

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**June 21, 2006**

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

ABSENT: Ms. English 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.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the March 15, 2006** regular meeting were adopted as modified, Ms. Cockey abstaining.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the application of **Christopher G. Rohde, 30 Walnut Parkway** was adopted:

**WHEREAS, Christopher G. Rohde**, owner of property at **30 Walnut Parkway**, designated as Lot 23 in Block 4308 on the Township Tax Map and located in the R-2 Two-Family Zone, did make application to the Board of Adjustment of the Township of Montclair requesting an appeal of the Administrative Officer's decision pursuant to **Montclair Code Section 202-21A(1)** and N.J.S.A. 40:55D-70a that 2 central air conditioning units proposed in the easterly side yard of the dwelling require a variance for a side yard setback less than the 6 feet required pursuant to **Montclair Code Section 347-52**; and

**WHEREAS**, the applicant also requested a variance from **Montclair Code Section 347-52** pursuant to NJSA40:55D-70c to allow for a side yard setback less than that required should the Administrative Officer's decision be determined to be correct; and

**WHEREAS**, the applicants submitted a property survey prepared by William Held Associates, Inc., dated September 25, 2005, with the location of the proposed central air conditioning units marked by the applicant, and specification sheet for the central air conditioning units; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 17, 2006 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an interior lot located in the R-2 Two-Family Zone and contains a 3½-story lawful nonconforming three-family dwelling, which was accepted by the Law Department as a legal use in 1963, and a paved parking area in the rear yard. The subject property is irregularly shaped and measures approximately 3,733 square feet in area.

2. The applicant proposes to locate 2 central air conditioning units in the easterly side yard of the dwelling. The easterly side measures approximately 7.5 feet in width at its widest point and narrows to a lesser width moving towards the rear of the dwelling due to the angle of the easterly side property line.

3. The central air conditioning unit specification sheet indicates that the proposed central air conditioning units measure 29 inches wide by 29 inches deep. The applicant indicated that the proposed units would be set back 4 feet 3 inches and 3 feet 9 inches respectively from the easterly side property line.

4. After a brief discussion with the Board Attorney concerning the requested appeal of the Administrative Officer's decision that the proposed central air conditioning units require a variance for a setback less than required, the applicant withdrew that request and proceeded to request a variance for a deficient side yard setback.

5. No screening is proposed with a solid fence or evergreen plantings, however, the adjoining property on the easterly side is the very deep rear yard of a property that fronts on Oxford Street, which is the next street to the north. This adjoining rear yard has no frontage on Walnut Parkway, and is not likely to be developed with a dwelling and the proposed location of the central air conditioning units would not impact the residents of this adjoining property.

6. The applicant demonstrated that, due to the shape of the property, the shape of the dwelling and the position of the dwelling on the lot, as well a particular features of the property such as the location of the driveway and the doors of the attached garages, the proposed location of the central air conditioning unit is the most suitable location on the property and would pose no detriment to the surrounding properties; and

**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 Christopher G. Rohde is hereby approved, subject to the following condition:

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

**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. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Roseann Stella, 397 North Fullerton Avenue** was adopted, Chair Harrison abstaining:

**WHEREAS**, **Roseann Stella**, owner of property at **397 North Fullerton Avenue**, 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 side yard setback less than that required pursuant to **Montclair Code Section 347-46A(2)(b)** in connection with the proposed relocation of a central air conditioning unit closer to the side property line on her property, which is designated as Lot 1 in Block 3503 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by George J. Anderson, LLC, dated July 1, 2004, with the existing and proposed location of the existing central air conditioning unit marked by the applicant, and specification sheets for the central air conditioning unit; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 17, 2006 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is a corner lot located at the intersection of North Fullerton Avenue and Carolin Road. The subject property is located in the R-1 One-Family Zone, contains a 2½-story single-family dwelling, and measures approximately 8,192 square feet in area.

2. The applicant received a building permit to locate a central air conditioning unit on the northerly side of an outside stairway that exists at the rear of the dwelling, which is a conforming location. The applicant proposes to relocate the central air conditioning unit to the southerly side of the stairway, closer to the side property line.

3. The property survey indicates that the dwelling is located 4.35 feet from the southerly side property line, measured to the southeasterly corner of the dwelling. The area of the stairway where the central air conditioning unit is proposed is approximately 92 inches, or 7.6 feet from the side property line.

4. The proposed central air conditioning unit has dimensions of approximately 35 inches by 35 inches and would be located 6 inches from the outside stairway at the rear of the dwelling. The unit would then be located 23 inches from the fence near the southerly side property line on the applicant's property and there would be 28 inches of the applicant's property left over on the other side of the fence on the subject property, which yields a total side yard setback of 4 feet 3 inches setback in lieu of the 6 feet required.

5. The existing fence would shield the view of the central air conditioning unit from the adjoining neighbor and the unit would be less visible from the side street, Carolin Road.

**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 variance application of Roseann Stella is hereby approved, subject to the following conditions:

1. The central air conditioning unit shall continue to be screened by the existing fence, a similar fence, or evergreen landscaping.

2. The southerly side yard setback of the proposed central air conditioning unit shall not be less than 4 feet 3 inches.

**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. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Matt Purdy and Dale Russakoff, 129 Westview Road** was adopted:

**WHEREAS**, Matt Purdy and Dale Russakoff, owners of property at **129 Westview Road**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow an easterly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** in connection with the construction of a detached garage on property designated as Lot 25 in Block 3703 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated June 16, 1994, and a site plan, floor plan, and elevations prepared by Joseph J. Bruno, A.I.A, dated April 3, 2006; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 17, 2006 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, measuring 60 feet in width and approximately 10,500 square feet in area. The subject property contains a 2½-story single-family dwelling and previously contained a detached garage in the rear yard, which has since been demolished after it was destroyed by a fallen tree.

2. The applicants propose to construct a new detached garage on the same footprint and with the same dimensions of the previously existing detached garage. The plans indicate that the footprint of the garage measures 18 feet in width by 19 feet 8 inches in length.

3. An easterly side yard setback of 0.9 feet is proposed from the easterly side property line, which matches the setback of the previously existing garage depicted on the survey. The proposed detached garage conforms to the westerly side yard, rear yard, and height requirements.

4. The fact that the property contained a lawfully existing detached garage in the same location as the proposed garage justifies the granting of a variance for a deficient easterly side yard setback, however, the Board determined that the proposed easterly side yard setback of 0.9 feet was too small in that roof eaves and gutters would be at or near the easterly side property line, which would have a negative impact on the adjoining property to the east.

5. The Board determined that the easterly side yard setback should be increased to a minimum of 2 feet in order to mitigate any negative impacts to the adjoining easterly property.

**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 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 Matt Purdy and Dale Russakoff is hereby approved, subject to the following conditions:

1. Stormwater collected from gutters and roof leaders on easterly side of the garage shall be directed to a drywell on the applicants' property.

2. The proposed detached garage shall have a minimum easterly side yard setback of 2 feet.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **5 Grant Street, LLC, 5 Grant Street** was adopted as modified:

**WHEREAS, 5 Grant Street, LLC**, owner of property located at **5 Grant Street**, designated as Block 4209 Lot 21 on the Montclair Township Tax Maps, filed an

application with the Board of Adjustment of the Township of Montclair for variances and site plan approval to construct a new parking area for 12 vehicles on the subject property; and

**WHEREAS**, the applicant applied for the following approvals under the Municipal Land Use Law:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to expand a preexisting, nonconforming use contrary to **Montclair Code Section 347-112**;
2. A variance pursuant to N.J.S.A. 40:55D-70c to permit a parking area setback less than the 4 feet required **Montclair Code Section 347-104**;
3. Preliminary and final site plan approval; and

**WHEREAS**, the applicant submitted site plan drawings on 2 sheets and drainage calculations, prepared by JMH Associates, dated February 25, 2006; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 17, 2006 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property contains a 3½-story 6-family dwelling, and a driveway leading to a small paved area on the lot. The property is located in the R-4 Three-Story Apartment Zone, measures 75 feet in width by 100 feet in depth, and measures 7,500 square feet in area.

2. The existing 6-family use is considered a nonconforming use because the permitted residential density on the property is 4.8, or 4 dwelling units. The proposed parking area constitutes an expansion of the nonconforming use and a variance is requested from **Montclair Code Section 347-112** in that the existing nonconforming use of the 6-family dwelling on the property is not permitted to be expanded, increased, or enlarged.

3. A variance is also requested from **Montclair Code Section 347-104** in that all off-street parking area must be set back a minimum distance of 4 feet from property lines, with the intervening space appropriately landscaped, and a setback of approximately 2 feet and 1.5 feet is proposed from the northerly (side) property line, 2.5 feet is proposed from the easterly (rear) property line, and 3 feet is proposed from the southerly property line, with no landscaping depicted in any setback area.

4. The design of the parking spaces, aisle widths, and driveway complies with the requirements of the **New Jersey Residential Site Improvement Standards**. Providing adequate on-site parking is desirable and is consistent with the purposes of the Municipal Land Use Law, Master Plan, and zoning ordinance, however, the Board determined that the number of parking spaces proposed should be reduced from the 12 proposed to a total of 10, in order to allow for more landscaping and a safer and more efficient flow of vehicles entering and exiting the site. With the above modification, the Board grants to the extent necessary, a variance from **Montclair Code Section 347-101** and an exception from the **New Jersey Residential Site Improvement Standards 5:21-4.14** to permit fewer parking spaces than permitted for the 6-family dwelling.

5. The Board determined that the requested variance for a setback less than 4 feet for the parking area from the northerly, easterly, and southerly property lines can only be approved for the northerly property line, which abuts a municipal parking area, and the southerly property line, where a setback of 3 feet is proposed and an increase would result in the loss of a parking space or a reduction in parking space sizes. The setback from the easterly property line shall be increased from the 2.5 feet proposed to 4 feet with appropriate landscaping added to that setback area; and

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

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variance for a parking area setback less than required from the northerly and southerly property lines could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of N.J.S.A. 40:55D-70c(2)

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of **5 Grant Street, LLC** for site plan approval and variances is hereby approved subject to the following conditions:

1. The applicant shall comply with comments 2 through 12 from the report from the Board Engineer, dated May 15, 2006.
2. The two (2) westernmost parking spaces, nearest to Grant Street along the northerly property line, shall be eliminated from the plan, and the resulting area shall be landscaped with shrubs that have an ultimate height of no more than 2½ feet and grass or other vegetative groundcover.
3. The easterly parking area setback shall be increased to comply with the 4-foot setback requirement and shall be appropriately landscaped.
4. All outstanding property taxes shall be paid.

**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.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the decision on the application of **Robert Martinelli, 1 Essex Way** was adopted as modified:

WHEREAS, Robert Martinelli, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct an attached two car garage onto his existing nonconforming three-family dwelling on property designated as Lot 46 in Block 2408 on the Township Tax Map and located in the R-2 Two Family Zone; and

WHEREAS, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70d(2) as the preexisting nonconforming three family dwelling may not be expanded, increased or enlarged pursuant to **Montclair Code Section 347-112**, a variance pursuant to N.J.S.A. 40:55D-70c in that a 6-foot rear yard setback is proposed from the westerly property line rather than the 25 feet required by **Montclair Code Section 347-51**, and site plan approval; and

WHEREAS, the applicant submitted a property survey prepared by Farro Bros. Engineers & Surveyors, dated April 2, 1964, and a site plan, floor plans, and elevations prepared by Jon Guadagnoli, Architect P.C., dated March 7, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on May 17, 2006 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is located in the R-2 Two-Family Residential Zone, and contains a lawful nonconforming three-family dwelling of 3 stories and a paved driveway that leads to a paved parking area on the lot. Township records indicate that the existing three-family dwelling was established as a lawful nonconforming use on January 30, 1963.

2. The subject property is an irregularly shaped, similar to a "flag lot", measures 10,100 square feet in area, and has 10.27 feet of width along North Fullerton Avenue and 60 feet of width on Essex Way, which is on its northerly boundary. Essex Way is a public right-of-way used as a pedestrian walkway.

3. There is no garage parking presently on the property. The applicant proposes to construct an attached two car garage onto the southerly side of the existing nonconforming three-family dwelling. The proposed two-car garage would be connected to the dwelling with a foyer/hallway that is approximately 10.5 feet wide and 10.5 feet long.

4. The Board determined that the requested use variance to construct a garage on the property is acceptable being that the proposed garage would provide some covered parking on the site and break up the large expanse of pavement on the site, both of which would promote a desirable visual environment which is consistent with the purposes of the Municipal Land Use Law.

5. The Board also determined, however, that the requested rear yard setback variance, which is caused by the fact that the applicant is proposing an attachment from the garage to the dwelling, should not be approved, as the additional massing of the connection exacerbates the impact of the dwelling and garage near the westerly property line, and being that the proposed garage would be approximately 10.5 feet from the dwelling, it is unnecessary to have covered access between the dwelling and garage.

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

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not prove that the requested variance for a deficient rear yard setback 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 not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, did not prove that the benefits of the deviation would substantially outweigh any detriment and did not prove that the variance requested for a deficient rear yard setback could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Robert Martinelli for a rear yard setback variance is hereby denied: and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Robert Martinelli for site plan approval and a use variance is hereby approved subject to the following conditions:

1. The applicants shall comply with comments contained in the memorandum from the Board Engineer, dated May 15, 2006.

2. The proposed two-car garage shall be detached from the dwelling.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the decision on the application of **Fran Adler, 22 Mulford Lane** was adopted, Ms. Cockey abstaining:

WHEREAS, Fran E. Adler, owner of 22 Mulford Lane, did file an appeal pursuant to N.J.S.A. 40:55D-70a as well as an interpretation pursuant to N.J.S.A. 40:55D-70b alleging a construction permit was improperly issued to permit construction of a new retaining wall in front of an existing retaining wall on property located at 131 Lloyd Road and designated as Lot 15.01 in Block 204 ("subject property") and located in the R-O(a) One Family Zone; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 17, 2006, 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 14, 2005, the Board of Adjustment denied the application of Michael J. Murphy, owner of the subject property, for a variance pursuant to N.J.S.A. 40:55D-70c to permit an existing retaining wall to exceed the maximum 7 foot height limitation contained in Montclair Code Section 347-27.1B.

2. On February 14, 2006 a construction permit was issued to permit construction of a new retaining wall in front of the existing retaining wall on the subject property as per plans prepared by Gregory Comito, AIA dated January 6, 2006.

3. Section 347-27.1G provides: "Terraced retaining walls involving more than one section of wall above or below each other shall be construed as one wall unless the base of the upper wall is separated from the face of the lower wall by at least four feet, measured horizontally." The applicant argued that the proposed tiered walls did not provide the requisite 4 foot horizontal separation since less than 4 feet spacing was provided between the walls below the ground surface. The Board, however, rejected such an interpretation and determined, consistent with prior holdings, "the base of the upper wall" is the lowest point at which the wall touches the ground. Based upon the Board's interpretation, the proposed walls provided the necessary 4 foot horizontal spacing.

4. The Board's determination is consistent with the clear legislative intent of the retaining wall ordinance which permits 7 foot high walls separated horizontally by a distance of 4 feet which addresses the visual impact of the walls on adjacent properties and not what is happening below the ground surface.

WHEREAS, the Board, based on the foregoing findings, concluded that the February 14, 2006 construction permit issued to the owner of the subject property was proper and consistent with the Board's interpretation of the Zoning Ordinance pursuant to N.J.S.A. 40:55D-70b and, as a result, the appeal pursuant to N.J.S.A. 40:55D-70a is hereby dismissed.

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

Chair Harrison called for a discussion on the request for an extension of time on the variance approval for the application of **David and Laura Janay, 210 Highland Avenue**. On motion by Mr. Fleischer, seconded by Mr. Susswein, the variance approval was extended to February 10, 2007. Chair Harrison called for a discussion of the request for a special meeting for the applications of **The Montclair Community School** for properties located at **149 and 152 Forest Street**. He stated that the applications should be listed on the July 19, 2006 regular meeting agenda, and will be carried to the special meeting already scheduled for July 26, 2006 if they are not heard on the 19th. Mr. Whipple stated that he would need to recuse himself from those applications. Chair Harrison, Mr. Sullivan, and the Planning Staff has a brief discussion concerning the

most recent zoning revisions, namely the separation of the 2½-story limit for one and two-family dwellings from the numeric height limit in the zoning ordinance, which was done in order to have variance applications for exceeding the number of stories considered as “c” variances rather than “d” variances. Two of the applications scheduled for this evening are affected by this change and it was determined that the technical change in the ordinance structure did not create an issue with the notice provided for these applications.

Chair Harrison called the application of **John Jediny, 51 Overlook Road**. Mr. Jediny was sworn and described the proposed additions to the dwelling. Mr. Flood arrived at the meeting after testimony had begun. Mr. Jediny described the proposed enlargement of the dormer at the front of the dwelling. He stated that the dormer enlargement is needed because of an existing stairway within the dwelling which provides inadequate access to the attic floor, which will be remedied by the proposed dormer enlargement. He also described the proposed addition at the rear of the dwelling and stated that it is needed since the existing dwelling is small in size and the proposed addition will provided the necessary improvements to allow for modern living arrangements.

The Board questioned Mr. Jediny. Mr. Jediny stated that the purpose for the dormer is not to enlarge the room in the attic as much as it is to provide adequate headroom through the existing stairway to attic. He stated that the submitted floor plans do not depict the stairway and described the stairway location in the dwelling and the problems associated with its location. He also stated that in order to balance the appearance of the dormer on the roof, the dormer would also be enlarged on the opposite side of the stairway location.

Marked into evidence was:

A-1 Photograph of the front of the dwelling

Chair Harrison called for questions and comments from the public.

Jennifer Hunter, 647 Grove Street, asked if she could see the plan and had no questions or comments.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved as submitted, Mr. Flood abstaining, subject to the following condition:

1. Any central air conditioning units on the property shall be located in a conforming location

Chair Harrison called the application of **Bradley Adams and Megan York, 51 Alexander Avenue**. Mr. Adams and Ms. York were sworn. Ms. York described the

application. She stated that they are proposing to finish the attic and require a dormer to allow for more space to construct a bedroom and bathroom on the third floor. She stated that the proposed dormer is located on the rear of the dwelling and that the existing dwelling is small in size.

Marked into evidence was:

A-1 Eight (8) photographs, on 2 sheets, of the interior and exterior of the existing dwelling

Ms. York described the photographs in Exhibit A-1. She also stated that a central air conditioning unit is proposed and that their property is a corner lot, which limits their options to locate the unit in a conforming location. She stated that they have no garage and that their driveway runs along the rear wall of the dwelling and that placing the unit along the rear wall would obstruct the parking on the driveway. She also stated that a patio area with a trellis exists at the rear corner of the dwelling, which is a sitting area that is not suitable for unit. She stated that the unit is proposed in their side yard which is not large enough to provide a 6-foot setback for the unit. She stated that the unit would be screened from view by an existing hedge and wood fence and that the house on the adjoining lot is a good distance from the side property line. She stated that they are willing to place the unit in side street front yard, although that would also require a variance. Mr. Adams stated that the unit would be placed where existing gate is located in the side yard, which would be removed.

The Board questioned the applicants. Mr. Adams stated that they use their rear door mainly to enter the home, which is accessible through their rear patio, and that placing the unit on the patio would obstruct the entrance to the dwelling that is most used.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application and had separate votes on the two variances requested. On motion by Mr. Fleischer, seconded by Ms. Cockey, the variance requested for the proposed third floor dormer was approved. On motion by Mr. Whipple, seconded by Mr. Flood, the variance requested for the location of the central air conditioning unit was approved, Chair Harrison and Mr. Fleischer voting in the negative.

Chair Harrison called the variance application of **Dr. Nitin Parekh and Smita Dharsi, 77 Inwood Road**. Dr. Parek was sworn and described the application. He stated that his home contains an attached one-car garage with a narrow driveway that leads to the garage. He stated that during the winter, one car is parked in the garage and a second car is parked on the driveway in front of the garage door. He also stated that for the most part during the year, no cars are parked in the garage and both vehicles are parked on the driveway, one behind the other. He stated that he would like

to widen the driveway in order to facilitate the parking of both cars side by side, which would make the maneuvering of cars easier for him following his recent heart surgery.

Marked into evidence were:

- A-1 Photograph of the front of the dwelling
- A-2 Photograph of the front of the dwelling
- A-3 Photograph of the front of the dwelling

Dr. Parek stated that decorative pavers would be used instead of macadam and that the existing walkway leading to the front door would be removed and incorporated into the proposed widened driveway/parking area.

The Board and the Planning Staff had a brief discussion regarding the zoning ordinance, front yard parking, and existing dwellings such as the subject dwelling that have attached one-car garages at the front wall of the dwelling. The Board questioned the applicant. Dr. Parek stated that a minimum width of 16 feet is proposed, but that 17 or 18 feet may be required in order to allow one car to park on the driveway while allowing the other to park in the garage. He stated that if approved, the minimum width required for this situation would be constructed.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Flood, the application was denied, Mr. Susswein voting in the negative.

Chair Harrison called the variance application of **Regino and Teresa Colazzo, 45 Godfrey Road**. Regino and Teresa Colazzo were sworn. Ms. Colazzo described the application to rebuild the detached garage in the rear yard of their property. She stated that the existing garage is very old and dilapidated and that it is a hazard. She stated that a new garage is proposed that would be of the same dimensions and have the same side and rear yard setbacks.

Marked into evidence were:

- A-1 Photograph of the existing detached garage
- A-2 Photograph of the existing detached garage

The Board questioned Mr. and Ms. Colazzo. Mr. Colazzo stated that when they purchased the property, they knew that the garage would have to be replaced at some point due to its age and dilapidated condition. Ms. Colazzo stated that building the garage in a conforming location would require the existing driveway to be relocated and

the removal of an existing tree. She also stated that conforming setbacks would impact the size of their rear yard, which is limited in size.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved.

Chair Harrison called the application of **Kathleen Vandervoort, 35 Watchung Avenue**. Ms. Vandervoort and Gene Winstead, her husband, were sworn and described the application. She stated that the existing kitchen is very small and inefficient to use and needs to be enlarged for comfortable and convenient use.

Marked into evidence were:

- A-1 Sheet X-1, floor plans of the existing first floor, on a board, with photographs of the existing dwelling added
- A-2 Sheet A-3, proposed rear elevation, on a board, with photographs of the existing dwelling added

Ms. Vandervoort described the elevation drawings and stated that the proposed addition to the first floor has been designed to be harmonious with the design of the dwelling.

The Board questioned the applicant. Ms. Vandervoort stated that only the proposed deck extends further into the rear yard than the existing dwelling and that the proposed addition fills in a corner of the dwelling. She also stated that the addition is aligned with the side wall of the dwelling and that due to the angled position of the dwelling, the addition is actually further from the side property line than the existing dwelling.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

Chair Harrison called the variance application of **Alan and Gail Firkser, 36 Glenridge Parkway**. Mr. and Ms. Firkser were sworn. Mr. Firkser described the application for a central air conditioning unit in the westerly side yard and stated that there is no area in back yard that does not intrude on their recreational space. He also stated that they have spoken with the adjoining neighbor to the west and that there is no objection to their proposal.

Marked into evidence were:

- A-1 Photograph of the westerly side wall showing the 3 window air conditioners that exist in westerly side wall
- A-2 Photograph of the westerly side wall showing the view from adjoining dwelling
- A-3 Photograph of the proposed location for the central air conditioning unit
- A-4 Photograph of the easterly side of the dwelling showing the driveway and the existing stone retaining wall between the dwelling and the driveway
- A-5 Photograph of the rear wall of the dwelling

Mr. Firkser stated that the installation of the proposed central air unit would allow for the removal of the 3 window units in the easterly wall of the dwelling, which are unsightly and create more noise than the proposed central air unit, and that the proposed unit would be shielded from view by existing shrubbery. He stated that the existing windows along the rear wall of the dwelling are low to the ground, which prevents the installation of the unit in that area of the rear yard and that the remainder of the rear wall adjoins the only outdoor recreational space they have. He further stated that the unit cannot be installed in the easterly side yard where the driveway is because they have been informed by their contractor that the stone retaining wall that supports the ground against the dwelling is too unstable to support the installation.

The Board questioned the applicants. Ms. Firkser stated that their contractor has also informed them that the area between the low windows along the rear wall is not wide enough to fit the proposed unit. Mr. Firkser described the usage of the rear yard in more detail and stated that the proposed unit would be about 3 inches from the dwelling and end up about 1 foot from the westerly side property line.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Susswein, the application was denied.

Chair Harrison called the variance application of **Stephen Black and Mary Rex, 7 Glenridge Parkway**. Mr. Black and Ms. Rex were sworn. Ms. Rex described the application and stated that 2 central air conditioning units are proposed in the westerly side yard of the dwelling, which is not large enough to provide the 6-foot side yard setback requirement for the units. She also stated that there is no other location on the property that is suitable for these units.

Marked into evidence were:

- A-1 Four (4) photographs of the subject property

A-2 Diagram prepared by the applicants illustrating the westerly side yard, the proposed units, and the setbacks provided

Ms. Rex stated that the proposed units would be shielded by existing shrubbery and that the neighbor's driveway adjoins their westerly side yard, which allows for a good distance from the dwelling on the adjoining property to the west. She also stated that the rear wall of their dwelling is fully occupied with an existing patio and that placing the units along the rear wall is not a suitable location.

The Board questioned the applicants. Ms. Rex stated that a sandbox play area exists in a recessed portion of the rear wall, and that they would like to retain that play area for their child instead of placing the proposed units in that location.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was denied, Ms. Holloway voting in the negative.

Chair Harrison called the application of **Arie and Elaine Hochberg, 39 Porter Place**. Judith Wildman, Esq. appeared as attorney for the applicants and stated that the applicants are not present because they are on a family vacation. She described the variances requested and stated that although a variance is required because the proposed interior modifications create complete living facilities for a second dwelling unit, it is not the applicants' intent to create a second dwelling unit within the home. She called Steven Vanderstad, builder for the proposed addition and interior renovations, who was sworn. Mr. Vanderstad stated that the existing dwelling has an existing nonconforming rear yard setback of 19.6 feet and that proposed deck would not encroach further into the rear yard than the existing dwelling. He described the existing kitchen and stated the proposed one-story addition would provide for an eat-in kitchen and other modernizations and that the proposed kitchen addition would have a rear yard setback of 25.8 feet at its closest point. He also stated that the exterior of the addition would match the exterior of the existing dwelling and that the proposed addition complies with all other setback requirements.

Mr. Vanderstad stated that the proposed renovations to the basement include a second kitchen and that because the basement also contains a full bathroom, the basement is considered to be a separate dwelling unit pursuant to the ordinance. Ms. Wildman stated that the applicants are Jewish and that the proposed kitchen in the basement would only be used 8 days a year during Passover, and that the applicants have no intention to use the basement as a second dwelling unit. She also stated that applicants are willing to dismantle the kitchen in the basement when they no longer own the dwelling.

The Board questioned Ms. Wildman and Mr. Vanderstad. Ms. Wildman stated that since the proposed kitchen is only to be used during the observance of Passover, it would not be used simultaneously at all with the kitchen upstairs.

Chair Harrison called for questions and comments from the public.

Michael Dore, 152 Union Street, was sworn and stated that he is against the project because the construction activities that have been occurring over an extended period of time on the subject property have been a nuisance to neighbors and that the proposed construction would continue the noise and disturbance that has been going on. He asked that the Board consider limiting the times of construction for the project.

Ms. Wildman questioned Mr. Vanderstad. Mr. Vanderstad stated that they have no intention to do any work on Saturdays and that the proposed construction would only occur during business hours between Monday and Friday. Ms. Wildman proceeded and gave her closing statements.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved, Ms. Cockey voting in the negative, subject to the following conditions:

1. No exterior construction shall occur on weekends or national holidays.
2. The applicants shall record a deed in the Essex County Register's office which shall be approved by the Board of Adjustment Attorney containing the following language:

"The purpose of this deed is to provide notice of a condition imposed by resolution of the Montclair Board of Adjustment adopted July 26, 2006, limiting use of the property as a single family dwelling and utilization of the kitchen in the basement to not more than 10 days a year in conjunction with the use of the existing single family dwelling in the remainder of the house. This condition shall run to the benefit of the public and may be modified as any other condition of a development approval by the Montclair Board of Adjustment pursuant to the provisions of the Municipal Land Use Law. The condition shall be enforceable by the Municipality and the cost of such enforcement, including reasonable attorney's fees, shall be the obligation of the property owner."

Chair Harrison called the variance application of **Ravi Srinivasan, 18 Bruce Road**. Mr. Srinivasan was sworn and described the application. He stated that his home contains a one-car attached garage at the front wall of the dwelling. He stated that he presently parks one car in the garage and a second car on the driveway in front of the garage. He stated that he is proposing to widen the driveway on one side in order to provide a new parking space for the car on the driveway in order to allow the car in the garage to have access to the garage without having to move the second vehicle.

Marked into evidence were:

A-1 Photograph of the front of the dwelling

A-2 Photograph of the front of the dwelling

The Board questioned the applicant. Mr. Srinivasan stated that paving a new driveway around a side of the dwelling to get to the rear yard would require the removal of grass, trees and retaining walls on the property. He stated that he has spoken the adjoining property owners and that there is no objection to his proposal.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Flood, the application was denied.

Chair Harrison called the variance application of **Bill Graham, 112 Christopher Street**. Mr. Graham was sworn and described the application. He stated that he is withdrawing the requested height variance for the detached garage and stated that the garage on his property was destroyed when a branch fell from a tree on a neighbor's property and crushed it. He stated that he is proposing to rebuild a detached garage with a new foundation. He also stated that the width of the proposed garage would be 6 inches larger than the previous garage and the proposed garage would also be 2 feet longer in order to provide car parking and storage space. He also stated that the same setback as the previous garage are proposed, which are also similar to other detached garages in the neighborhood.

Marked into evidence was:

A-1 Photograph of detached garage located at 83 Montclair Avenue, which abuts the rear of the subject property.

The Board questioned the applicant. Mr. Graham stated that increasing the side yard setback to 3 feet would be extremely difficult because the existing driveway is to remain and has recently been upgraded with new curbing. He also stated that enlarging the side yard setback to 2 feet would be acceptable since it would allow him to keep the driveway in its existing location.

Chair Harrison called for questions and comments from the public.

Alan Trembulak, 120 Christopher Street, was sworn. Mr., Trembulak stated that he is the owner of the adjoining property and that the branch that fell on the applicant's garage came from a tree on his property. He stated that he has no objection to the application at all.

The Board discussed the application. On motion by Mr. Flood, seconded by Mr. Whipple, the application was approved, subject to the following condition:

1. The northerly side yard setback of the garage shall be no less than 2 feet.

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