

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**July 26, 2006**

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, Mr. Haizel, Ms. Holloway, Mr. Susswein and Mr. Whipple; also, Ms. John, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Flood, and Mr. Mellon, Secretary

Assistant Secretary Charreun called the roll and announced the special 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. Whipple, the **Minutes of the March 29, 2006** special meeting were adopted as modified, Mr. Haizel and Ms. Holloway abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the **Minutes of the April 19, 2006** regular meeting were adopted, Ms. Holloway abstaining.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Mr. and Mrs. John Jediny, 51 Overlook Road** was adopted, as modified, Mr. Haizel and Ms. English abstaining:

WHEREAS, Mr. & Mrs. John Jediny, owners of property at 51 Overlook Road, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to permit a front yard setback less than required pursuant to **Montclair Code Section 347-45B(2)**, and to allow an enlargement of a third floor dormer, whereas the dwelling is limited to a maximum of 2½ stories pursuant to **Montclair Code Section 347-45A(2)**, in connection with proposed additions and modifications to a dwelling on property designated as Lot 19 in Block 3705 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant submitted a site plan, floor plans, elevations, prepared by Scott Monro Architect, dated June 5, 2006; and a property survey prepared by Pronesti Surveying Inc., dated September 7, 2004; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 21, 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 a corner lot located at the intersection of Overlook Road and Grove Street, is located in the R-1 One-Family Residential Zone, and

contains a 2½-story, single-family dwelling. The property measures 50 feet wide on Overlook Road and 150.95 feet wide Grove Street and contains 7,548 square feet in area.

2. The applicants propose to construct a two story addition and a deck, at the rear of the dwelling. An existing third floor dormer at the front of the dwelling would be widened to 22 foot 9 inches.

3. The average front yard setback of the 2 nearest principal structures on Grove Street is 31.1 feet, and a front yard setback of 14.55 feet is proposed for the 2-story addition and 12.97 feet is proposed from the deck to the Grove Street property line. The addition meets the minimum side yard, rear yard, and height requirements.

4. The existing dwelling has a nonconforming front yard setback of 9.48 feet in the Grove Street front yard at its closest point. The proposed 2-story addition and deck at the rear of the dwelling would be aligned with a section of the dwelling that is set back approximately 17 feet from Grove Street; the proposed front yard setbacks of 14.55 feet for the addition and 12.97 feet for the deck occur due to the angle of the Grove Street front property line.

5. Based on the existing front yard setback of the dwelling on Grove Street and the position of the dwelling on the lot, the proposed front yard setbacks can be approved. The proposed third floor dormer expansion, which faces Overlook Road, is required to better accommodate an existing stairwell within the dwelling and is positioned in the best possible location and sized correctly to maintain a visually pleasing front façade.

6. Based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact area properties and is consistent with the intent and purpose of zone plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that 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 N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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 Mr. and Mrs. John Jediny is approved, subject to the following condition:

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

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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Bradley Adams and Megan York, 51 Alexander Avenue** was adopted, as modified, Chair Harrison, Mr. Fleischer, Mr. Haizel, and Ms. English abstaining:

WHEREAS, Bradley Adams & Megan York, owners of property at 51 Alexander Avenue, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to construct a third floor dormer addition, whereas the dwelling is limited to a maximum of 2½ stories pursuant to **Montclair Code Section 347-45A(2)**, and to permit a side yard setback less than required for a central air conditioning unit pursuant to **Montclair Code Section 347-45B(2)** on property designated as Lot 116 in Block 3802 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos Inc., dated October 20, 2004, a plot plan, floor plan, and elevations, prepared by Joseph J. Bruno Architect, dated March 30, 2006, and a specification sheet for the proposed central air conditioning unit; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 21, 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 a corner lot located in the R-1 One-Family Residential Zone and contains a 2½-story frame and stone, single-family dwelling with a parking area and detached green house. The property has 60.34 feet of frontage on Alexander Avenue, 109.70 feet of frontage on Riverview Drive, and contains 7,630 square feet in area.

2. The applicants propose to construct a third floor dormer along the rear of the dwelling. A maximum of 2½ stories is permitted and the proposed third floor dormer requires a variance. The proposed dormer measures 22 feet 7 inches in width.

3. The proposal also calls for the installation of a central air conditioning unit in the easterly side yard of the property. The unit measures 26.5" long and 24.75" wide and would be located 6 inches from the side of the house and would be set back 3½ feet from the side property line, where 6 feet is required.

4. The proposed third floor dormer addition to the dwelling is appropriate given the fact that no increase in overall height is proposed, and the dwelling would still be in keeping with the existing size, scale, and character of the existing dwellings in the neighborhood.

5. The proposed location of the central air conditioning unit is also appropriate given the limited outdoor recreational space on the property and the lack of another practical conforming location. The proposed unit would also be screened by existing landscaping.

6. Based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact area properties and is consistent with the intent and purpose of zone plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that 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 N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Bradley Adams and Megan York is approved; 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.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the denial of the application of **Dr. Nitin Parekh & Smita Dharsi, 77 Inwood Road** was adopted, Mr. Haizel and Ms. English abstaining:

**WHEREAS**, Dr. Nitin Parekh and Smita Dharsi, owners of property at 77 Inwood Avenue, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c from **Montclair Code Section 347-46C** to expand the width of their driveway in order to create front yard parking on the westerly side of the driveway, from **Montclair Code Section 347-102B** to allow a width of less than 9 feet for the parking space, and from **Montclair Code Section 347-102C** to allow a driveway width less than 10 feet, on property designated as Lot 60 in Block 3706 on the Township tax map and located in the R-1 One-Family Residential Zone; and

**WHEREAS**, the applicant submitted a property survey, with the location of the driveway expansion and new parking area sketched by the applicant; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 21, 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 Residential Zone and contains a 2-story single family dwelling with an attached one-car garage on the westerly side of the dwelling. The subject property is located near the end of a dead-end street and measures 55 feet in frontage width and contains 7,722 feet in area.

2. The existing one-car garage is accessed by a driveway from Inwood Avenue that measures approximately 8.5 feet wide and 30 feet in length from the front property line to the front of the attached garage.

3. The plan calls for an expansion of the driveway width in a westerly direction along with the inclusion of the existing walkway on the easterly side of the driveway together as a new driveway/parking area. The applicants indicated that a widening of the curb opening is proposed.

4. The applicants indicated that the westerly expansion of the driveway measures approximately 3 feet and that the total width proposed is approximately 16 feet. The purpose for the proposed widening of the driveway is to accommodate front yard parking askew from the garage door. The applicants also indicated that, at times, up to 2 vehicles would be parked side by side in front of the garage and that the proposed configuration would allow them to independently maneuver vehicles on the driveway and in and out of the garage.

5. The westerly edge of the proposed driveway/parking area would be set back about 5 feet from the westerly side property and complies with the 4-foot side yard setback required for parking. The total width of 16 feet does not allow for the 9-foot

width required for parking and the 10-foot width required for a driveway for vehicular access to the garage.

6. The Board determined that the applicants failed to prove any hardship with relation to space on their property and failed to demonstrate that there are not conforming options for additional parking on their property. The Board also determined that the proposal is contrary to the purpose and intent of the zoning ordinance and Master Plan.

**WHEREAS**, the Board, based on the foregoing findings concluded that the applicants 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 applicants 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 Dr. Nitin Parekh and Smita Dharsi 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.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Regino and Teresa Colazzo, 45 Godfrey Road** was adopted, Mr. Haizel and Ms. English abstaining:

**WHEREAS**, Regino and Teresa Colazzo, owners of property at 45 Godfrey Road, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a westerly 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 17 in Block 1707 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 October 20, 2003, and a site plan, floor plan, and elevations prepared by John Collins, Architect, dated March 2006; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 21, 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 65 feet in width and approximately 8,955 square feet in area. The subject property contains a 1½-story single-family dwelling and a detached garage in the rear yard.

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, which is in an advanced state of disrepair. The plans indicate that the footprint of the garage measures 19 feet 4 inches in width by 19 feet 4 inches in length. The required side yard setback for the proposed garage is 6 feet.

3. The existing detached garage has westerly side yard setbacks of 3.47 feet and 3.08 feet measured to the westerly corners of the garage. The rear yard setback of the existing garage is a conforming 9.76 feet. The proposed garage would have the same setbacks that are described above. The plan indicates that a conforming height of 15 feet to the ridge on the roof is proposed for the garage and the applicants indicated that the height of the existing garage is similar to the proposed height.

4. The fact that the property contains a lawfully existing detached garage in the same location as the proposed garage justifies the granting of a variance for a deficient westerly side yard setback, and the proposed detached garage is consistent with other detached garages in the neighborhood and would not have a negative impact on the adjoining property to the west.

**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 Regino and Teresa Colazzo 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. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the denial of the application of **Alan and Gail Firkser, 36 Glenridge Parkway** was adopted, Mr. Haizel and Ms. English abstaining:

**WHEREAS**, Alan and Gail Firkser, owners of property at 36 Glenridge Parkway, 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)a** in connection with the installation of a central air conditioning unit on property designated as Lot 34 in Block 4406 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 Louis Puopolo III, dated March 18, 1998, with the location of the proposed unit marked by the applicants, 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 June 21, 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 and contains a 2½-story single-family dwelling and a detached garage in the rear yard. The subject property measures 60 feet in frontage width and approximately 9,560 square feet in area.

2. The applicants propose to locate a central air conditioning unit in the westerly side yard of the dwelling. The property survey indicates that the westerly side measures 4.09 and 4.08 feet measured to the westerly corners of the dwelling.

3. The proposed central air conditioning unit has dimensions of 30 inches by 34 and 15/16 inches. The applicants indicated that the unit would be 3 inches from the wall of the dwelling and would be 1 foot from the westerly side property line rather than the 6 feet that is required.

4. The applicants testified that proposed air conditioning units could not be placed in conforming locations on their property, such as the easterly side yard because the ground adjoining the home on that side of the dwelling is supported by a retaining wall that is not strong enough to support the unit, or the rear wall of the dwelling where the first floor windows of the dwelling are low, which would cause the unit to be visible from inside the dwelling.

5. The applicants also testified that that there is limited usable rear yard space on their property and that placing the units in the rear yard would impair their enjoyment of their rear yard and that the unit would be screened by existing shrubbery on the easterly side yard.

6. The Board determined that the applicants failed to demonstrate that there is no other practical location on the property for the air conditioning unit and that the applicants did not demonstrate any hardship with relation to space on their property.

**WHEREAS**, the Board, based on the foregoing findings concluded that the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variance 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 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 *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 Alan and Gail Firkser, for a variance to allow an westerly side yard setback 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.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the denial of the application of **Stephen Black and Mary Rex, 7 Glenridge Parkway** was adopted, Mr. Haizel and Ms. English abstaining:

**WHEREAS**, Stephen Black and Mary Rex, owners of property at 7 Glenridge Parkway, 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)a** in connection with the

installation of 2 central air conditioning unit on property designated as Lot 12 in Block 4407 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 Mid Atlantic Services, Inc., dated February 3, 1998, with the location of the proposed unit marked by the applicants, and specification sheets 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 June 21, 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 and contains a 2½-story single-family dwelling and a detached garage in the rear yard. The subject property measures 60 feet in frontage width and approximately 9,432 square feet in area.

2. The applicants propose to locate 2 central air conditioning units in the westerly side yard of the dwelling. The property survey indicates that the westerly side measures 5.8 feet at both westerly corners of the dwelling.

3. The proposed central air conditioning unit has dimensions of 35 inches by 29 inches. The applicants indicated that the units would be 12 inches from the wall of the dwelling and would be 21 inches from the westerly side property line rather than the 6 feet that is required.

4. The applicants testified that proposed air conditioning units could not be placed in conforming locations on their property, such as the easterly side yard because of their driveway and the location of a play area for their child, or the rear wall of the dwelling where a patio exist along the entire length of the rear wall.

5. The Board determined that the applicants failed to demonstrate that there is no other practical location on the property for the air conditioning units and that the applicants did not demonstrate any hardship with relation to space on their property.

**WHEREAS**, the Board, based on the foregoing findings concluded that the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variance 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 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 *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 Stephen Black and Mary Rex, for a variance to allow an westerly side yard setback 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.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Arie and Elaine Hochberg, 39 Porter Place** was adopted, as modified, Mr. Haizel and Ms. English abstaining:

**WHEREAS**, Arie and Elaine Hochberg, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a one story addition and deck onto their existing single family dwelling and to install a new kitchen in the basement of the dwelling to be utilized as a Passover kitchen on property designated as Lot 14 in Block 1203 and located in the R-O Mountainside Zone; and

**WHEREAS**, the applicants sought the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit a rear yard setback of 25.8 feet to the proposed addition and 19.6 feet to the proposed deck where a minimum of 30 feet is required pursuant to Montclair Code Section 347-33D.
2. A variance pursuant to *N.J.S.A. 40:55D-70d(1)* to install a second kitchen in the basement of the dwelling to be utilized as a Passover kitchen contrary to Montclair Code Section 347-29A.

**WHEREAS**, the applicants submitted a site plan dated February 14, 2005 and property survey dated April 5, 2006 prepared by Hansen Engineering as well as floor plans and elevations prepared by Lewis Brandt, Architect, dated December 29, 2005; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 21, 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 an interior lot and contains 127.05 feet of frontage and 25,456 sq. ft. in area and contains a two and one-half story single family dwelling and a one and one-half story detached garage located to the east of the dwelling.

2. The application contemplates a one-story addition, with a semi-circular shape on the easterly side of the dwelling which will contain part of an expanded kitchen on the first floor and an exercise room in the basement. A 6 foot by 13 foot deck is proposed at the easterly rear corner of the dwelling.

3. The existing dwelling has a nonconforming rear yard setback of 19.6 feet and the proposed rear yard setbacks of 25.8 feet to the new addition and 19.6 feet to the deck will not encroach any further than the preexisting nonconforming rear yard setback.

4. Based upon the lot configuration and location of the existing home, the strict application of the rear yard setback requirement results in peculiar and exceptional practical difficulties and undue hardship upon the property owners.

5. The applicants' proposal provides adequate light, air and open space and provides an aesthetic benefit consistent with the purposes of the Municipal Land Use Law.

6. The applicants propose to install a second kitchen in the basement to be utilized not more than 10 days a year as a Passover kitchen in conjunction with the use of the main floor of the house. The testimony established there would be only one kitchen in use at any given time in the house so that when the basement kitchen is in use, the kitchen on the main floor of the house would not be utilized.

7. The installation of the second kitchen in the basement with a separate entrance creates the need for the variance, however, the applicants represented it is not their intention to create a second dwelling unit and that the second kitchen would only be utilized as part of the use of the existing dwelling unit located in the remainder of the house.

8. Based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact area properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 N.J.S.A. 40:55D-70c(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicants 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).

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicants proved the requisite special reasons for the granting of this application 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.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within application of Arie and Elaine Hochberg for a rear yard setback variance and variance to install a kitchen in the basement is hereby approved 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."

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the denial of the application of **Ravi Srinivasan, 18 Bruce Road** was adopted, Mr. Haizel and Ms. English abstaining:

**WHEREAS**, Ravi Srinivasan, owner of property at 18 Bruce Road, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c from **Montclair Code Section 347-46C** to create a front

yard parking space along the easterly side of the driveway and from **Montclair Code Section 347-102B** in for a width of less than 9 feet and a length of less than 19 feet for the parking space, on property designated as Lot 60 in Block 3706 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 DAB Surveying, dated October 26, 2004, with the location of the new parking area sketched by the applicant; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 21, 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 Residential Zone and contains a 2½-story dwelling with an attached one-car garage on the westerly side of the dwelling. The subject property measures 77 feet in frontage width and contains 8,033 feet in area.

2. The existing one-car garage is accessed by a driveway from Bruce Road that is slightly more than 11 feet wide. No change is proposed to the existing curb opening on Bruce Road.

3. A parking space, measuring 8.75 feet in width by 17.5 feet in length is proposed along the easterly side of the driveway, between the front wall of the dwelling and Bruce Road.

4. The applicant indicated that the proposed configuration would allow he and his wife to independently maneuver vehicles on the driveway and in and out of the garage, that the proposed parking space would not encumber vehicular access to the garage, and that no more than 1 vehicle would be parked in the front yard.

5. The Board determined that the applicant failed to any hardship with relation to space on his property and failed to demonstrate that there are not conforming options for additional parking on his property. The Board also determined that the proposal is contrary to the purpose and intent of the zoning ordinance and Master Plan.

**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 Ravi Srinivasan 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.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Bill Graham, 112 Christopher Street** was adopted, Mr. Haizel and Ms. English abstaining:

**WHEREAS**, Bill Graham, owner of property at 112 Christopher Street, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *NJSA40:55D-70c* to allow a northerly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)**, a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)**, and a height greater than permitted pursuant to **Montclair Code Section 347-46A(1)**, in connection with the construction of a detached garage on property designated as Lot 23 in Block 4402 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 December 31, 1997, and a floor plan and cross section (elevation) with no preparer or date indicated; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 21, 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 62 feet in width and approximately 9,936 square feet in area. The subject property contains a 2½-story single-family dwelling and a detached garage in the rear yard, which has been damaged by a fallen tree and will be demolished.

2. The applicant proposes to construct a new detached garage in the same location as the existing detached garage, however with a slightly larger footprint. The property survey indicates that the footprint of the existing garage measures approximately 20 feet wide by 20 feet long. The survey also indicates that the existing garage has a nonconforming northerly side yard setback of 1.87 feet and 2.05 feet to the northerly side corners of the garage and a nonconforming rear yard setback of 3.17 feet and 3.07 feet to the rear corners of the garage. The required side and rear yard setback is 6 feet.

3. The plans indicate that the length of the garage would be enlarged by 2 feet and the width towards the south by 6 inches towards the front, and that that the footprint of the proposed garage measures 20 feet 6 inches in width by 22 feet in length. The same side and rear yard setback described above are proposed for the new garage.

4. At the hearing the applicant withdrew his request for a height of 15 feet 8 inches, thereby eliminating the request for a variance required from **Montclair Code Section 347-46A(1)** for a height greater than 15 feet.

5. The fact that the property contains a lawfully existing detached garage in the same location as the proposed garage justifies the granting of a variance for a deficient northerly side yard setback, however, the Board determined that the proposed northerly side yard setback should be enlarged from the 1.87 feet that exists at the northerly front corner of the garage to a minimum of 2 feet.

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

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

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within variance application of Bill Graham is hereby approved, subject to the following condition:

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

Chair Harrison stated that the Resolution for the application of **Kathleen Vandervoort, 35 Watchung Avenue** would be adopted at the end of the hearing.

Chair Harrison called the continuation of the application of **Wallwood Gardens, Inc., 400 Orange Road** and read the revised public notice in to the record. Robert Taylor, Esq., appeared as attorney for the applicant and described the modifications to the application. Mr. Taylor stated that the only witness he would call would be the Architect and that the testimony of the Professional Planner provided at the previous hearing would still be applicable to the modified plan. Mr. Taylor called Rocco Orlando, who was still under oath.

Marked into evidence was:

A-5 Rendered Landscape Plan, dated on a board, depicting the revised layout of the site

Mr. Orlando described the revised layout of the site. He stated that there is no change in number of dwelling units and that the height of the buildings was also not revised. He stated that the front yard setback on Pleasant Way has been improved from 14 feet at its closest point and an average of 18 feet to 18 feet at its closest and an average of 20.75 feet. He stated that the rear setbacks have been increased from 18 feet and 17 feet to 20 feet and 19 feet. He also stated that 23 parking spaces are provided, which may comply depending on the interpretation of the standards of the New Jersey Residential Site Improvement Standards, which may require up to 24 parking spaces.

Assistant Secretary Charreun stated that according the off-street parking requirements contained in the New Jersey Residential Site Improvement Standards, the site requires a total of 22 parking spaces if the two buildings containing 2 dwelling units are considered two-family dwellings, and a total of 24 parking spaces if those dwelling units are counted as townhomes, like the remainder of the dwelling units proposed. He also stated that the rear yard setback is actually 16 feet for the building fronting on Pleasant Way, not the 19 feet indicated by Mr. Orlando, which is due to the jog in the rear property line.

Mr. Orlando stated the parking area setback would be landscaped with arborvitae, although it is not depicted on the landscape plan. He stated that a new variance is required in that a maximum principal building coverage of 25 percent is permitted, while 30.8 percent is proposed. He also stated that all proposed fences would be revised to conform to the ordinance and that pole-mounted light fixtures are proposed at 8 feet in height at 9 locations on the site plan. He further stated that the total number of bedrooms proposed for the development has been reduced from 30 to

28, and that the originally proposed plan, which was denied by the Board earlier this year, had proposed 42 bedrooms. He continued by stating that the width of the two-way driveway from Orange Road has been reduced from 24 feet to 18 feet in width, and that a new egress only driveway is proposed onto Pleasant Way in order to improve traffic circulation.

The Board questioned Mr. Orlando.

Chair Harrison called for questions from the public.

Ethel Booker, 24 Ward Place, inquired about the total number of rooms within the different types of dwelling units proposed. She also asked whether certain rooms like family rooms could be used as bedrooms.

James Dargan, 391 Orange Road, asked how many of the proposed units would front on Ward Place. He also inquired about the driveway widths and how trash would be collected from the property.

Richard Williams, 22 Ward Place, asked whether a plan with a conforming residential density has been considered.

James Dargan, 391 Orange Road, asked about the type of fencing that is proposed and whether it would comply with the zoning requirements for corner lots.

Mr. Taylor stated that he had no questions and no further witnesses.

Chair Harrison called for public comment.

Ethel Booker, 24 Ward Place, was sworn and stated her opposition to the application. She stated that the proposed development is out of scale with the neighborhood. She also stated the area contains other large properties and that approval of this application would set a precedent that would have a detrimental effect on the neighborhood.

Richard Williams, 22 Ward Place, was sworn and stated his opposition to the application. He stated that the property should only be developed with a conforming residential density. He stated that the congestion and traffic that would be brought to the neighborhood by the development as proposed would have a negative effect on the community.

The Board questioned Mr. Williams.

Dr. Renee Baskerville, 371 Orange Road, was sworn and stated her opposition to the application. She stated that the R-1 zoning of the property and the area should be preserved. She stated that the efforts to revise the plan do not alleviate the problems associated with a development of the scale proposed.

James Dargan, 391 Orange Road, was sworn and stated his opposition to the application.

Janis Zadel, 79 Pleasant Way, was sworn and stated her opposition to the application. She stated that only a development consisting of single-family dwellings should be considered for the site.

Sybil Smith-Darlington, 67 Pleasant Way, was sworn and stated her opposition to the application. She stated that the development as proposed would have far too great of a negative impact on the neighborhood to be considered.

Tracy Phalon, 185 Willowdale Avenue, was sworn and stated her opposition to the application. She stated that she has prepared an exhibit to illustrate the scale of the proposed buildings, as they were proposed prior to the most recent revisions.

Marked into evidence was:

O-1 A copy of the Sanborn Map and Tax Map, depicting the subject property and other properties in the neighborhood

Ms. Phalon stated that she has researched the zoning ordinance and that the proposed development would need variances even if the lot was zoned for multifamily development, which further illustrates its inappropriateness in an R-1 Zone.

Mr. Taylor gave his closing statement. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was denied.

Chair Harrison stated that the Resolution for the application of **Kathleen Vandervoort, 35 Watchung Avenue** would be adopted at the next meeting of the Board.

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