in the neighborhood. He also described the design options that would not require the rear yard setback variance and stated that the proposed location of the addition offers the least negative impacts to the site and the neighborhood.

The Board questioned Mr. Blysak.

Mr. Blysak described the existing mature trees on the site. He also stated that the attached garage has been set deep into the grade in order to minimize the volumetric impact of the addition on the neighbors.

Marked in to evidence was:

A-2 Site Plan and details, on 2 sheets, prepared by Thorr Engineers, P.A., dated May 6, 2004

Mr. Blysak described the sizes of the existing dwellings in the vicinity of the subject property.

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

Mr. Dickson called Peter John Willner, who was sworn and stated his qualifications as a Licensed Professional Engineer and a Licensed Professional Planner in the State of New Jersey. Mr. Willner described the site and stated that it is a steeply sloping, irregularly shaped lot. He stated that the proposed plan would improve the driveway grade by making it less steep and would also preserve the existing mature trees on the site. He described the proposed retaining walls and stated that they are conforming to ordinance requirements and stated that the applicant is providing more drainage improvements than required. He continued by addressing the comments of the Board Engineer and stated that all of the recommendations would be complied with.

Mr. Willner described the variance requested for the rear yard setback. He stated that the proposed addition has been embedded into the grade, which reduces the impact of the addition on the rear yard setback, and that the existing trees in the front yard would be negatively affected by shifting the addition forward. He continued by stating that the proposed addition is in keeping with the existing dwellings in the neighborhood and that granting of the variance would not impair the intent and purpose

of the Master Plan or the zoning ordinance. He also stated that the application satisfies the positive and negative criteria and that the benefits of the application outweigh any detriments.

The Board questioned Mr. Willner.

Mr. Willner stated that the driveway slope would be reduced to approximately 1 percent, which would reduce the rate of stormwater runoff from the driveway on to the street. He also stated that the downspouts from the roof would discharge near the dwelling with sufficient space to drain into the ground and are in compliance with the recommendations of the Board Engineer.

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

Mr. Dickson summarized the application.

The Board discussed the application and it was determined that the applicants should revise the plan to allow for no less than a 25-foot rear yard setback and present those revised plans at an upcoming meeting of the Board.

Chair Harrison announced that the application would be continued at the June 16, 2004 regular meeting of the Board and that no further notice would be given.

Chair Harrison called the variance application of **John Falcone, Jr., 25 Plymouth Street**. John Falcone, Jr., was sworn and stated that his property abuts property used by Gibbs College as a parking lot. He described the application and stated that he is proposing a 7-foot tall fence along most of the westerly side property line abutting the parking lot in order to reduce the impacts associated with safety, privacy, and noise. He stated that the 4.5-foot fence height that is required along most of the side property line does provide an effective visual and noise screen and does not provide his property with adequate privacy. He described the proposed 7-foot tall fence along a portion of the easterly side line and state that it is a replacement fence, part of which was rendered nonconforming when an addition was built onto the rear of the dwelling. Mr. Falcone stated that the westerly side yard of his property is heavily shaded due to large existing trees, which does not allow for the planting of a hedge or other plantings for screening.

Marked into evidence were:

A-1 through A-4 Four (4) photographs of the westerly side yard of the subject property

Mr. Falcone stated that the large existing trees along the westerly side property line do not provide screening of the parking lot and that he plans to keep as much of the existing landscaping along the westerly side property line as possible.

The Board questioned Mr. Falcone.

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. Gallardo, the variance application was approved subject to the following condition:

1. The 7-foot section of fencing along the westerly side property line shall not extend beyond the rear edge of the existing Star Gum Tree located on the westerly side property line, which is approximately 37 feet away from the front property line; and any fence between the Star Gum Tree and Plymouth Street shall be no taller than 4½ feet in height.

Chair Harrison called the application of **Cornerstone Industries, LLC, 272 Valley Way**. Cal Trevenen, Esq., appeared as attorney for the application and summarized the previous applications involving the subject property.

Marked into evidence were:

A-1 Excerpt from the Township of Montclair Tax Map depicting the subject property

Mr. Trevenen stated that the Township Council has formally vacated Murray Street, which has resulted in the property owners along Murray Street taking title to property up to the midline of the vacated street. He also stated that the applicant has obtained easements for the paved driveway leading to the subject property from Valley Way. He described the proposed driveway extension and the conditions of the prior approval that are required to be amended as a result of the proposed driveway extension. He stated that the intent of those particular conditions was to prevent any possibility that the applicant's private driveway would be used as a through street connecting Valley Way to Murray Street in West Orange.

Mr. Trevenen called Steven Lauda, member of Cornerstone Industries, LLC, was sworn. Mr. Lauda stated that he is the developer of the property and is seeking to sell the property. He stated the proposed driveway extension that leads to the front entrance of the dwelling would provide a sense of "curb appeal" that the property lacks because it does not face a street. He also stated that the driveway extension would be constructed with brick pavers, and that the original driveway would be paved with asphalt.

Mr. Lauda addressed the conditions of the previously approved application and stated that the intention of Condition 4 and Condition 10 was to prevent any through street access between the paved driveway and the gravel driveway and that the proposed driveway extension would not provide any possibility for through access. Mr.

Trevenen added that the gravel driveway was proposed by the Montclair Fire Department in order to provide adequate access to the subject property for emergency vehicles. Mr. Lauda stated that Condition 3 requires an amendment because the width of the paved driveway was enlarged to a width greater than 12 feet as it approaches the 3-car attached garage. He stated that the additional width of the paved driveway is necessary to allow for safe vehicle maneuvering in and out of the garage. He further stated that the 9-foot width of the driveway extension would be revised to 10 feet and that the section of retaining wall that exceeds the height limit would be corrected, thereby eliminating the variances required for each of those items. He continued by describing the retaining walls and landscaping on the site and stated that the retaining walls allow for improved stormwater drainage and that 11 evergreen trees, at 5 to 6 feet in height, are proposed along the northerly property line in the area of the driveway extension.

The Board questioned Mr. Lauda.

Mr. Lauda stated that the end of the proposed driveway extension is approximately 20 feet away from the end of the gravel driveway and that it would not be possible to drive through the lot.

Chair Harrison called for questions from the public.

Sherwin Content, 24 Murray Street, West Orange, asked whether the gravel driveway is located on the vacated portion of Murray Street that has become a part of his property as a result of the vacation of the street.

Mr. Trevenen called John DeGrace, who was sworn and stated his qualifications as a Licensed Professional Engineer in the State of New Jersey. Mr. DeGrace described the plan and addressed the comments of the Board Engineer. He described the changes from the previously approved plan, including grade changes, the addition of retaining walls, and the proposed driveway extension. He stated that the purpose of Conditions 4 and 10 of the prior approval was to prevent through street access on the lot and that the proposed plan is still in keeping with that purpose. He also stated that additional grade changes and retaining walls could be added between the proposed driveway extension and the gravel driveway to further limit the possibility of through street access and that the proposed landscaping along the northerly side of the lot would shield neighboring properties from the headlights of vehicles using the applicant's driveway.

The Board questioned Mr. DeGrace.

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

Chair Harrison called for public comment.

Sherwin Content, 24 Murray Street, West Orange, was sworn. He stated that he believes the gravel driveway is located on his property and that the gravel driveway is not suitable for emergency vehicle access because it is too steep.

Marked into evidence were:

O-1 through O-17 Seventeen photographs of the portion of the gravel driveway near 24 Murray Street in West Orange

The Board questioned Mr. Content.

Donald Zief, 143 Eagle Rock Way, was sworn. He asked Mr. DeGrace if the applicant is responsible to provide drainage for stormwater that enters the subject property from the higher grades to the west.

Mr. Trevenen summarized the application.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Fleischer, the application was approved, Chair Harrison voting in the negative, subject to the following conditions:

1. The section of the new driveway between the paved driveway from Valley Way and the circular portion in front of the dwelling shall be expanded from 9 feet to 10 feet in width to comply with Montclair Code Section 347-102C.
2. The 5-foot tall section of retaining wall shall be corrected so as not to exceed the maximum of 4.5-foot height restriction contained in Montclair Code Section 347-27.1B.
3. The applicant shall obtain the approval of the Montclair Fire Department.
4. All conditions imposed by the December 12, 2001 resolution not inconsistent with the within modifications shall remain in full force and effect.

Mr. Content left the meeting with exhibits O-1 through O-17.

Chair Harrison called the variance application of **RICA Enterprises, Inc., 137 Forest Street**. Maria Rivero, Esq., appeared as attorney for the applicant and described the application.

Ms. Rivero called Rui Amaral, who was sworn and stated his qualifications as a Licensed Professional Architect in State of New Jersey. Mr. Amaral described the proposed single-family dwelling the variances requested. He stated that the proposed front yard setback of 14 feet matches that of a dwelling on an adjoining lot and is also consistent with the typical front yard setback of the existing dwellings in the neighborhood. He also stated that the proposed front yard setback allows for the 2 off-

street parking spaces to be provided in the rear yard and that a 25-foot front yard setback would have a negative impact on the streetscape. He described the proposed side yard setbacks and stated that the proposed home has been designed to be as narrow as possible. He stated that a side yard setback of 6 feet 1 inch is provided on the north side of the dwelling and that 9 feet is provided on the ground level of the south side where the driveway is proposed. He further stated that the second and third floors of the dwelling are set back 6 feet 2 inches from the southerly property line as those floors are cantilevered over the 9-foot wide driveway.

Mr. Amaral described the off-street parking provided in the rear yard. He stated that the proposed 2-foot parking area setback from the northerly side property line is necessary in order to allow a minimum back-up area of 15 feet. He also stated that a fence and evergreens would screen the parking area. He stated that the proposed fence height in the front and side yards would be revised to conform to the ordinance and that the central air-conditioning units could be moved to a location that does not require a variance.

The Board questioned Mr. Amaral.

Mr. Amaral stated that the proposed fence would be a board-on-board fence.

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

Ms. Rivero called Sophia Costa, who was sworn and stated that she is a shareholder in RICA Enterprises, Inc. Ms. Costa stated that a one-family dwelling is proposed rather than a two-family dwelling so as not to overburden the site. She also stated that options that would require less variances were explored and that the proposed plan is the best plan to develop property. She continued by stating that the existing lot size is typical in the area.

The Board questioned Ms. Costa and Mr. Amaral.

Mr. Amaral stated that the existing street tree in front of the property could be preserved.

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

Ms. Rivero summarized the application.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the application was approved, Chair Harrison voting in the negative, subject to the following conditions:

1. Any proposed fencing on the property shall conform to the requirements of the zoning ordinance.

2. Any proposed central air-conditioning units on the property shall conform to the requirements of the zoning ordinance.

3. The existing street tree located opposite of the front entrance of the proposed dwelling shall be retained.

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