

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**June 16, 2004**

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

ABSENT: Ms. Cockey, Vice Chair Fleischer, and Mr. Haizel

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.

Chair Harrison stated that the adoption of meeting minutes and resolutions would be moved to the end of the meeting after hearing the applications.

Chair Harrison called the variance application of **Doreen and Scott Peterson, 24 Columbus Street**. Scott Peterson, owner, and Tony Argibay, Architect, were sworn. Mr. Argibay described the proposed addition and stated that the existing dwelling has nonconforming side yard setbacks of approximately 4.35 in the westerly side yard and 8.03 feet in the easterly side yard. He also stated that the addition would conform to the 6-foot side yard setback requirement in the westerly side yard, and that it would be aligned with the dwelling along the easterly side yard and provide an easterly side yard setback of approximately 8 feet.

The Board questioned Mr. Argibay.

Mr. Peterson stated that the 10-foot side yard setback that is required in the easterly side yard would significantly impact the proposed floor plan in a negative manner.

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

1. The proposed addition shall conform to the required side yard setback of 6 feet in the westerly side yard and shall be aligned with the easterly side wall of the dwelling.

Chair Harrison called the continuation of the variance application of **Terence and Margaret Gorman, 16 Edgewood Road**. Craig Dickson, Esq., appeared as attorney for the applicant and described the revisions to the plan since the last hearing on the application held on May 19, 2004. He stated that the applicant had previously proposed

a rear yard setback of 19 feet 10 inches and that the Board had requested that the applicant examine the possibility of providing a rear yard setback of no less than 25 feet.

Mr. Dickson called Andrew Blysak, Architect, who was still under oath. Mr. Blysak described the revised plans and stated that a minimum rear yard setback of 25 feet is now provided. He stated that the reduction in the footprint size of the 3-story addition on the northerly side of the dwelling also produced an increase in the northerly side yard setback from 56 feet to 57 feet 4 inches and that the revisions to the plans did not affect the height, front yard setback or the southerly side yard setback. He further stated that the direction of the pitched roof of the 3-story addition had been changed as a result of the modifications to the plans and continued by describing the changes in the new retaining walls on the site.

Marked in to evidence was:

A-3 Site Plan, prepared by Thor Engineers, P.A., revised to June 9, 2004

The Board questioned Mr. Blysak.

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

Mr. Dickson summarized the application.

The Board discussed the application. Ms. Rock-Bailey, Mr. Susswein, and Mr. Flood stated that they had listened to the audiotapes of the previous testimony on the application and are eligible to vote on the application.

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

1. A rear yard setback of no less than 25 feet shall be provided as shown on the revised architectural plans prepared by Parrette Somjen, Architects, revised to June 3, 2004, and the site plan, prepared by Thor Engineers, P.A., revised to June 9, 2004.
2. The applicant shall comply with the comments 1, 3, and 4, and a portion of Comment 2, as described below, of the Board Engineers Letter, dated May 17, 2004.
3. The applicant shall not be required to comply with the portion of Comment 2 from the Board Engineer's letter dated May 17, 2004, which reads "and not connected directly to the street unless discharging underground into an existing storm sewer".

Chair Harrison called the application of **Paul Hoerrner, 1 Wendover Road**. Paul and Inez Hoerrner, owners, were sworn. Mr. Hoerrner described the previous application regarding the proposed detached garage in his rear yard. He stated that he is now seeking to amend the condition of the previously approved application that

limited the maximum height of the proposed garage to 15 feet in height to the ridgeline of the roof. He also stated that the height limitation imposed by the Board is far below the Township's ordinance requirements and does not allow for the construction of a Dutch Gable roof on the garage, which would match that of his home. He further stated that he has consulted with his architect and it was determined that a 17-foot height to the ridgeline of the roof would allow for the construction of a Dutch Gable roof. He continued by stating that the additional 2 feet being requested for the garage height would not create or worsen any negative impact associated with the side yard setback variances that he has obtained for the garage because the neighboring property most impacted by the proposed garage is located at a higher grade.

Marked into evidence were:

- A-1 Photograph of the existing detached garage on the applicants' property
- A-2 Photograph of the existing detached garage on the applicants' property
- A-3 Photograph of adjoining detached garages taken from the roof of the detached garage on the applicants' property
- A-4 Photograph of adjoining detached garages taken from the roof of the detached garage on the applicants' property

Mr. Hoerrner stated that the photograph marked A-1 was taken 2 months ago and that the photographs marked A-2 through A-4 were taken today and accurately depict the site. He stated that the existing detached garage on his property measures 12 feet 4 inches to the ridgeline and that the proposed garage would measure an additional 4 feet 8 inches in height to the ridgeline. He also stated that the photographs submitted show that the detached garages of adjoining properties are already taller than his garage and that the proposed garage at 17 feet in height to the ridgeline would be consistent with the heights of these other garages.

The Board questioned the applicants.

Mr. Hoerrner stated that the existing garage does not contain any loft storage space and that the proposed garage has a second floor loft for storage that would be accessible through a hatch door and ladder on the inside of the garage. He also stated that the footprint of the proposed garage has been reduced in accordance with the Board requirements of the previously approved application.

Chair Harrison called for questions and comments from the public.

Philip Hazard, 227 Valley Road, was sworn and stated that the Board imposed the height limitation of 15 feet to the ridgeline in order to limit the impacts on the deficient side yard and rear yard setbacks that were proposed for the new garage. He also stated that, although the detached garages located to the west of the subject

property are located at a higher grade, the height proposed by the applicants is not in keeping with the character of the majority of the detached garages in the neighborhood.

Gordon Keil, 45 Brunswick Road, was sworn and stated he owns the property directly behind the applicants' property. He stated that his property has the most direct view of the proposed garage and stated his support for the application. He also stated that the 15-foot height limit appears arbitrary and that the applicants' proposal is well below what the ordinance would permit. He continued by stating that the additional 2 feet requested by the applicants is insignificant, and that the proposed design of the detached garage is a benefit to the neighborhood.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Susswein, the application to amend a condition of the previously approved application was denied, Chair Harrison and Ms. Rock-Bailey voting in the negative.

Chair Harrison called the variance application of **George & Phyllis Attisano, 449 Valley Road**. George and Phyllis Attisano, owners, and Edmundo Lopez, Architect, were sworn. Mr. Attisano described the proposed addition and stated that it would allow for an expansion of the kitchen to provide a breakfast nook. He continued by describing the previous variance application from 2001.

Mr. Lopez described the property and stated that the site is difficult because it is a corner lot that is irregularly shaped. He stated that the large front yard setback requirements restrict the buildable area of the property and that the existing rear yard setback of the dwelling is nonconforming.

The Board questioned the applicants and Mr. Lopez.

Mr. Lopez stated that the proposed addition is aligned with the rear wall of the dwelling. He also described the additions that were approved by the Board in 2001.

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. English, the variance application was approved.

Chair Harrison called the variance application of **Emre Erdi, 26 Elizabeth Road**. Gerald Friend, Esq., appeared as attorney for the applicant. Emre Erdi, owner, and Michael Handel, general contractor, were sworn. Mr. Friend stated that the subject property is a corner lot and that the proposed second story addition would not extend beyond the existing dwelling. He stated that the height, side yard, and rear yard setback requirements are met and that variances are requested for both front yard

setbacks. He further stated that, based on the average front yard setbacks of the two nearest dwellings on each side of the subject property, the required front yard setback for the Elizabeth Road frontage is approximately 29 feet 10 inches and the required front yard setback for the LaSalle Road frontage is approximately 33 feet 4 inches. He continued by stating that the applicant is proposing a front yard setback of 17.9 feet in the Elizabeth Road front yard and a front yard setback of 29 feet in the LaSalle Road front yard. He also stated that Montclair Code Section 347-112 seems to indicate that the proposed addition does not require a variance because the existing nonconforming front yards are not being further violated.

Mr. Handel described the proposed addition and stated that the proposed addition would be constructed directly over the existing first floor and would not extend over the attached garage, which is 2 feet closer to Elizabeth Road than the rest of the dwelling. He stated that the majority of homes in the neighborhood are two stories in height.

The Board questioned the applicant and Mr. Handel.

Mr. Handel described the existing landscaping that would be removed or replaced and stated that the existing tree in the LaSalle Road front yard would remain and the existing pine tree on north side of home would be pruned. He stated that the roof of the attached garage would be replaced.

Chair Harrison called for questions from the public.

Keith Knight, 8 La Salle Road, asked if any other changes besides the new roof are proposed for the garage and how the pine tree is damaging the roof of the garage. He also asked for clarification on the design of the proposed front entrance and whether any street trees would need to be pruned. He continued by asking if the mature rhododendrons on the property would be kept.

Barbara Zeller, 8 La Salle Road, asked what the required side yard setback is for the subject property.

Mr. Friend questioned Mr. Erdi. Mr. Erdi stated that the proposed addition is needed to accommodate his family. He stated that he has two sons, and that one of his sons is autistic and requires home therapy. He stated that a new exterior would be constructed to the finished dwelling and that new landscaping would be provided on the property.

The Board questioned the applicant.

Chair Harrison called for questions from the public.

Gregory Amato, 7 La Salle Road, asked if the applicant had considered purchasing an existing two-story dwelling.

Beena Butani, 18 La Salle Road, asked how much of the existing dwelling would remain.

Mr. Handel stated that the first floor framing would remain

Chair Harrison called for public comment.

Keith Knight, 8 La Salle Road, was sworn and stated that the proposed addition would negatively impact his property and the neighborhood. He also stated that the existing dwelling is already too close to the street and that the proposed addition would negatively impact the street. He continued by stating that certain design changes could lessen the negative impact of the proposal.

The Board questioned Mr. Knight. Mr. Knight stated that the existing home on the subject property is low in height and is better suited for the subject property because the lot size is small and it is a corner lot. He also stated that if the proposed height of the building were lowered, the neighborhood would be better served.

Marked into evidence were:

O-1 16 photographs of existing homes in the neighborhood

O-2 7 photographs of the subject property

O-3 Elevation drawings, entitled "Alternative Roof Design, 26 Elizabeth Road"

Mr. Knight stated that the photographs in Exhibits O-1 and O-2 were taken within the last week and that the drawings in Exhibit O-3 were not prepared by an architect. He stated that the drawings in Exhibit O-3 would provide for a lower overall height and would have less of a negative impact.

The Board questioned Mr. Handel. Mr. Handel stated the subject property does not have a basement and that the proposed attic would be accessible by a pull-down stairway on the second floor.

Mr. Friend cross-examined Mr. Knight.

Mr. Knight summarized his testimony and stated that there are better alternatives for the subject property than what is proposed.

Marc Rosenberg, 11 La Salle Road, was sworn and stated that the proposed addition would have a negative impact on the neighborhood. He also stated that the subject property is too small and that the existing dwelling is too close to the street.

Mr. Friend cross-examined Mr. Rosenberg.

Chris Mendes, 18 La Salle Road, was sworn and stated that the proposed addition would have a negative impact on the neighborhood because it is too close to the street.

The Board questioned Mr. Mendes.

Mr. Friend cross-examined Mr. Mendes.

Beena Butani, 18 La Salle Road, was sworn and stated the subject property is unique because it is located on a corner lot and that it should remain as a single-story home.

Barbara Zeller, 8 La Salle Road, was sworn, and stated the proposed addition is too close to the street and would have a negative impact on the neighborhood.

The Board questioned Mr. Handel. Mr. Handel stated the dwellings on adjoining properties are much greater in height compared to the dwelling on the subject property. He also stated that the pitch of the roof of the proposed second floor could be reduced and that the dormer over the entrance could be removed.

Keith Knight, 8 La Salle Road, asked if any changes proposed to the submitted plan would require another Board meeting.

Steven Jackson, 3 La Salle Road, asked questions regarding the front façade design and asked if the veneer stone pillars on the front are necessary.

Chris Mendes, 18 La Salle Road, asked if removing the dormer on the roof would reduce the storage area of the attic.

The Board questioned the applicant and Mr. Handel. Mr. Handel stated that the existing dwelling is only 26 feet deep and that he feels that any efficient design would require at minimum keeping the second floor addition aligned with the existing footprint.

Mr. Friend summarized the application.

The Board discussed the application.

On motion by Ms. English, seconded by Mr. Gallardo, the variance application was denied, Mr. Susswein voting in the negative.

Chair Harrison stated that the applicant should investigate alternatives for a second floor addition that would not be as extensive an encroachment into the Elizabeth Road front yard.

Assistant Secretary Charreun announced that the **Minutes of the May 19, 2004** regular meeting would be adopted at the July 21, 2004 regular meeting of the Board.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the **Minutes of the April 28, 2004** special meeting were adopted, Ms. English and Mr. Flood abstaining.

On motion by Mr. Gallardo, seconded by Ms. English, the following Resolution memorializing the approval of the variance application of **Joel Ackelsberg & Betsy Tessler, 10 Burnside Street** was adopted, Mr. Flood, Ms. Rock-Bailey, and Mr. Susswein abstaining:

**WHEREAS, Joel Ackelsberg and Betsy Tessler**, owners of property at **10 Burnside Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a northerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a one-story addition on property designated as Lot 46 in Block 1703 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared Alfred J. Clark, Inc., dated April 30, 1991, and a site plan on a copy of the property survey, and floor plans and elevations, prepared by Peter Wilcox, Architect, revised to March 30, 2004; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 19, 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, which measures approximately 5,799 square feet in area and contains a single-family and a driveway on the southerly side of the dwelling.
2. The existing dwelling has a nonconforming westerly side yard setback of approximately 2.65 feet.
3. The applicants' proposal is to construct a one-story addition at the rear of the dwelling, measuring 3 feet by 9 feet 2½ inches, which would contain additional floor area for the existing kitchen on the first floor of the dwelling. The proposed one-story addition would be set back 4 feet 10 inches from the northerly side property line.
4. The proposed addition conforms to the height rear yard setback, and southerly side yard setback requirements but does not meet the northerly side yard setback requirement of 6 feet.

5. The proposed addition will be set back further than the existing dwelling from the northerly side property line, is small in scale, and would have a minimal impact on adjoining properties.

6. Based upon the Board's particular knowledge of local conditions, the proposed addition is 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 Joel Ackelsberg and Betsy Tessler is hereby approved.

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

On motion by Mr. Gallardo, seconded by English, the following Resolution memorializing the approval of the variance application of **John Falcone, Jr., 25 Plymouth Street** was adopted as modified, Mr. Flood, Ms. Rock-Bailey, and Mr. Susswein abstaining:

**WHEREAS**, **John Falcone, Jr.**, owner of property at **25 Plymouth Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a fence height taller than that permitted in side yard areas of his property pursuant to **Montclair Code Section 347-27A(2)** on property designated as Lot 12 in Block 2203 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Alfred J. Clark, Inc., dated September 28, 1990, that has a color-coded explanation of the proposed fence installation, and a photograph depicting the proposed fence style; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 19, 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 located in the R-1 One-Family Zone and contains a single-family dwelling and a detached garage at the rear of the property. The adjacent property to the west of the applicant's property is utilized by Katherine Gibbs School as a parking lot, which is also located in the R-1 Zone and is a legal nonconforming use in the R-1 Zone.

2. The applicant proposes to install fencing on his property, sections of which exceed the height limitation in side yard areas for both the easterly and westerly side yards of the applicant's property. **Montclair Code Section 347-27A(1)** requires that, for interior lots, fences shall not exceed 4½ feet in height when built in front of the extreme rear corners of the principal building and shall not exceed 7 feet in height when built on the remainder of the lot.

3. The applicant proposes to install a 7-foot tall wooden privacy fence along the rear property line, which is conforming. The 7-foot tall fence would also extend along the westerly side property line to a point nearly aligned with the westerly front corner of the dwelling, where it would begin to transition down to 4½-feet in height and continue to the front property line. The purpose of the proposed fence along the westerly side property line is to provide screening from the adjoining parking lot.

4. The 7-foot tall fence is also proposed along the easterly side property line from the rear property line connecting to the rear corner of a two-story section of the dwelling that is forward of the rear corner of a one-story section of the dwelling at the rear, which is the extreme rear corner of the dwelling on the easterly side. The applicant indicated that this section of fencing is replacing an existing 7-foot tall fence that was conforming prior to the construction of the one-story addition at the rear of the dwelling, which changed the extreme rear corner of the dwelling on the easterly side of the dwelling, and therefore changed the point to which a fence of 7 feet in height could be located.

5. In terms of the 7-foot height for the fence on the westerly side property line, the Board concluded that the conditions caused by the existing nonconforming use adjoining the applicant's property to the west, create an unusual circumstance that compromises the use and privacy of the applicant's rear and westerly side yard, and justifies the need for a variance.

6. In terms of the 7-foot tall fence along the easterly side property line, the Board concluded that the prior construction of the one-story addition created an unusual circumstance, in that the extreme rear corner of the dwelling, which delineates the area

where a fence of 7-feet in height could be located, was changed to be further towards the rear than what was previously existing.

7. Based upon the Board's particular knowledge of local conditions, the proposed locations of the 7-foot tall fencing in sections of the easterly and westerly side yards of the subject property 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 variance application of John Falcone, Jr. is hereby 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.

**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. English, the following Resolution memorializing the approval of the application of **Cornerstone Industries, LLC, 272 Valley Way** was adopted, as modified, Chair Harrison, Mr. Flood, Ms. Rock-Bailey, and Mr. Susswein abstaining:

WHEREAS, Cornerstone Industries, LLC, as owner, did make application to the Board of Adjustment of the Township of Montclair to modify conditions imposed by a prior approval of the Board in connection with the construction of a single family residence and related improvements on property designated as Lot 20 in Block 103 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant specifically requested relief from Conditions 3, 4 and 10 contained in the Board's December 12, 2001 Resolution; and

WHEREAS, the applicant submitted a "partial site plan and as-built" plan consisting of one sheet dated April 27, 2004 prepared by Degrace Architects; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on May 19, 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. By resolution adopted on December 12, 2001 the Board granted variance relief as well as relief pursuant to N.J.S.A. 40:55D-35, 36 in connection with the construction of a single family home and related improvements. The aforementioned resolution contained the following conditions:

3. As also set forth in the site plan, access to the aforesaid single family dwelling shall be via a private driveway that will run between the single family dwelling and Valley Way in Montclair Township, and this driveway shall conform in width (12 feet maximum), layout, and all other respects to the site plan.

4. The aforesaid driveway shall not extend westward (i.e., towards West Orange Township) any greater distance than as set forth in the site plan and, as a consequence, shall not extend into West Orange Township or provide access to any road or street in West Orange Township (however, a 16 foot wide gravel drive, shall be constructed as set forth in the site plan, shall meet existing Murray Street in West Orange Township, and shall be used only for fire protection purposes).

10. No disturbance of the right of way shall be permitted in the area between the 16-foot wide gravel drive and the 12-foot wide paved driveway.

2. In accordance with the December 12, 2001 resolution, the applicant requested from, and the Township of Montclair did, in fact, vacate its public rights in Murray Street, subject to an easement for fire access in accordance with condition 4 above.

3. The applicant now seeks relief from the aforementioned conditions in connection with the proposed extension of the driveway westward by constructing an extension of the driveway that would lead to the front entrance of the dwelling including a circular turnaround for vehicles.

4. The Board determined the proposed driveway improvements would provide a visual and practical benefit for the property owner and are reasonable and consistent with the intent and purpose of the original approval.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant's requests for relief from the prior conditions of the Board were reasonable and consistent with the original approvals granted pursuant to N.J.S.A. 40:55D-70c(2) and N.J.S.A.40:55D-35, 36;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Cornerstone Industries, LLC modifying Conditions 3, 4 and 10 of the Board's December 12, 2001 resolution as set forth in the "partial site plan and as-built" plan dated April 27, 2004 prepared by Degrace Architects is hereby approved 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 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.

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 Ms. English, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **RICA Enterprises, Inc., 137 Forest Street** was adopted, as modified Mr. Flood, Ms. Rock-Bailey, and Mr. Susswein abstaining:

**WHEREAS, RICA Enterprises, Inc.**, under contract to purchase property located at **137 Forest Street**, 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 single-family dwelling on a vacant lot designated as Lot 5 in Block 3304 on the Township tax map and located in the R-2 Two-Family Zone; and

**WHEREAS**, the applicant submitted and a property survey prepared by Alfred J. Clark, dated December 3, 1986, and a site plan, floor plans, and building elevations prepared by Rui Amaral, Architect, dated February 10, 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 May 19, 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 applicant requested variances pursuant to N.J.S.A.40:55D-70c for failure to comply with the following:

- (a) **Montclair Code Section 347-50A** in that a minimum lot width of 60 feet is required, and a lesser lot width of 33.33 feet exists; and
- (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 14 feet is proposed; and
- (c) **Montclair Code Section 347-51** in that a minimum side yard setback of 10 feet is required for the southerly side yard, and a side yard setback of 6 feet 2 inches is proposed for the southerly side yard; and
- (d) **Montclair Code Section 347-102C** in that a minimum driveway width of 10 feet is required, and a lesser driveway width of 9 feet is proposed; and
- (e) **Montclair Code Section 347-104** in that a 4-foot setback, that is appropriately landscaped, is required for off-street parking areas, and a lesser setback of 2 feet is proposed for the parking area in the rear yard; and

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

1. The subject property is vacant land located at 137 Forest Street and has dimensions of approximately 33.33 feet by 105 feet.

2. The applicant presented testimony regarding the width of other properties on Forest Street and demonstrated that the existing lot width of 33.33 feet is consistent with other lot sizes in the neighborhood and that is no adjoining lot in common ownership or any opportunity to enlarge the width of the subject property.

3. The applicant proposes to construct a new single-family dwelling with 2 off-street parking spaces in the rear yard.

4. At the hearing, the applicant testified that the proposed central air-conditioning units would be moved to the rear of the dwelling in order to provide the 6-foot minimum side yard setback, eliminating the variance required from **Montclair Code Section 347-52**. The applicant also indicated that any fencing proposed for the property would conform to the ordinance, eliminating the variance required from **Montclair Code Section 347-27A(1)** for a fence height taller than permitted in the front yard and side yard areas.

5. The variances requested for the front yard setback and side yard setback of the dwelling, parking area setback, and driveway width are appropriate given the physical constraints of the property and result in no adverse impact to the adjacent properties.

6. 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 RICA Enterprises, Inc. hereby approved, 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.

**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. Susswein, seconded by Mr. Gallardo, the meeting was adjourned.