

MINUTES OF THE BOARD OF ADJUSTMENT
May 21, 2003

PRESENT: Chair Harrison, Ms. Costello, Vice Chair Fleischer, Mr. Flood, Mr. Gallardo, Ms. Rock-Bailey, and Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey and Mr. Haizel

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

On motion by Mr. Gallardo, seconded by Mr. Susswein, the **Minutes of the April 23, 2003** regular meeting were adopted, Ms. Costello and Vice Chair Fleischer abstaining.

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Kevin & Christin McManus, 29 Brunswick Road** was adopted, Ms. Costello and Vice Chair Fleischer abstaining:

WHEREAS, Kevin & Christin McManus, owners of property at **29 Brunswick Road**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to permit a parking area in a front yard pursuant to **Montclair Code Section 347-46C** on property designated as Lot 9 in Block 1605 on the Township Tax Maps and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by EKA Associates, P.A., dated November 17, 1997, and a site plan prepared by the applicants on a copy of the survey depicting the location of the proposed driveway and parking area; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 23, 2003 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 Brunswick Road and Central Avenue, and measures approximately 7,026 square feet in

area and contains a 2-½ story single-family dwelling and a driveway from Central Avenue that leads to a parking area in the rear yard.

2. The applicants' proposal is to remove the existing driveway and parking area and construct a new driveway and parking area for 2 vehicles in the Central Avenue front yard of the property.

3. The existing driveway and parking area is located in a conforming location, however, due to the limited size of the property and the placement of the existing dwelling, the existing driveway and parking area occupy most of the rear yard of the property, leaving the applicants without a usable backyard.

4. The impact of the proposed front yard parking is mitigated by the presence of the Montclair Kimberly Academy property across the street from the subject property, as well as the relatively high level of vehicular traffic in the area.

5. Based upon the board's particular knowledge of local conditions, the proposed driveway and parking area will not adversely impact the public good.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance for front yard parking 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 applicant did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance for front yard parking 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 Kevin and Christin McManus for a variance pursuant to N.J.S.A. 40:55D-70c to construct a front yard parking area is hereby approved subject to the following conditions:

1. The plan shall be modified so that both curb openings for the proposed driveway are located on Central Avenue and are at least 25 feet away from the curb at the intersection of Brunswick Road and Central Avenue.

2. The applicants shall install fencing and landscaping as depicted on Exhibit A-2 along the Central Avenue frontage in order to screen the proposed parking area from public view.

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

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Michael Anthony Sign & Awning Co., 565 Valley Road** was adopted, Ms. Costello and Vice Chair Fleischer abstaining:

WHEREAS, **Michael Anthony Sign & Awning Co.**, on behalf of CVS/Pharmacy, Inc., a commercial tenant of property at **565 Valley Road**, did make application to the Board of Adjustment of the Township of Montclair for variances to install 4 wall-mounted business signs on the commercial building located on the property. The property is designated as Lot 9 in Block 1712 on the Township Tax Map and located in the N-C Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted a building elevation drawings depicting the proposed signage prepared by Little & Associates, revised to September 9, 2001 and a sheet of sign details; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 23, 2003 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 applicant requested variances pursuant to N.J.S.A.40:55D-70c for failure to comply with the following:

- (a) **Montclair Code Section 347-109A(2)** in that wall-mounted business signs are required to be mounted on walls facing a street or municipal parking lot, and 1 of the proposed wall mounted signs reading "CVS/pharmacy" is mounted on the southerly wall of the structure facing a private parking lot on the subject property;
- (b) **Montclair Code Section 347-109A(5)** in that wall-mounted business signs are required to be mounted within the sign location band, the top and bottom of the band being 12 feet and 8 feet, respectively, above grade level, and a sign mounting height of approximately 18 feet 1¼ inches and 16 feet 1¼ inches, at the top and bottom of the 2 signs reading "CVS/pharmacy", and 17 feet 7¼ inches and 16 feet 1¼ inches, at the top and bottom of the 2 signs reading "1 Hour Photo" and "Food Shoppe", is proposed;

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

1. The subject property is a corner lot and contains a one-story retail building and an accessory parking lot.

2. The proposed wall-mounted sign on the southerly wall of the structure reading "CVS/pharmacy" faces the private parking lot on the subject property which is used for the sole commercial tenant on the property and provides visibility of the business for northbound vehicles on Valley Road.

3. The façade and window design at the front of the single-story commercial building does not allow the applicant to place the proposed wall mounted signs within the required sign band location.

4. The applicant failed to cite the purposes of the Municipal Land Use Law which would be advanced or any public benefit which would result in granting variances for the 2 wall-mounted signs reading "1 Hour Photo" and "Food Shoppe".

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant's request for the 2 wall-mounted signs reading "1 Hour Photo" and "Food Shoppe" on the front façade of the building failed to meet the proofs required to support the granting of the variances from **Montclair Code Section 347-109A(5)**; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant's request for a variances from **Montclair Code Section 347-109A(2)** and **Montclair Code Section 347-109A(5)** for the 2 wall-mounted business signs reading "CVS/pharmacy" 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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variances requested from **Montclair Code Section 347-109A(5)** for the 2 wall-mounted business signs reading "1 Hour Photo" and "Food Shoppe" as part of the application of Michael Anthony Sign & Awning Co. are hereby denied; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the variances requested from **Montclair Code Section 347-109A(2)** and **Montclair Code Section 347-109A(5)** for the 2 wall-mounted business signs reading "CVS/pharmacy" as part of the application of Michael Anthony Sign & Awning Co. are hereby approved subject to the following condition;

1. The 2 proposed wall-mounted business signs reading "1 Hour Photo" and "Food Shoppe" are not permitted.

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 Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Gale Britton, 7 Berkeley Place** was adopted, Ms. Costello and Vice Chair Fleischer abstaining:

WHEREAS, Gale Britton, owner of property at **7 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 front yard setback less than that required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of an addition and an outdoor deck on property designated as Lot 8 in Block 1607 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Alfred J. Clark, Inc., dated August 3, 1983 and a site plan, floor plans, and building elevations prepared by Paul Newman, AIA Architect, dated November 24, 2002, 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 23, 2003 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:

The subject property is a corner lot at the intersection of Berkeley Place and Edgemont Road and contains a 2½-story single-family dwelling and a detached garage.

1. The existing dwelling on the property has a non-conforming front yard setback of approximately 18 feet 1 inch, as measured to the northeasterly corner of the screened porch in the Edgemont Road front yard.

2. The applicant's proposal is to construct a one-story addition at the rear of the dwelling which conforms to all height and setback requirements, and an outdoor deck at the rear of the dwelling which does not meet the front yard setback requirement of 33 feet ½ inch, as determined by the average front yard setback of the 2 nearest dwellings on Edgemont Road.

3. The proposed outdoor deck would be aligned with the existing northwesterly wall of the screened porch and have a front yard setback of 18 feet 1 inch in the Edgemont Road front yard.

4. The curvature of Edgemont Road along the applicant's property line reduces the visual impact of the proposed outdoor deck.

5. Based upon the Board's particular knowledge of local conditions, the proposed addition and outdoor deck are not inconsistent with the character of the neighborhood and will not adversely impact the public good.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the 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 Gale Britton is hereby approved, subject to the following condition:

1. The proposed outdoor deck shall not be constructed closer than 18 feet 1 inch to the front property line along Edgemont Road.

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 Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Homes of Montclair Ecumenical Corp., 34 New Street** was adopted, Ms. Costello and Vice Chair Fleischer abstaining:

WHEREAS, Homes of Montclair Ecumenical Corp., as owner, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to *N.J.S.A. 40:55D-70c* to permit construction of a two-family dwelling on a vacant lot with lot width of approximately 36 feet where a minimum of 60 feet is required by Montclair Code Section 347-50 on property designated as Lot 4 in Block 3110 on the Township tax map and located in the R-2, Two-Family Zone; and

WHEREAS, the applicant submitted a site plan, floor plan, and elevations prepared by Dassa Haines, Architects, dated November 18, 2002 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 23, 2003 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 applicant requested variances pursuant to N.J.S.A.40:55D-70c for failure to comply with the following:

- (a) **Montclair Code Section 347-50** in that a minimum lot width of 60 feet and minimum lot area of 6,000 square feet is required and a lesser lot width of 35 feet 9 inches and lesser lot area of 3,575 square feet exists,
- (b) **Montclair Code Section 347-51** in that a minimum front yard setback of 25 feet is required and a lesser front yard setback of 21 feet 6 inches is proposed, and foot setback for off-street parking areas are required and a lesser setback is proposed; and
- (c) **Montclair Code Section 347-51** in that a minimum rear yard setback of 25 feet is required and a lesser rear yard setback of 20 feet 6 inches is proposed,
- (d) **Montclair Code Section 347-51** in that a minimum side yard setback of 10 feet is required for one of the side yards and a side yard setback of 6 feet is proposed for both the easterly and westerly side yards,
- (e) **Montclair Code Section 347-101** and the **New Jersey Residential Site Improvement Standards, Section 5:21-4.14** in that a minimum of 4 off-street parking spaces are required, and a total of 3 parking spaces are proposed,
- (f) **Montclair Code Section 347-52** in that parking in the front yard is not permitted and 2 of the 3 proposed parking spaces are located in the front yard;

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

1. The subject property (Block 3110, Lot 4) is vacant land located at 34 New Street and has dimensions of approximately 35.75 feet by 100 feet.

2. The applicant presented testimony regarding the width of other properties on New Street and finds that the existing lot width of 35 feet 9 inches and lot area of 3,755 square feet for the property is consistent with other lot sizes in the neighborhood.

3. The variance requested for setbacks and parking represent minimal deviations from the ordinance, which are appropriate given the physical constraints of the property and result in no adverse impact to the adjacent properties.

4. The proposed dwelling is consistent with the established development pattern of the neighborhood and would not cause any substantial detriment to 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 requested 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 Homes of Montclair Ecumenical Corp. 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 Ms. Rock-Bailey, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **Homes of Montclair Ecumenical Corp., 17 Franklin Avenue** was adopted, Ms. Costello and Vice Chair Fleischer abstaining:

WHEREAS, Homes of Montclair Ecumenical Corp., as owner, 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* to permit construction of a single family dwelling on a vacant lot with lot width of approximately 49 feet where a minimum of 60 feet is required by Montclair Code Section 347-44 on property designated as Lot 12 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 building elevations dated November 18, 2002 prepared by Dassa Haines, Architects; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 23, 2003 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 (Block 1911, Lot 12) is vacant land located at 17 Franklin Avenue and has dimensions of approximately 49 feet by 155 feet.
2. Except for the lot width, which is an existing condition, the application complies with all applicable requirements of the Zoning Ordinance.
3. The applicant presented testimony regarding the width of other properties on Franklin Avenue and Virginia Avenue and finds that the existing 49-foot lot width for the property is consistent with other lot sizes in the neighborhood.
4. The proposed dwelling is consistent with the established development pattern of the neighborhood and would not cause any substantial detriment to 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 Homes of Montclair Ecumenical Corp. 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 Vice Chair Fleischer, the following Resolution memorializing the approval of the site plan and variance application of **Keith Ballentine, 395 Claremont Avenue** was adopted as modified, Mr. Susswein abstaining:

WHEREAS, Keith Ballentine, owner of property located at 395 Claremont Avenue and designated as Block 406 Lot 34 on the Montclair Township Tax Maps, filed an application with the Board of Adjustment of the Township of Montclair for variances from the conditional use standards set forth in Montclair Code Section 347-54B, and for preliminary and final site plan approval to convert a two-family dwelling to a four-family dwelling and to construct an addition to the rear of the existing building; and

WHEREAS, the applicant also applied for a waiver from Montclair Code Section 281-9I to permit a two-way driveway with less than the minimum 18-foot width required by the ordinance; and

WHEREAS, the applicant submitted a site plan, floor plans and elevation drawings prepared by Dassa Haines, Architects, dated October 10, 2002, and a property survey prepared by AFR Engineering Group, dated April 29, 2002; and

WHEREAS, the Board of Adjustment conducted a public hearing on this application at meetings held on March 19, 2003 and April 30, 2003, at which time it was established that notice of this application had been properly published and that property owners within 200 feet of the property had been served with notice of this application; and

WHEREAS, the Board of Adjustment carefully reviewed and considered the applicant's plans and the other evidence presented in connection with this application, and made the following findings of fact:

1. The subject property is located in the R-3 Garden Group Zone and contains an existing two-family residence with an attic-level boarding unit, an attached one-car garage, a detached two-car garage and a gravel parking area in the rear yard.

2. The applicant proposes to construct a new 3½ story addition onto the rear of the building. The addition will contain a new dwelling unit, and the attic boarding unit will also be converted to a regular dwelling unit. As a result, the residential building will contain a total of 4 dwelling units. The applicant also proposes to construct a rear entrance porch/terrace to provide access to the new dwelling unit.

3. Pursuant to Montclair Code Section 347-54B, the conversion of a two-family dwelling to provide more dwelling units is permitted as a conditional use in the R-3 Zone, provided the following conditions are satisfied:

- (1) The floor area of each dwelling unit, measured from the inside of the building walls and exclusive of stairs, basements, utility rooms and porches, shall be not less than 800 square feet.
- (2) The principal building on a lot shall occupy not more than 1/4 of the ground area of the lot.
- (3) [Repealed]
- (4) The ground coverage of the building, exclusive of open porches, garages or any other area not within the area occupied by normal living quarters, shall be not less than 1,250 square feet; the area of the lot on which the building is erected shall not be less than 15,000 square feet within 150 feet of the front street line; and the density shall not be greater than 24 units per acre.
- (5) The fire escapes or stairways leading to the second or any higher floor shall be completely enclosed within the building walls.
- (6) The interior design and arrangement of the dwelling units shall be consistent with the United States Department of Housing and Urban Development Minimum Property Standards, Volume 2 (1973), Chapter 4.
- (7) Access to all dwelling units within a converted building shall be provided by a common entrance situated in the wall of the building facing the street on which the lot has frontage.

4. The applicant's plan complies with all of the foregoing conditions, except the requirement that the lot area of the property measure at least 15,000 square feet within 150 feet of the front street line, and the requirement that all dwelling units be accessed by a common entrance located in the wall of the building facing the street. Accordingly, variances are required pursuant to N.J.S.A. 40:55D-70d(3) to permit deviations from these conditional use standards.

5. The subject property is approximately 57 feet wide and 250 feet deep, and the total lot area is approximately 14,207 square feet, with approximately 8,461 square feet located within 150 feet of the street line. In addition, the entrance to the existing dwelling units is located on the southwesterly side of the building and does not face Claremont Avenue. The entrance for the new dwelling unit will be located on the northwesterly wall of the addition facing the rear yard.

6. Based upon the evidence presented by the applicant, the Board finds that the subject property is appropriate for use as a four-family dwelling even though the site plan does not comply with the two aforementioned conditions of Montclair Code Section 347-54B. See, Coventry Square v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285 (1994).

7. The subject property is a deep but narrow lot with only 57 feet of frontage on Claremont Avenue. The narrowness of the lot renders it impossible to satisfy the 15,000 square feet lot area requirement within 150 feet of the street line. However, given the fact the property was nonetheless included in the R-3 Zone despite its narrow lot width and the fact that the applicant proposes only four dwelling units whereas the ordinance would permit a density of seven units, the Board finds that the property is suitable for use as a four-family dwelling notwithstanding its failure to comply with the lot area requirement. Accordingly, a variance may be granted pursuant to N.J.S.A. 40:55D-70d(3).

8. In addition, given the design and configuration of the existing structure, it is impractical to require that the dwelling be redesigned to comply with the conditional use requirement that all dwelling units be accessed from a common entrance located in the front of the building. Notwithstanding the building's non-compliance with this condition, the property is nonetheless appropriate for use as a four-family dwelling with access provided from the existing entrance combined with the entrance in the rear of the property for the new dwelling unit.

9. Subject to the conditions imposed by the Board, the requested variances may be granted without substantial detriment to the public good and without substantially impairing the intent or purpose of the zone plan or the zoning ordinance.

10. The applicant agreed to revise the site plan to locate the rear entrance porch/terrace at least six feet from the westerly side line and, accordingly, the applicant withdrew his request for a side yard variance from Montclair Code Section 347-45C(1). The applicant also agreed to discontinue any use of the property, including the garage, for business or commercial purposes.

WHEREAS, based on the foregoing findings, the Board concluded that the applicant proved the requisite special reasons for the granting of variances from the conditional use standards set forth in Montclair Code Section 347-54B, and that, subject to the conditions imposed by the Board, the proposed variances could be granted without substantial detriment to the public good and would not substantially impair the intent or purpose of the zone plan or zoning ordinance; and

WHEREAS, the Board, based on the foregoing findings, also concluded that the requested waiver from the driveway width requirement set forth in Montclair Code Section 281-9I is reasonable and within the general purpose and intent of the site plan ordinance and that literal enforcement of the width requirement was impracticable and

would exact undue hardship because of peculiar conditions pertaining to the subject property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Keith Ballentine for preliminary and final site plan approval and variances from the conditional use standards of Montclair Code Section 347-54B is hereby approved in strict accordance with the site plan, floor plans and elevation drawings prepared by Dassa Haines, Architects, dated October 10, 2002, subject to the following conditions:

1. No commercial uses of any kind shall be permitted on the subject property.

2. The applicant shall comply with the comments and recommendations contained in Paragraphs 2 through 4 of the letter from the Board Engineer, W. Thomas Watkinson, P.E., P.P., dated October 23, 2002.

3. The applicant shall submit a stormwater management plan to ensure that there will be no increased runoff onto adjoining properties from the detached garage or the new addition, which plan shall be subject to review and approval by the Board Engineer.

4. The applicant shall install a six-foot board-on-board fence along the easterly side line of the property extending from the rear of the new addition to the rear property line.

5. The parking area shall remain gravel and shall not be paved.

6. The applicant shall plant shade trees approved by the Planning Department which shall be a minimum of 15-feet high at the time of planting and installed at 10-foot intervals around the perimeter of the property extending from the beginning of the parking area on the westerly side of the property and along the rear property line and easterly side line to a point parallel with the front of the detached garage.

7. There shall be no more than three outdoor parking spaces in the rear yard of the property and the northerly end of the parking area shall be appropriately delineated to prevent cars from parking too close to the garage.

8. No indoor or outdoor parking spaces shall be rented to anyone who does not reside on the property.

9. The applicant shall execute and record a deed restriction reciting all of the aforementioned conditions, which deed shall be reviewed and approved by the Board Attorney and recorded in the Essex County Register's Office prior to the issuance of a Certificate of Occupancy for the four-family dwelling.

10. The site plan shall be revised so as to eliminate any intrusion of the porch/terrace into the required 6-foot setback area on the westerly side of the property.

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

12. The applicant shall be responsible for all inspection fees required pursuant to Montclair Code Section 202-27. BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the applicant, the Township Manager, the Township Council, the Township Clerk, the Township Engineer, the Township Tax Assessor and the Construction Code Official.

Chair Harrison called the variance application of **Eric Esterlis and Norma Ingui, 339 Grove Street**. Eric Esterlis and Norma Ingui, owners, were sworn and described the proposed front porch addition. Ms. Ingui stated that the proposed roofed porch would not be located closer to Watchung Avenue than the existing stoop on the northerly side of the dwelling. She also stated that the proposed roofed porch would provide a weather-protected entrance to the dwelling from the area of the driveway. Mr. Esterlis stated that the angle of the front property line along Watchung Avenue and the location of the existing dwelling on the property reduce the impact of the proposed roofed porch in the Watchung Avenue front yard of the property.

The Board questioned the applicants.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Ms. Costello, seconded by Mr. Susswein, the variance application was approved, Mr. Gallardo voting in the negative, subject to the following conditions:

1. All outstanding property taxes shall be paid before the issuance of a building permit.

2. The proposed roofed entry porch shall not be constructed closer to Watchung Avenue than the existing open stairs in the Watchung Avenue front yard of the property.

Mr. Flood joined the meeting.

Chair Harrison called the continuation of the variance application of **Omnipoint Communications, 630 Valley Road**. Richard Schkolnick, Esq., appeared as attorney

for the applicant and summarized the testimony from the previous hearing on the application.

Mr. Schkolnick called Charles Whelan, Architect, who was still under oath. Mr. Whelan described the revised plans and stated that the applicant currently has 6 panel antennas on the building and that 1 panel antenna would be removed from the site so that a total of 5 panel antennas owned by the applicant would remain on the building. He further stated that an existing panel antenna would be lowered in mounting height to a less visible location.

Marked into evidence were:

- A-8 Site Plan, Sheet S-1 of the revised plans, on a board, prepared by Salient Architects, dated May 1, 2003
- A-9 Zoning Drawing, Sheet Z-1 of the revised plans, on a board, prepared by Salient Architects, dated May 1, 2003
- A-10 Zoning Drawing, Sheet Z-2 of the revised plans, on a board, prepared by Salient Architects, dated May 1, 2003

Mr. Whelan described the revised location of the equipment cabinets and stated that the metal frame mounting for the cabinets is now located as close as possible to the center of the roof. He also stated that the roof of the building is not designed to bear the weight of the cabinets without the frame and that the frame is as low to the roof surface as possible. He continued by describing the proposed screening panels.

Mr. Sullivan questioned Mr. Whelan.

Mr. Whelan summarized the location of all existing and proposed antennas owned by the applicant and the screening of the antennas.

The Board questioned Mr. Whelan.

Mr. Whelan stated that the GPS and whip antennas that were previously proposed are no longer proposed for the site.

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

Mr. Schkolnick called Tim Kronk, Professional Planner, who was still under oath. Mr. Kronk described the photo-simulations that were submitted as Exhibits A-4 through A-7 at the previous hearing on the application and described how the revised plans would affect the view of the site from the surrounding locations.

Marked into evidence were:

A-11 Photoboard prepared by T.K. Design Associates

A-12 Photoboard prepared by T.K. Design Associates

Mr. Schkolnick stated that the applicant had discussed with the owners of the building the possibility of locating the equipment cabinets inside of the building and that it had been determined that there was no possibility for that option.

A-13 Letter from James R. Franciose, V.P., of 630 Valley Road Corporation, dated May 7, 2003

The Board questioned Mr. Kronk.

Mr. Kronk stated that the existing and proposed screening panels totally eliminate the view of the equipment cabinets as shown on photo-simulation boards submitted as exhibits. He addressed the conditional use standards for the installation of wireless telecommunications in the N-C Zone and stated that the applicant has satisfied the requirement of providing documentary evidence indicating the need for additional equipment and that the proposed antennas would be painted to minimize their visual impact. Mr. Kronk also stated that, although the proposed antennas exceed the height of the parapet wall, they do not exceed the height of the screening wall and that the proposed mounting heights of the antennas meet the intent of the ordinance. He continued by stating that if indeed the Board found that a variance is required to mount the antennas above the parapet wall, that the Board need only determine whether that deviation is unacceptable. Mr. Kronk described the originally proposed and revised elevation views depicted on the drawings labeled Z-1 and Z-2, respectively, and stated that the equipment cabinets within the revised plan are screened and completely eliminated from view and that the applicant would be improving the aesthetics of the site.

The Board questioned the applicant.

Mr. Whelan stated that each of the proposed panel antennas would be mounted on a pipe mast that is front of the screening wall and that the antennas would not be mounted directly onto the screening wall.

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

Chair Harrison called for public comment. None was offered.

Mr. Schkolnick summarized the application.

The Board discussed the application.

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

1. The applicant is permitted a total of five wireless telecommunications panel antennae as shown on the approved plan.
2. The applicant shall implement design option 2 (Plan sheet Z-2).
3. With the exception of the variance granted herein for the height of two of the antennae, the applicant shall comply with the remaining conditional use standards contained in Section 347-17.1C(4).
4. The applicant shall pay a development fee to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

Chair Harrison called the variance application of **Gary and Hilary Walsh, 222 Grove Street**. Gary Walsh, owner, was sworn and described the application. Mr. Walsh stated that the northerly side yard of his property in the area where the 2 central air conditioning units are proposed measures 6 feet 3 inches. He stated that the larger of the 2 central air conditioning units measures 34 inches wide by 32 inches deep and 40 inches high and that the units would be set away from the dwelling no more than 12 inches and no less than 6 inches. He further stated that the side yard setback proposed for the air conditioning units would be no less than 2 feet 5 inches.

Mr. Walsh stated that the dwelling on the adjacent property to the north is located approximately 65 feet away the proposed location of the air condensers and that the southerly side of the dwelling abuts his driveway and a walkway and contains no feasible location for the proposed units. He also stated that the southerly side of the house contains closed off garage bays that he is looking forward to re-opening. He further stated that backyard does not offer a suitable location for the units due to the extent of copper tubing and wiring that would be required which in turn would greatly reduce the energy efficiency and life of the air conditioning units. He continued by stating that he had discussed the proposal with the resident of the adjacent northerly property and that there is no objection. Mr. Walsh stated that the view of the proposed units from Grove Street would be obscured by 7 existing Apple Trees.

Marked into evidence was:

- A-1 Photograph illustrating the view of the proposed location of the central air conditioning units from Grove Street
- A-2 Photograph of the proposed location of the central air conditioning units in the northerly side yard of 222 Grove Street showing existing fencing on the property line

A-3 Photograph illustrating the view of the proposed location of the central air conditioning units from the adjacent property to the north

Mr. Walsh stated that he took the photographs submitted as exhibits and that the photographs accurately depict the existing conditions on and around his property.

The Board questioned Mr. Walsh.

Mr. Walsh stated that he would consider providing landscaped screening or other type of screening for the units if required.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

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

1. A solid wood board fence, not exceeding the height of the central air conditioning units, shall be installed around the proposed central air conditioning units.

The Board took a short recess.

Chair Harrison called the application of **Commerce Bank/North, Mountainview Place and 94 and 100 Valley Road.**

Mr. Sullivan briefed the Board on the type of request being presented by the applicant.

David Owen, Esq., appeared as attorney for the applicant and described the application. He stated that the applicant is before the Board seeking an interpretation of the zoning ordinance to determine whether a bank, including a bank with drive-through facilities, is a permitted use in the OR-3 Garden Apartment and Office Building Zone. Mr. Owen described the properties in question and stated that the properties located at 94 and 100 Valley Road are located in the OR-3 Zone and that the Administrative Officer of the Township had countersigned a letter dated September 17, 2002, stating that a bank with a drive-through is a permitted use in the zone. He further stated that the applicant subsequently applied to the Planning Board, at which time the Planning Board Attorney determined in a letter dated February 3, 2003, that the Planning Board had no jurisdiction to hear the application because a use variance would be required. Mr. Owen continued by highlighting points from the Planning Board Attorney's letter and stated that the applicant disagrees with the Planning Board Attorney's determination that bank with a drive-through is not a permitted use in the OR-3 Zone.

Mr. Owen stated evidence exists where the Township has considered banks, including banks with a drive-through, as permitted uses in the OR-3 Zone and stated that banks in the OR-3 Zone within previous applications had been treated as business offices. He also stated that the zoning ordinance amendments of 1995, done primarily for the purpose of revitalizing the C-1 Central Business District, prohibited drive-through banks from the "Center Area" of the C-1 Zone, however, that there has been no legislative intent to prohibit banks in the OR-3 Zone.

Mr. Sullivan questioned Mr. Owen.

Mr. Owen stated that the applicant is not claiming estoppel and asked that the Exhibits cited be moved into evidence.

Marked into evidence were:

- A-1 Planning Board Site Plan Application, dated December 19, 2002
- A-2 Board of Adjustment Application containing 5 pages, dated February 4, 2003
- A-3 Prior Applications Regarding 239 Claremont Avenue
- A-4 Prior Applications Regarding 57 Park Street
- A-5 Prior Applications Regarding 19 North Fullerton Avenue
- A-6 Prior Applications Regarding 323 Orange Road
- A-7 Prior Applications Regarding 527 Valley Road
- A-8 Prior Applications Regarding 560 Valley Road
- A-9 Prior Applications Regarding 580-600 Valley Road
- A-10 Planning Board Minutes of October 24, 1994
- A-11 Planning Board Minutes of March 27, 1995
- A-12 Governing Body Minutes of June 20, 1995
- A-13 Governing Body Minutes of July 11, 1995
- A-14 Richard Preiss materials, containing 59 pages, with a cover dated May 7, 2003
- A-15 September 1987 Township of Montclair Zoning Ordinance

A-16 July 1995 Township of Montclair Zoning Ordinance

A-17 July 17, 1995 Amendments to the Township of Montclair Zoning Ordinance

A-18 Resolution dated November 20, 2000 for 37 North Fullerton Avenue, LLC

Mr. Owen called Peter Steck, Professional Planner, who was sworn and stated his qualifications as a Licensed Professional Planner in the State of New Jersey. Mr. Steck reviewed the Planning Board Attorney's letter and stated that although a bank is not listed as a permitted use in the OR-3 Zone, it is not unusual for a bank to be in the OR-3 Zone and that the Administrative Officer of the Township confirmed this by countersigning the letter stating that a bank, including a drive-through bank is a permitted use in the OR-3 Zone. Mr. Steck stated that in the past, the Township has treated banks as a business office, which is a permitted use in the OR-3 Zone, due to the fact that no merchandising occurs with bank. He also stated that banks should be classified as a subcategory of business offices, and further, drive-through banks as a subcategory of banks.

Mr. Steck stated that he held the position of Assistant Planner within the Township of Montclair from 1973 to 1978 and then the position of Planning Director from 1981 to 1990. He stated that he also was the Zoning Administrative Officer during his tenure as Planning Director. He stated that throughout his employment in the Township Planning Department, banks were permitted uses in the OR-3 Zone and treated as business offices and that the Planning Board had jurisdiction for applications regarding banks and drive-through banks in the OR-3 Zone. He cited examples of applications regarding banks that went before the Planning Board and stated that in 1987, a bank located at 322 Orange Road, and in the N-C Zone was approved by the Planning Board. He stated that although a bank was not listed as a permitted use in the N-C Zone at that time, it was treated as a permitted use and went to the Planning Board. He stated that an identical situation occurred in 1988, for a bank at 527-529 Valley Road, which is also in the N-C Zone.

Mr. Steck stated that a bank cannot be treated as a retail use because banks do not stock or sell merchandise. He also stated that banks are listed separately from retail uses under the category of permitted uses in the C-1 Zone. He further stated that there has not been any legislative intent in any previous zoning amendments to prohibit banks and drive-through banks within the OR-3 Zone and cited the Minutes of the Planning Board meetings held on March 27, 1995 and July 11, 1995, in which discussions items regarding the 1995 zoning amendments are contained. Mr. Steck continued by stating that banks and drive-through banks are not specifically listed as prohibited uses in the OR-3 Zone, and that medical offices, although not listed as permitted uses in the OR-3 Zone are treated as permitted uses in the OR-3 Zone. He also stated that the February 9, 1985 Master Plan, as well as 1992 and 1999 Master Plan Re-examination Reports, do not contain any evidence of a legislative intent to prohibit banks and drive-through banks in the OR-3 Zone.

The Board questioned Mr. Steck.

Mr. Steck stated that banks were first listed separately from business offices in the N-C Zone in 1988. He also stated that none of the previous applications for banks that went before the Planning Board cited in the testimony had===== occurred after the July 1995 amendments to the zoning ordinance.

Chair Harrison called for questions from the public.

Jeff Wactlar, 317 Claremont Avenue, asked Mr. Steck how many municipalities he has testified before regarding an application for an interpretation of the zoning ordinance.

Chair Harrison called for public comment.

Ray Bishop, 26 Bell Street, was sworn and asked if the applicant would be required to return to the Board of Adjustment if a bank or a drive-through bank was proposed for the site.

Ronald D., Istivan, 315 Claremont Avenue, was sworn and stated that the zoning ordinance is clear and that a bank is not a permitted use in the OR-3 Zone.

Mr. Franciose, president of the Montclair Volunteer Ambulance Unit, was sworn and stated concerns that a bank on the site could potentially impede the operations of their ambulance squad.

Chair Harrison, Mr. Owen, and Mr. Sullivan discussed Exhibit A-14 and whether into could be marked as an exhibit and moved into evidence.

Mr. Owen moved Exhibits A-1 through A-13 and Exhibits A-15 through A-18 into evidence and summarized the application.

The Board discussed the application.

On motion by Vice Chair Fleischer, seconded by Mr. Gallardo, it was determined that a bank, including a bank with drive through facilities, is not a permitted use in he OR-3 Garden Apartment and Office Building Zone and that a use variance would be required for such an application.

Chair Harrison called the site plan and variance application of **Homes of Montclair Ecumenical Corp., 89 Maple Avenue**. David Conrad, Esq., appeared as attorney for the applicant and described the application. Mr. Conrad called Beverly Riddick, Executive Director of Homes of Montclair Ecumenical Corp. (Homecorp), who was sworn. Ms. Riddick described the activities of Homecorp as a nonprofit affordable housing organization serving Montclair. Ms. Riddick described the subject property and

stated that the property contains two buildings: 1 Woodland Avenue, which is a three-story mixed use building on the northerly side of the lot containing the offices of Homecorp on the first floor and 2 dwelling units above, and 89 Maple Avenue, which is a two-story mixed use building on the southerly side of the lot containing 2 vacant commercial spaces on the first floor and 1 dwelling unit above. She also stated that the paved area between the 2 buildings on the property is utilized by residents of 1 Woodland Avenue as parking for 2 vehicles.

Ms. Riddick stated that a barrier-free dwelling unit is proposed for the first floor of 89 Maple Avenue. She stated that Homecorp has recognized a shortage of barrier-free residential units within Montclair and that the first floor of 89 Maple Avenue is suitable for the proposed barrier-free dwelling unit. She continued by stating that the barrier-free dwelling unit would be a 1-bedroom apartment for no more than 2 people and that it would likely be rented at the market rate.

The Board questioned Ms. Riddick.

Ms. Riddick stated that the proposed barrier-free ramp and stairway in the public right-of-way received approval from the Engineering Department and the Law Department.

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

Mr. Conrad called Martin Dassa, Architect and Professional Planner, who was sworn. Mr. Dassa described the property and the land uses in the vicinity of the site. He also described the 2 existing buildings on the site and the uses within the buildings. He continued by describing the paved area between the 2 buildings on the site and stated that it measures approximately 20 feet wide by 25 feet deep and would contain 2 existing parking spaces, trashcans, and the proposed central air conditioning unit for 89 Maple Avenue. Mr. Dassa described the floor plans and features proposed barrier-free dwelling unit and stated that it would meet all of the required New Jersey State codes for barrier-free dwelling units. Mr. Dassa described the exterior changes to the building and stated that the proposed barrier-free ramp and stairway has been reviewed and approved by the Township Engineer. He also stated that the proposed central air conditioning unit could be moved as far from the street as possible but could not meet the required 28-foot setback from Maple Avenue due to the narrowness of the lot.

Mr. Dassa stated that the proposed conversion of 2 commercial tenant spaces into a barrier-free dwelling unit for 2 persons maximum is a less intensive use of the site than existing and provides a need in the community. He stated that the proposal would have no detriment on the public good and is consistent with goals cited in the Master Plan. Mr. Dassa addressed site plan issues and stated that the trash area for the property would be kept in its existing location adjacent to the fence at the rear of the property and that no landscaping exists nor is any landscaping proposed. He also stated that the existing site lighting would be kept and that the lighting on the site is typical residential security lighting that would not have a negative effect on neighboring

properties. He continued by stating that the applicant has approached the Township regarding obtaining approval for a barrier-free parking space on the street in front of 89 Maple Avenue.

The Board questioned Mr. Dassa.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Vice Chair Fleischer, it was resolved to approve the site plan and variance application, subject to the following conditions:

1. Any air-conditioning units installed between the two buildings on the property shall be placed as far back from Maple Avenue as possible.
2. The applicant shall obtain all required Township approvals for any proposed construction in the public right-of-way, including the proposed stairway and barrier-free ramp.

Chair Harrison stated that the **Minutes of the April 30, 2003** special meeting would be adopted at the June 18, 2003 regular meeting of the Board.

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