

**MINUTES OF THE BOARD OF ADJUSTMENT
SEPTEMBER 19, 2001**

PRESENT: Chair Harrison, Ms. Costello, Mr. Fleischer, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey, Mr. Susswein; also, Michael Sullivan, Esq., Ms. Kadus, Secretary and Donald Sammet, Assistant Secretary

ABSENT: Mr. Chapman and Ms. Brooks

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

On motion by Mr. Fleischer, seconded by Ms. Costello, the following Resolution memorializing the approval of the variance application of **K. Webster Investment Company, LLC, 52-54 Fairfield Street** was adopted:

WHEREAS, K. Webster Investment Company, L.L.C., as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70d* to allow a real estate sales office to occupy a portion of the first floor and the entire second floor contrary to Montclair Code Section 347-90D on property designated as Lot 26 in Block 3403 on the Township tax map and located in the N-C Neighborhood Commercial Zone; and

WHEREAS, at a public hearing held on July 18, 2001, in response to a request for an interpretation, the Board determined the proposed real estate sales office is a business office rather than a retail use and requires a variance from Section 347-90D; and

WHEREAS, the applicant submitted a site plan, elevations and floor plans prepared by Sionas Architecture, P.C. dated June 30, 1999 and bearing a final revision date of May 11, 2001; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 15, 2001 at which time it was established that notice of this application had been published and that property owners within 200 feet of the subject property had properly been served with notice; and

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

1. The gross floor area of the first and second floors total 5,454 square feet. The proposed gross floor area to be devoted to the real estate sales office, which is a permitted use in the N-C Zone, consists of 1,223 square feet on the first floor and 2800

square feet on the second floor for a total of 4,023 square feet (73.8%). The gross floor area devoted to the existing retail use is 1,431 square feet (26.2%).

2. The real estate sales office use will have a storefront, will generate substantial pedestrian walk-in trade and more than a typical office, will draw additional customers to the area, and thus, is consistent with the intent and purpose of the zone plan and master plan.

3. The real estate sales office does not contravene the purpose of Montclair Code Section 347-90D, which is to prevent so-called "stilt" buildings devoid of ground floor use other than parking.

4. The proposed site, with existing on-site parking, adjacent to a municipal parking lot and at a location not in the heart of the N-C Zone, is particularly suitable for the proposed real estate sales office and encourages appropriate use of the land consistent with *N.J.S.A. 40:55D-2a*.

5. The proposed use will compliment the mix of existing businesses in the neighborhood and provides sufficient space in an appropriate location for the proposed real estate sales office consistent with *N.J.S.A. 40:55D-2g*.

6. The proposed use does not present any detriment to surrounding properties, which are already in commercial use, and is consistent with the various real estate sales offices that currently operate harmoniously in the various N-C Zones.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant 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 K. Webster Investment Company, L.L.C., for a variance to permit a real estate sales office, is hereby approved subject to the following condition:

1. The gross floor area devoted to the real estate sales office shall not exceed 75% of the commercial area of the building.

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. Gallardo, the following Resolution memorializing the approval of the variance application of **Carol Cotugno, 55 South Fullerton Avenue** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, Carol Cotugno, as owner, did make application to the Board of Adjustment of the Township of Montclair to convert a single-family residence into three residential units on property designated as Lot 14 in Block 3107 on the Township tax map and located in the OR-4 Three Story Apartment and Office Building Zone; and

WHEREAS, the applicant sought site plan approval and variances as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(3)* for failure to provide access to all dwelling units through a common entrance as required by Montclair Code Section 347-54B(7).

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow a front yard setback from Roosevelt Place of 14.8 feet to the building addition where a minimum of 25 feet is required pursuant to Montclair Code Section 347-45B(2).

3. A variances pursuant to *N.J.S.A. 40:55D-70c* to permit an off-street parking area to be located in the front yard contrary to Montclair Code Section 347-58D.

4. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow less than the required 4 foot setback for an off-street parking area contrary to Montclair Code Section 347-104.

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Gerard Valk, Architect, revised through May 21, 2001 and a property survey prepared by Fletcher Engineering dated March 16, 2001; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on September 5, 2001, 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 application contemplates converting an abandoned unoccupied one-family house into three residential units consisting of two 3-bedroom units and one 1-bedroom unit.

2. The application complies with all of the conditional use standards applicable to the conversion except Section 347-54B(7) which requires access to all dwelling units shall be provided by a common entrance. Two of the units shall have access via an entrance facing Roosevelt Place and the remaining unit shall have access via an entrance facing South Fullerton Avenue. The Board determined the deviation is necessary in order to preserve certain historic characteristics of the interior consistent with the purposes of the Municipal Land Use Law.

3. The existing building is nonconforming with respect to the front yard setback from Roosevelt Place. The proposed addition will maintain the existing building line and not encroach any further than the preexisting nonconformity and is appropriate given the structure lawfully existing on the site.

4. The applicant's parking plan proposes 10 exterior spaces and 4 garage spaces for a total of 14 spaces. The plan includes 2 parking spaces located in the front yard of Roosevelt Place and fails to provide the 4 foot setback along the southerly side of the property. The applicant failed to cite any purposes of the Municipal Land Use Law which would be advanced by granting the variances related to the parking areas and since a conforming parking plan could be provided, the applicant is unable to prove a hardship related to the physical characteristics of the land.

5. The applicant failed to provide any detail regarding storm water drainage, lighting, landscaping, or location of trash and recycling receptacles and with the applicant's consent, site plan review was deferred.

WHEREAS, the Board, based on the foregoing findings, concluded that, with respect to permitting access to dwelling units through other than a common entrance, the applicant 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.

WHEREAS, the Board, based on the foregoing findings concluded that, with respect to the building setback from Roosevelt Place, the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 *N.J.S.A. 40:55D-70c(1)*; and

WHEREAS, the Board, based on the foregoing findings concluded that, with respect to the variances related to the parking layout, 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, with respect to the variances related to the parking layout, 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 Carol Cotugno, for variances pursuant to *N.J.S.A. 40:55D-70c(1)* and (2) to allow parking within the Roosevelt Place front yard and less than the required setback for an off-street parking area are hereby denied; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Carol Cotugno for variances to permit access to dwelling units through other than through a common entrance and building setback are hereby approved subject to the following conditions:

1. All outstanding taxes shall be paid.
2. On-site parking spaces shall not be rented for use by parties other than the occupants of the building.
3. The applicant shall redesign the parking area to conform to the Zoning Ordinance except that the Board may consider a request for a waiver to permit less than the 18 foot driveway width required by Montclair Code Section 281-91.
4. No parking shall be permitted in the front yard of Roosevelt Place which shall be adequately landscaped.
5. The applicant shall obtain site plan approval.

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 announced the continuation of the site plan application of **Montclair Community Church 143 Watchung Avenue**. Grant Gille, Esq., appeared as attorney for the applicant. Mr. Gille described the history of the application including the granting of the use variance in March of 2001. He stated that the applicant is currently seeking site plan approval.

Mr. Gille called Dennis Mylan, Architect, Mylan Architectural Group, who was still under oath.

Marked into evidence was:

- A-7 Set of Plans prepared by the Mylan Architectural Group on 11 pages, dated September 6, 2001
- A-8 Color version of Sheet SP-1 prepared by the Mylan Architectural Group, on a board, dated September 6, 2001.

A-9 Height and Volume Study prepared by the Mylan Architectural Group, on a board, dated September 6, 2001.

Mr. Mylan described the changes made to the site plan since the last hearing. He stated that the western façade of the building has been stepped in to help avoid the appearance of a large mass of building wall, that the proposed addition has been set in 2 feet further from the westerly property line and that the rear yard setback has been increased to 40 feet. Mr. Mylan also stated that he has lowered the height of the building so that the main entrance to the building is at grade. He continued by stating that the building's square footage has been reduced from 7,417 to 6,825, and that the hyphen connecting the buildings was reduced from 41 feet deep to 31 feet deep. Mr. Mylan stated that the loop driveway would remain but that the front yard parking area has been removed, and a variance is no longer requested.

Mr. Mylan described the proposed lighting and stated that it would be shielded from adjacent properties. He also reviewed the comments made by Board Engineer Watkinson and agreed to meet all of Mr. Watkinson's recommendations. He continued by stating that additional parking is not proposed, and therefore a variance is requested for a parking deficiency, since the neighbors do not want parking on the site since it would cause a negative visual impact and harm the existing character of the neighborhood.

The Board questioned Mr. Mylan.

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

Carl Herman of 135 Watchung Avenue asked when Mr. Mylan had last met with the neighbors, how many people could the site accommodate at any one time and where trash receptacles would be located.

Bob Granger of 25 Fairfield Street asked what landscaping was proposed along the southerly property line.

Jeff Rodgers, Associate Pastor, Montclair Community Church, asked what additional costs are incurred as part of building the lower floor of the addition below ground.

Chair Harrison called for public comment.

Carl Herman of 135 Watchung Avenue was sworn. Mr. Herman stated that the Church and neighbors have not met enough to discuss the project and come to a compromise. He also stated that what is proposed is too intensive for the site.

Marked into evidence was:

O-1 Letter to Pastor Banghart, dated March 28, 2001.

O-2 Letter to Pastor Banghart, undated.

Mr. Gille questioned Mr. Herman.

Paul deKoninck, 134 Watchung Avenue was sworn. He stated that single-family home zoning regulations are difficult to apply to a church property and that the proposed church covers a larger percentage of the lot than single-family homes in the neighborhood.

Rob Rawley, 29 Fairfield Street was sworn. He stated that the building is too high and massive for the site.

Jonathan Hyman of 27 Fairfield Street was sworn. He stated that he is concerned with light and sound pollution from the site and that the proposed use is too intensive for the site.

Neil Broham of West Orange and a congregation member was sworn. He stated that the neighbors' concerns were addressed by the Church.

Mr. Haizel joined the meeting.

Nany Pi-Sunyer, Watchung Avenue was sworn. She stated that a play area is needed on the site, that the existing church building should be demolished and a completely new church should be designed and built.

Evelyn Hon of Verona and a congregation member was sworn. She stated that the church has provided guidance to children and their parents and that the proposed facility is sorely needed.

Joseph Fields, Youth Pastor, was sworn. He stated that the children playing on the site need to be controlled but that they have nothing to do with the proposed site plan.

Mathew Asino of Bloomfield and a congregation member was sworn. He stated that he recognizes the neighbors' concerns, but that the Church has done its best to accommodate them.

Ms. Susan Baumbach, 103 Gordonhurst Avenue, was sworn. She stated that the church has tried not to disrupt the neighborhood.

Ms. Miriam Fields of Cedar Grove and a congregation member, was sworn. She stated that her children look forward to going to the church and that children playing outdoors are told to be good neighbors.

Mr. Bob Granger, 25 Fairfield Street, was sworn. He stated that the planned addition is too big for the site.

Mr. Jeff Rogers, of Plainfield and a congregation member, was sworn. He stated that the church's congregation numbers around 300.

Ms. Jessica deKoninck, 134 Watchung Avenue, was sworn. She stated that the neighborhood has conceded the issue of use but that the proposed addition is too large for the site.

Ms. Maya Hall of Nutley and a congregation member, was sworn. She stated that churches can contribute greatly to a neighborhood.

Mr. Doug Pitarski of Bloomfield and a congregation member, was sworn. He stated that the proposed lot coverage is not excessive.

Ms. Robin Mitchell of West Orange and a congregation member, was sworn. She stated that the church has invested a lot of time and money into these plans.

Ms. Pat Braun, 136 Watchung Avenue, was sworn. She stated that the size of the proposed addition is too large and that the neighborhood has already conceded to noise and stressed parking availability around the church.

Ms. Joan Budd of Bloomfield and a congregation member, was sworn. She stated that the circular driveway proposed will ease the drop-off of people going to the church and that the proposed handicapped spaces are needed.

Ms. Claudia Vianella, 33 Fairfield Street, was sworn. She discussed a memorandum to the Board describing why a use variance should not be granted.

Mr. Jim Rodgers, 26 Fairfield Street, was sworn. He stated that property values would be negatively effected if the plan was approved.

Ms. Guida of Bloomfield and a congregation member, was sworn. She stated that noise impacts could be mitigated, that the proposed addition meets all setback requirements and that the proposed height of the addition has been reduced.

Ms. Gina Brisalara of Hasbrouck Heights and a congregation member, was sworn. She stated that the proposed church addition can not get any smaller and still accommodate the needs of the congregation.

Mr. Gille summarized the application.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, it was resolved to approve the site plan and variance requests, Ms. Rock-Bailey voting in the negative, subject to the following conditions:

1. Absorption materials shall be installed on building walls adjacent to areas where condensers are located on the ground which shall also be shielded by the installation of a three foot berm and arborvitae.
2. The large window located on the south façade shall be translucent so that no visible light sources can be seen through the window.
3. The applicant shall install additional evergreens between the proposed addition and the southerly property line.
4. Outdoor lighting shall be limited only to the front façade and shall not exceed a "soft glow".
5. No outdoor recreational use shall be permitted after dark or 7:00 p.m., whichever is earlier.
6. The Church shall direct parishioners to park, whenever possible, in public parking lots within 1,000 feet of the property and that parishioners not block or turn around in the driveways of neighbors.
7. The Planning Department shall issue a letter to the County on behalf of the Board recommending the driveway cut be 12 feet rather than 15 feet as proposed.
8. Any outdoor use of the property shall be fully supervised by Church personnel.
9. If any existing trees (not shown to be removed on the plan) die within two years of completion of construction, they shall be replaced by an equivalent tree.
10. The applicant shall adhere to conditions 1 through 4 and 7 contained in the Board of Adjustment's Engineer's memo dated September 19, 2001.
11. The applicant shall obtain any necessary road opening permits.
12. Exterior lighting shall not be on after 11:00 p.m.
13. The existing fire escape on the building shall be removed.
14. The existing information sign shall be removed.
15. The existing spotlights that shine on the building shall be removed.
16. The applicant shall obtain approval from the Essex County Planning Board.

17. The applicant shall obtain Soil Conservation District approval.
18. As stipulated by the applicant, no outside groups shall be allowed to use the property.
19. The applicant shall be responsible for posting inspection fees as required by the Board Engineer.

Secretary Kadus announced the postponement of the variance application of **Howard and Stacie Mintz, 53 Melrose Place** to the October 17, 2001 meeting of the Board since insufficient notice was provided by the applicants.

Chair Harrison announced the variance application of **Kanwaljit and Jennifer Bakshi, 66 Stonebridge Road**. Calvin Trevenen, Esq., appeared as attorney for the applicants. Mr. Trevenen described the property and the variance requested. Mr. Trevenen called Mr. Bakshi, applicant and owner, he was sworn. Mr. Bakshi stated that a subdivision was approved immediately adjacent to his property which resulted in his lot becoming a corner lot. He stated that the proposed development would substantially impact the privacy that he currently enjoys in his backyard. He also stated that the proposed 3 car garage will maintain the integrity and character of the house and will provide screening for his property from Stonebridge Court.

The Board questioned Mr. Bakshi.

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

Mr. Trevenen called Paul Sionas, Professional Planner and Architect, Sionas Architecture, P.C., he was sworn. Mr. Sionas described the proposed design of the garage. He also described the front yard setback variance which was requested. Mr. Sionas stated that the existing garage would be converted to a family room. He also stated that the proposed driveway location is an improvement over the location of the existing driveway in that it provides a safer access point to the street.

Mr. Sionas stated that the proposed garage is in keeping with the existing setback on Stonebridge Court and would not encroach into the rear yard of the existing dwelling. He stated that the applicant faces a hardship which exists due to the location of the existing structure on the property and the creation of the new road, Stonebridge Court. He also stated that the driveway would be paved with either asphalt or paving stones. Mr. Sionas stated that a landscape plan is being designed and will help to screen the driveway.

The Board questioned Mr. Sionas.

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

Mr. Trevenen summarized the application.

The Board discussed the application.

On motion by Ms. Costello, seconded by Ms. Rock-Bailey, it was resolved to approve the variance request, Chair Harrison, Mr. Fleischer and Mr. Susswein voting in the negative.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the September 5, 2001** special meeting were adopted as modified, Ms. Rock-Bailey abstaining.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **Len and Donna Cerame, 266 North Mountain Avenue** was adopted, Ms. Rock-Bailey and Mr. Haizel abstaining:

WHEREAS, Len and Donna Cerame, owners of property at **266 North Mountain Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variances 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 construction of a second story addition to their existing detached two-car garage on property designated as Lot 8 in Block 603 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted elevations and a site plan prepared by Susan Chandler, Architect, dated July 25, 2001, and a property survey prepared by Shepard & Shepard, Inc., dated October 30, 1995; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 5, 2001 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 measuring approximately 8,010 square feet in size and contains a 2 ½ story single-family dwelling.

2. The applicants' proposal is to construct a second story addition to their existing detached two-car garage in order to accommodate a workspace for the owner/applicant.

3. The workspace will be utilized for the painting of samples which the owner/applicant will present to clients. Furthermore, the workspace is not for the actual creation of a final work product which will take place on a client's premises.

4. Large quantities of paint and painting supplies will not be stored on the premises.

5. The second story addition is in line with the the existing side wall of the garage, a further encroachment into the side yard is not proposed, and all height requirements will be met.

6. A deck proposed off the rear of the garage will meet all height and setback requirements.

7. It is not the applicants' intent to convert the second story garage addition into a residential dwelling unit.

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(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 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 Len and Donna Cerame for a variance pursuant to N.J.S.A. 40:55D-70c to construct a second story addition to their detached garage is hereby approved subject to the following conditions:

1. The applicant shall meet all requirements of the Township of Montclair Home Occupation Ordinance, Montclair Code Section 347-31E.
2. All paints shall be stored in a fire-proof storage cabinet.
3. The proposed porch shall meet all setback requirements of the Zoning Ordinance.
4. The garage shall not be used as a dwelling unit.

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. Gallardo, the following Resolution memorializing the approval of the variance application of **George and Phyllis Attisano, 449 Valley Road** was adopted, Ms. Rock-Bailey 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 variances pursuant to NJSA40:55D-70c to allow for a side yard setback less than that required pursuant to **Montclair Code Section 347-45C(2)**, a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(2)** and a rear yard setback less than that required pursuant to **Montclair Code Section 347-45D** in connection with the construction of additions to 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 elevations and a site plan prepared by Edmundo Lopez, Architect, received in the Planning Department on May 29, 2001, and a property survey prepared by EKA Associates, dated June 23, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 5, 2001 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 measuring approximately 6,719 square feet in size and contains a 2 story single-family dwelling.

2. The applicants' proposal is to construct three separate additions to their single-family dwelling in order to accommodate expanded bedrooms and an expanded kitchen facility.

3. The lot is irregularly shaped and the existing dwelling has non-conforming rear-yard, side-yard and front-yard setbacks.

4. The addition on the northerly side which is to accommodate an expanded dining room and expanded kitchen and bath is parallel to the existing side wall of the dwelling and a further encroachment into the side yard is not proposed.

5. The addition on the easterly side which is to accommodate an expanded kitchen and new second story bedroom presents a minimal intrusion into the existing rear yard setback deficiency and is warranted due to the irregularly shaped lot and location of the existing dwelling on the lot.

6. The addition on the westerly front yard which fronts on Bruce Road and will accommodate an expanded bedroom and study will be constructed on top of an existing garage and a further encroachment into the front yard setback requirement is not proposed.

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 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 N.J.S.A. 40:55D-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 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 variances pursuant to N.J.S.A. 40:55D-70c to construct additions to their single-family dwelling are hereby approved,

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

Chair Harrison announced the variance application of **XM Satellite Radio, Inc., 10 Crestmont Road**. Stephen Aspero, Esq., appeared as attorney for the applicant. Mr. Aspero described the application and variance requested to install telecommunications antennas and equipment cabinets on the roof of a condominium building. Mr. Aspero called Michael Riley, Engineer, LCC International, he was sworn. Mr. Riley stated that a repeater station is proposed to augment the existing satellite signal.

Mr. Aspero called Petronillo Cailiban, RF Engineer, he was sworn. Mr. Cailiban stated that the proposed use falls below FCC and State regulations in regard to radiation exposure.

Mr. Aspero called John McDonough, Professional Planner, Herbst & Muschiano, he was sworn. Mr. McDonough described the variances requested. He also described the conditions set forth in the Township's Telecommunications Ordinance and stated that only one condition was not met, that being that the height of the antenna exceeds the height of the structure. He stated that antennas would be painted to match the building's color and that equipment cabinets would be located inside the building.

Mr. McDonough stated that the visual impact of the antenna would be negligible.

Marked into evidence was:

A-1 Photographs

A-2 Photographs

Mr. Cailiban stated that alternate sites were considered in Montclair, but they were rejected as they did not meet adequate RF criteria for the installation of the antennas.

Mr. McDonough described the use as providing a public benefit and that only one antenna is proposed which will provide only a minimal visual impact. He stated that this is a permitted use in the zone and that there is no negative impact on public health.

Mr. Cailiban stated that the site is at a major geographical location and is appropriate for the installation of the antennas.

The Board questioned Mr. Reilly, Mr. Cailiban and Mr. McDonough.

Marked into evidence was:

A-3 Map of existing satellite radio coverage

Chair Harrison called for questions and comments from the public.

Mr. John-Pierre Naegeli, Highland Avenue asked if the proposed antennas would interfere with other radio signals.

The Board discussed the application.

Due to the late hour and comments received from the Board, the applicant decided to revise their plans and return to the Board at the October 17, 2001 meeting.

The meeting adjourned.