

MINUTES OF THE BOARD OF ADJUSTMENT
July 21, 2004

PRESENT: Chair Harrison, Ms. English, Vice Chair Fleischer, Mr. Flood, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey and Mr. Susswein; also, Mr. Trembulak, Esq., Mr. Charreun, Assistant Secretary, and Mr. Mellon, Assistant Planner

ABSENT: Ms. Cockey

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. Gallardo, seconded by Mr. Fleischer, the **Minutes of the May 19, 2004** regular meeting were adopted, as modified, Mr. Flood, Ms. Rock-Bailey, and Mr. Susswein abstaining.

On motion by Mr. Gallardo, seconded by Mr. Fleischer, the **Minutes of the May 26, 2004** special meeting were adopted, as modified, Ms. Rock-Bailey abstaining.

On motion by Mr. Gallardo, seconded by Ms. English, the **Minutes of the June 16, 2004** regular meeting were adopted, as modified, Mr. Fleischer and Mr. Haizel abstaining.

On motion by Mr. Gallardo, seconded by Ms. English, the following Resolution memorializing the approval of the variance application of **Doreen and Scott Peterson, 24 Columbus Avenue** was adopted, Mr. Fleischer and Mr. Haizel abstaining:

WHEREAS, Doreen and Scott Peterson, owners of property at **24 Columbus 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 an easterly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a two-story addition on property designated as Lot 34 in Block 4304 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Richard J. Hingos, Inc., dated July 2, 1998, and a site plan, floor plans, and elevations, prepared by Meridian Design Associates, Architects, dated May 5, 2004; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 16, 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 7,100 square feet in area and contains a single-family and a detached garage at the rear of the lot.

2. The existing dwelling has nonconforming side yard setbacks of approximately 4.35 feet in the westerly side yard as measured to the rear corner of the existing one-story section on the westerly side of the dwelling, and approximately 8.03 feet in the easterly side yard.

3. The applicants' proposal is to construct a two-story addition at the rear of the dwelling. The proposed addition has been designed to meet the westerly side yard setback of 6 feet, where 4.35 feet exists, and also conforms to the height and rear yard setback requirements, but does not meet the easterly side yard setback requirement of 10 feet.

4. The proposed addition will be aligned with the existing easterly wall of the dwelling and would be set back approximately 8 feet from the easterly side property line.

5. 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 Doreen and Scott Peterson is hereby 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.

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 Ms. English, the following Resolution memorializing the approval of the variance application of **Terence and Margaret Gorman, 16 Edgewood Road** was adopted, Mr. Fleischer and Mr. Haizel abstaining:

WHEREAS, Terence and Margaret Gorman, as owners, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a rear yard setback less than that required pursuant to **Montclair Code Section 347-33D** in connection with the construction of a three-story addition on property designated as Lot 6 in Block 502 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicants submitted a boundary and topographic survey prepared by Richard J. Hingos, Inc., dated January 12, 2004, and architectural plans prepared by Parrette Somjen, Architects, dated March 4, 2004, and engineering plans, prepared by Thor Engineers, dated May 6, 2004, followed by a revised submission that included architectural plans prepared by Parrette Somjen, Architects, revised to June 6, 2004, and engineering plans prepared by Thor Engineers, revised June 9, 2004, that depicts the new construction; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on May 19, 2004 and June 16, 2004, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an irregularly shaped, steeply sloped lot measuring approximately 29,384 square feet in area, and contains a two-story, single-family dwelling with an attached garage at the ground level at the northerly side of the dwelling.
2. The applicants propose several additions onto the single-family dwelling, including a three-story addition at the northerly side of the dwelling, which meets the height, front yard, and side yard setback requirements, but does not meet the rear yard setback requirement of 30 feet.
3. The other proposed additions include a third floor addition over the existing dwelling, a two-story addition at the southerly side of the dwelling, a second floor addition over an existing one-story section at the southerly side of the dwelling, and new covered porches onto the front and rear of the dwelling. All of these additions meet the height and setback requirements.

4. At the May 19, 2004 hearing, the applicants presented plans that depicted a rear yard setback of 19 feet 10 inches for the proposed three-story addition at the northerly side of the dwelling, in lieu of the 30 feet required. The Board determined that the proposed rear yard setback of 19 feet 10 inches would have a negative impact and that the applicants should investigate the possibility of providing a rear yard setback of no less than 25 feet for the three-story addition, and return to the Board with revised plans.

5. The applicants returned to the Board at the June 16, 2004 hearing, and presented revised plans that depicted a rear yard setback of 25 feet for the proposed three-story addition at the northerly side of the dwelling. The Board determined that the revised plan was in keeping with the neighborhood and would not have a negative impact.

6. The irregular shape and steep slope of the property, as well as the placement of the existing dwelling on the lot, places undue hardship on the applicants in constructing a fully conforming addition, and based upon the Board's particular knowledge of local conditions, the proposed three-story 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 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 FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Terence and Margaret Gorman for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to permit a rear yard setback less than the required rear yard setback for the proposed three-story addition is hereby 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, dated June 3, 2004, and the revised site plan, prepared by Thor Engineers, P.A., dated 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".

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

On motion by Mr. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the denial of the variance application of **Paul Hoerrner, 1 Wendover Road** was adopted, Chair Harrison, Mr. Fleischer and Mr. Haizel abstaining:

WHEREAS, Paul Hoerrner, owner of property at **1 Wendover Road**, did make application to the Board of Adjustment of the Township of Montclair to amend a condition imposed by a prior approval of the Board in connection with the construction of a detached garage on property designated as Lot 28 in Block 1807 on the Township tax map and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richlan, Lupo & Associates, Inc., dated April 17, 2003 and a site plan, floor plans, and elevations prepared by Oasis Architecture and Planning, P.C., dated April 28, 2004, that depicts the proposed detached garage; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 16, 2004 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an irregularly shaped corner lot, located at the intersection of Valley Road and Wendover Road, measures approximately 10,555 square feet in area, and contains a 2½-story single-family dwelling and a detached garage located in the southernmost area of the property.

2. The applicant was before the Board on April 14, 2004, with a variance application for the deficient rear yard and side yard setbacks of a proposed two-car detached garage on the subject property. By resolution adopted on May 19, 2004, the Board granted variance relief to allow the construction of the detached garage, subject to conditions. The aforementioned resolution contained the following condition:

3. The proposed detached garage shall be limited to a maximum of 15 feet in height as measured to the ridgeline of the roof.

4. The applicant now seeks relief from the aforementioned condition and proposes an amendment of that condition in order to allow a maximum of 17 feet in height as measured to the ridgeline of the roof.

5. The applicant testified that the height limitation of 15 feet was arbitrarily imposed and does not permit the design flexibility to construct a roof for the detached garage that would be in keeping with the design of the roof of the dwelling on the property. The applicant also testified that the additional garage height provided by the requested amendment to the aforementioned condition would not have a negative impact on adjoining properties and would be in keeping with existing garages in the neighborhood.

6. The Board determined that the height limitation of 15 feet was not imposed arbitrarily, and rather, was imposed in an effort to reduce the negative impacts associated with the variances granted for the deficient rear yard and side yard setbacks of the detached garage. Furthermore, the height limitation was imposed within the context and scale of the portion of the subject property that the proposed garage is to be constructed in order to preserve as much open space, air, and light between properties as possible.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant's requests for relief from a prior condition of the Board was not reasonable and was inconsistent with the original approval granted pursuant to N.J.S.A. 40:55D-70c(1) and N.J.S.A. 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 Paul Hoerrner, to amend Conditions 3 of the Board's May 19, 2004 resolution, as set forth in the architectural plans dated April 28, 2004 prepared by Oasis Architecture and Planning, P.C., is hereby denied.

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

On motion by Mr. Gallardo, seconded by Ms. English, the following Resolution memorializing the approval of the variance application of **George and Phyllis Attisano, 449 Valley Road** was adopted, Mr. Fleischer and Mr. Haizel abstaining:

WHEREAS, George and Phyllis Attisano, owners of property at **449 Valley Road**, 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 rear yard setback less than that required pursuant to **Montclair Code Section 347-45D** in connection with the construction of an addition onto their single-family dwelling on property designated as Lot 75 in Block 2503 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by EKA Associates, dated October 29, 2002, and a site plan, floor plans, and elevations prepared by Edmundo Lopez, Architect, dated May 20, 2004; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 16, 2004 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an irregularly shaped corner lot measuring approximately 6,719 square feet in size and contains a two-story single-family dwelling with an attached garage.

2. The applicants' proposal is to construct a one-story addition, measuring approximately 7 feet by 14 feet, onto the rear of their single-family dwelling in order to accommodate an expanded kitchen that would contain a breakfast area. The proposed addition conforms to the height, front yard setback, and side yard setback requirements, but does not meet the rear yard setback requirement of 25 feet.

3. The lot is irregularly shaped and the existing dwelling has non-conforming rear yard setback of approximately 12 feet. The proposed one-story addition would be aligned with the rear wall of the dwelling, and would also be set back 12 feet from the rear property line.

4. The proposed addition represents a minimal intrusion into the existing rear yard setback deficiency and is warranted due to the irregularly shaped lot and the location of the existing dwelling on the lot.

5. 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 on 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 N.J.S.A. 40:55D-70C(l); 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 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 George and Phyllis Attisano for a variance pursuant to N.J.S.A. 40:55D-70c to construct a one-story addition onto their single-family dwelling is hereby approved; and

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

On motion by Mr. Gallardo, seconded by Ms. English, the following Resolution memorializing the denial of the variance application of **Emre Erdi, 26 Elizabeth Road** was adopted, Mr. Fleischer, Mr. Haizel, and Mr. Susswein abstaining:

WHEREAS, Emre Erdi, owner of property at **26 Elizabeth Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for front yard setbacks less than that required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of a second story addition onto the existing dwelling on property designated as Lot 10 in Block 3802 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by William H. Hunt, dated April 16, 2004, and floor plans and elevations prepared by Byrne Design Associates, Inc., dated May 24, 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 June 16, 2004 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is a corner lot at the intersection of Elizabeth Road and La Salle Road and contains a one-story single-family dwelling with an attached garage.

2. The applicant's proposal is to construct a complete second story plus attic addition over the first floor of the existing one-story dwelling. The proposed addition meets the height, side yard setback, and rear yard setback requirements, but does not meet the minimum required front yard setback in either the Elizabeth Road front yard or the La Salle Road front yard.

3. The existing dwelling has a non-conforming front yard setback of 17.9 feet in the Elizabeth Road frontage, as measured to the front wall of the dwelling, and 15.9

feet as measured to the front wall of the attached garage. A minimum front yard setback of approximately 29 feet 10 inches feet is required from Elizabeth Road, due to the average front yard setback of the nearest 2 dwellings on Elizabeth Road.

4. The existing dwelling also has a non-conforming front yard setback of 29 feet in the La Salle Road frontage, as measured to the southeasterly corner of the dwelling, where a minimum of approximately 33 feet 4 inches is required, due to the average front yard setback of the nearest 2 dwellings on La Salle Road.

5. The proposed second story addition is aligned with the existing footprint of the dwelling, excluding the attached garage, and would not encroach closer to any property line than the existing dwelling. However, the Board determined that the existing encroachment into the Elizabeth Road front yard is too great on the subject property and the proposed addition would exacerbate this condition and have a negative impact on the neighborhood and the streetscape.

WHEREAS, the Board, based on the foregoing findings concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variances could be granted without substantial detriment to public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to *N.J.S.A. 40:55D-70C(1)*; and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of *N.J.S.A. 40:55D-70C(2)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Emre Erdi, for variances pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to allow for front yard setbacks less than required is hereby denied; and

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

Chair Harrison called the continuation of the site plan and variance application of **Montclair Homes, LLC, 8 South Mountain Avenue**. David Owen, Esq., appeared as attorney for the applicant and Owen T. Hughes, Esq., appeared as attorney for an interested party who is objecting to the site plan and variance application.

Mr. Hughes stated that he is representing Michael J. Murphy, of 648 Grove Street, Montclair, in objecting to the applicant's proposal. He stated that based on the

evidence and testimony presented by the applicant and in light of the burden of proof on the applicant, he would not be presenting any testimony. He also stated that he would provide his closing arguments after all of the remaining testimony is placed on the record.

Mr. Owen stated that, since Mr. Hughes is not presenting any evidence or testimony, the line of questioning that Mr. Hughes initiated towards Mr. Maltz, regarding a hypothetical question and an assumption of traffic accidents in front of the neighboring garden apartment complex should be stricken from the record.

Chair Harrison stated that until all of the testimony is placed on the record, that line of questioning may still be relevant.

Chair Harrison called for public comment.

Dickson Lane, 11 North Mountain Avenue, was sworn and stated his opposition to the proposed development. He stated that the proposal would set a bad precedent in the R-3 Zone, that the exhibits presented by the applicant are inaccurate, and that the applicant has a history of not abiding by conditions of approval. Mr. Lane continued and stated that the applicant has ignored evidence of underground tunnels on the property.

Mr. Owen objected, stating that Mr. Lane should only be permitted to comment on the application before the Board and that there is no factual evidence regarding any tunnels on the subject property.

Mr. Lane stated that the proposed development would create traffic problems and that the findings of the applicant's traffic expert are suspect and unreliable. He stated that he has conducted his own study on traffic safety, and that, although he is not an expert, his findings refute those of the applicant's witness.

Mr. Owen objected, stating that Mr. Lane is not an expert and he cannot make expert conclusions on traffic issues.

Chair Harrison stated that Mr. Lane may present his observations as factual testimony, however, he may not draw expert conclusions.

Mr. Lane stated that the distance from Bloomfield Avenue to the driveway for the proposed development is 80 feet and not 95 feet as indicated by the applicant. He referred to the New Jersey Motor Vehicle Commission Driver Manual for 2003 and described the required stopping distances for various vehicles. He stated based on his observations of traffic on South Mountain Avenue, there is not safe egress from the driveway.

Marked into evidence were:

OL-1 Photograph of South Mountain Avenue looking south from Bloomfield Avenue, taken at 4:00 p.m. on a recent day

OL-2 Photograph looking north from the driveway on the subject property taken at 4:00 p.m. on a recent day

Mr. Lane described the sight lines for vehicles exiting the driveway of the proposed development and stated there is not enough distance to provide safe vehicular egress from the subject property, which also presents a danger for oncoming vehicles. He stated that based on his observations, the peak A.M. period is between 5:30 A.M. and 7:30 A.M., and that the peak P.M. period is between 5:30 P.M. and 7:00 P.M.

Mr. Owen objected, stating that Mr. Lane may not give opinions on traffic safety and peak periods since he is not a traffic expert.

Mr. Hughes stated that Mr. Lane should be allowed to give his opinion on traffic safety based on the observations he is presenting as testimony.

Chair Harrison stated that Mr. Lane must provide his empirical observations in order to support his conclusions on his observations.

Mr. Lane stated that he made his traffic observations on Thursday, May 27, 2004 from 5:00 A.M. to 8:00 A.M, and from 4:00 P.M. to 7:30 P.M., on Monday, May 17, 2004 from 5:30 A.M. to 8:30 A.M. and from 11:30 A.M. to 1:30 P.M., on Tuesday, June 13, from 5:30 A.M. to 7:30 A.M., and on Saturday, July 17, 2004 from 9:30 A.M. to 2:30 P.M. He stated that his observed peak periods of traffic occur during times of low daylight, which adds to the element of danger. Mr. Lane stated that the trip generation figures provided by the applicant's traffic expert are unrealistic for one-family dwellings.

Mr. Owen objected, stating that the applicant's expert based his trip generation figures on an industry accepted publication and that Mr. Lane is not qualified to make conclusions on trip generation.

Chair Harrison stated that Mr. Lane may dispute the facts that the applicant's expert based his conclusions on, however, he may not dispute the expert conclusions of the expert witness without testimony from another expert witness. Mr. Trembulak agreed with Chair Harrison.

Mr. Lane continued and stated that the application should be denied because any traffic increase in the area would be highly detrimental to the neighborhood and the proposed development would destroy historic underground tunnels.

The Board questioned Mr. Lane.

Mr. Lane stated that there have not been traffic accidents over the last few years at the foot of the driveway for the subject property because it has been uninhabited for the last two years and prior to that in was inhabited by an elderly woman.

George Fanous, 10 North Mountain Avenue, was sworn and stated that he has observed an entrance to an underground tunnel in the basement of his home, which may be connected to other tunnels on the subject property.

The Board questioned Mr. Fanous.

Mr. Fanous stated that he has no documentation that would indicate that the tunnel under his property has any historic merit.

Raymond Silen, 15 Ramsay Road, was sworn and stated his support for the application. He stated that he drives on South Mountain Avenue on weekdays between 6:45 A.M. and 7:00 A.M. and that there are no traffic problems in the area of the subject property.

Frank Gerard Godlewski, 10 Crestmont Road, was sworn. He stated that he has observed the tunnel at the home of Mr. Fanous and other dwellings in the area and described the history of the area and homes in the vicinity of the subject property. He stated that there appears to be a system of historic underground tunnels in the area that link properties that contain "safe rooms", all of which could be associated with the "Underground Railroad". He continued by stating that studies need to be done by experts to look into this further before any disturbance of the site takes place. He also added that the driveway for the garden apartments, which adjoins the subject property, is very dangerous and that the proposed driveway would pose similar hazards.

The Board questioned Mr. Godlewski.

Mr. Godlewski stated that he walked the subject property with Mr. Meyer, the applicant's site engineer. He stated that they observed a structure that is built into the hillside, which appears to predate the existing dwelling on the lot and could have been another underground tunnel. Mr. Godlewski referred to Exhibit A-3 and indicated the location of this outdoor doorway in the hillside.

Mr. Owen stated the area where the outdoor doorway structure is located is west of all proposed and existing structures on the site.

Mr. Godlewski stated that the outdoor doorway structure built into the hillside could be more than just a storage structure because it has been modified since it was originally built. Mr. Godlewski stated his professional credentials as a Restoration Architect and stated that he is not licensed in New Jersey because he has done most of his work in Italy.

Mr. Owen objected, stating that Mr. Godlewski is not licensed as an Architect in the State of New Jersey.

Michael Strahan, 99 Lloyd Road, was sworn and stated his opposition to the application. He stated that the zoning district should be changed to not allow multifamily development in the area of the intersection of South Mountain Avenue and Bloomfield

Avenue. He also stated that he has offered to purchase the property and was turned down.

The Board questioned Mr. Strahan.

Jean Strahan, 99 Lloyd Road, was sworn and stated her opposition to the application. She confirmed that there was an offer to purchase the property. She also stated that the outdoor doorway structure built into the hillside on the subject property is too small to be a storage shed and has many features that may lead you to believe it could be something more than a storage shed.

The Board questioned Mrs. Strahan.

Tara Williams, 26 North Mountain Avenue, was sworn and stated her opposition to the application. She stated that the proposed development would increase traffic congestion, lower the quality of life in the area, and ruin the aesthetics of the subject property.

Kenneth Traum, 24 Mulford Lane, was sworn and stated his support for the application. He stated that he has traveled South Mountain Avenue during peak hours many times and that he has not observed any significant traffic problem. He stated that the proposed development would not have a negative impact on traffic circulation because of its low residential density.

Mr. Hughes objected, stating that Mr. Traum is not qualified to make conclusions on traffic impacts.

Mr. Traum stated that the proposed development is an improvement for the neighborhood and is a good alternative to the higher density that is permitted.

Tony Polizzi, 22 Mulford Lane, was sworn and stated his support for the application. He stated that he also drives South Mountain Avenue frequently and has not observed any traffic problems.

Mr. Lane objected from the audience, stating that Mr. Polizzi is not qualified to draw conclusions on traffic impacts. Chair Harrison stated that Mr. Polizzi did not draw any conclusions and has only presented his own observations.

The Board questioned Mr. Polizzi.

Mr. Hughes questioned Mr. Polizzi.

Mr. Polizzi stated that he is a homeowner and taxpayer in Montclair.

Jill Mueller, 96 Undercliff Road, was sworn. She stated her support for the application and stated that she prefers the lower density development proposed by the

applicant. She also stated that she has a storage shed built into the hillside on her property that is similar to the one on the subject property.

The Board questioned Mrs. Mueller.

Mr. Hughes questioned Mrs. Mueller.

Mr. Polizzi, 22 Mulford Lane, who was still under oath, approached the Board to clarify that he is married to Fran Adler, who is the owner of 22 Mulford Lane. He stated that he contributes to the mortgage, and therefore contributes to the payment of property taxes.

Chair Harrison stated that the line of questioning being directed at Mr. Polizzi by Mr. Hughes, in terms of property ownership and property taxes is irrelevant.

Steven Aspero, 361 Claremont Avenue, was sworn and stated his support for the project. He stated that the property is zoned for multifamily use and the proposed density is lower than permitted. He stated that he has traveled South Mountain Avenue for many years and has never observed any accidents in the vicinity of the subject property. He also stated that he had spoken to the Montclair Police Department regarding vehicular accident history in the area of the subject property.

Mr. Hughes objected, stating that the Mr. Aspero must provide written information from the Montclair Police Department if he is to discuss it as testimony.

Chair Harrison sustained the objection and called for questions from the public for Mr. Aspero.

Martin Schwartz, 45 Gates Avenue, inquired about the relationship between the developer and Mr. Aspero.

Mr. Owen recalled Peter Meyer, Professional Engineer, who was still under oath. Mr. Meyer stated that he has conducted a study to evaluate the presence of any underground tunnels on the subject property. He stated that he met with Mr. Godlewski at the subject property in order to assist him in the investigation of these possible underground tunnels and referred to Sheet 3 of 8, Existing Conditions, to describe the areas on the site that were investigated. He stated that he discussed the findings of the investigation with the property owner and that a trench was dug during April 2004 to examine the area identified by Mr. Godlewski as a possible location of an underground tunnel. He stated that the investigative trench did not reveal any evidence of underground tunnels. He continued by describing the existing outdoor doorway built into the hillside on the subject property and stated that it is approximately 5 feet deep and could have been used as cold storage.

The Board questioned Mr. Meyer.

Mr. Meyer stated that he could not tell whether the storage structure was older than the home. He also stated that he probed beyond the rear wall of the storage structure and that it did not keep going much more than 6 inches beyond the rear wall, indicating that there was soil behind the rear wall.

Mr. Trembulak questioned Mr. Meyer.

Mr. Meyer stated that if underground tunnels exist on the site, they could be affected by the proposed construction.

Mr. Owen conducted a redirect of Mr. Meyer.

Mr. Meyer stated that the storage shed is not located in the area of any of the proposed construction.

The Board questioned Mr. Meyer.

Mr. Meyer stated that the proposed plans do depict the storage structure being removed, however, that it may be preserved if required.

Mr. Hughes cross-examined Mr. Meyer.

Chair Harrison called for questions from the public for Mr. Meyer.

Jean Strahan, 99 Lloyd Road, asked for a clarification on what area was excavated as part of the investigation for the presence of underground tunnels.

Frank Gerard Godlewski, 10 Crestmont Road, referred to Sheet 3 of 8, Existing Conditions, and asked if Mr. Meyer investigated a particular area that he had indicated should be investigated.

Mr. Meyer stated that he had not done an investigation of the area just identified by Mr. Godlewski.

Jean Strahan, 99 Lloyd Road, asked whether alternatives to excavation were considered.

Frank Gerard Godlewski, 10 Crestmont Road, asked if the investigation for underground tunnels was only done in areas where construction would occur.

The Board questioned Mr. Godlewski.

Mr. Godlewski referred to Sheet 4 of 8, Site Plan, and stated that the removal of the storage structure and the construction of the retaining walls on the westerly side of the property would destroy any underground tunnels in that area.

Chair Harrison called for a short recess.

Mr. Hughes gave his closing arguments. He stated that the proposed development is not an inherently beneficial use and that the applicant must satisfy the positive and negative criteria. He stated that the objector is not obligated to present proofs for denial and that the burden of proof rests with the applicant in satisfying the statutory requirements for approval. He stated that the testimony of the applicant's Professional Planner fails to satisfy the special reasons and the proofs required for approval. He stated that Mr. Steck's argument for the proposed development centered on furthering the purposes of zoning enumerated in the New Jersey Municipal Land Use Law, which includes the preservation of historic structures. He stated that the historic quality of existing building could be preserved by leaving the site as it is, and the historic quality of the existing dwelling would be compromised by the proposed new construction.

Mr. Hughes stated that the purpose of limiting one and two-family dwellings to no more than one per lot is to preserve open space and that the proposed plan is inconsistent with the spatial requirements for one and two-family dwellings on a single lot in Montclair. He also stated that the argument provided by Mr. Steck indicating that the subject property is not particularly suitable for a garden apartment-style multifamily development is invalid because the lot is particularly suitable for the existing one-family dwelling. He further stated that the threat of a 15-unit development on the subject property should not be considered as a viable alternative because it has not been properly put before the Board and it does not take into account numerous other issues regarding bulk requirements and site plan approval. He continued by stating that the proposal does not satisfy the negative criteria because it would have a negative impact on the character of the neighborhood, which is the gateway to the single-family residential district on South Mountain Avenue, and would set a negative precedent in the R-3 zone, by allowing a type of development that does not currently exist. He also stated that permitting the type of development proposed would be tantamount to effecting a zoning change by variance and that the application should be denied.

Mr. Owen gave his closing arguments. He stated that the subject property has been in the R-3 zone since before 1950 and is located adjacent to a high-density garden apartment, which marks the end of the R-3 zone in the area. He stated that the plan calls for the preservation of the existing historic dwelling, and provides new residential development that is complimentary in style and architecture to the existing home and is at one-third of the permitted density for the property. He also stated that pointing out the higher permitted density for the site and comparing it to what is proposed is a test on the negative criteria rather than a threat. He continued by describing the modifications to the plans during the application process indicating the applicant's willingness to address the concerns of the Board and the public.

Mr. Owen described the variances requested by the applicant and stated that there is no aspect of rezoning with the application. He stated that he had described the reasons for this at a prior hearing and stated that prior case law on that topic would support his assertion. He also stated that the objecting testimony regarding the presence of underground tunnels is highly speculative and that the applicant's

investigation into the presence of underground tunnels indicates that there is no clear and firm evidence of such tunnels. Mr. Owen continued by stating that all of the variances requested are supported by the conservation of the existing home and that the use variance is further supported by that the fact that the proposed plan promotes a population density less than that permitted and promotes a desirable visual environment. He also stated that the use variance could be approved without any substantial detriment to the Master Plan, Zoning Ordinance, or the public good. He continued by reviewing the reasons why the requested bulk variances should be approved and stated that the benefits of approving the requested bulk variances outweigh any detriments.

Mr. Owen stated that the Essex County Planning Board has approved the plan and that the plan complies with the Township's Steep Slope Ordinance and the New Jersey Residential Site Improvement Standards. He also stated that the plan provides safe and efficient vehicular ingress and egress and that the plan calls for the preservation of most of the existing trees on the site while adding many new plantings. He further stated that the application does not represent an impairment of the Zone plan because the requested deviations from the zoning ordinance are minor when compared to the zoning purposes served by the application. He continued by stating that the proposed development strikes a balance between zoning and preservation and that the application should be approved.

The Board discussed the application.

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

1. Garbage shall be collected at each dwelling unit by a private garbage collection service.
2. Snow removal shall be provided in accordance with the snow removal plan admitted depicted on Exhibit A-18.
3. The kitchen facility located on the third floor of the existing single-family home shall be eliminated prior to the issuance of construction permits.
4. The line of sight between the driveway entrance and Bloomfield Avenue shall be maintained, for pedestrian and vehicular safety, by trimming existing and new groundcover as necessary and by removing tree branches lower than 8 feet from the ground.
5. The applicant shall plant evergreen shrubs to the east of Unit E and between the drip line of the proposed Red Oak tree and the drip line of the existing 30-inch Maple tree (as shown on the landscape plan) which shrubs shall be planted no further than 5 feet apart and will grow to a height of at least 6 feet;

6. The applicant shall comply with the comments contained in Paragraphs 1 and 3 of the Board Engineer's report, dated April 29, 2004.

7. The applicant shall install a fire hydrant on the driveway in accordance with the Montclair Fire Department's request.

8. The width of the driveway apron shall be increased in accordance with Exhibit A-18.

9. The applicant shall install a "hidden driveway" sign between Bloomfield Avenue and the driveway entrance, in a location to be approved by the Township Engineer, in order to alert vehicles proceeding south on South Mountain Avenue.

10. Prior to any land disturbance on the property, the applicant shall conduct testing for underground tunnels in the presence of an archeologist who has been qualified in court as an expert in archeology, at no more than 5-foot intervals around the northerly and westerly sides of the storage structure, and if any tunnels are discovered, said archeologist shall record the location of same and the applicant shall continue testing to the extent of any tunnels but not further than the boundary lines of the property. The applicant shall provide the results of the testing to the Planning Department and the Montclair Historical Society.

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.

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