

MINUTES OF THE BOARD OF ADJUSTMENT
September 20, 2006

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

ABSENT: Mr. Flood and Mr. Haizel

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

Chair Harrison stated that the minutes of the Minutes of the May 17, 2006 regular meeting would be reviewed at a later point in the meeting.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of The Montclair Community School, 149 Forest Street was adopted as modified, Mr. Whipple abstaining:

WHEREAS, The Montclair Community School did make application to the Board of Adjustment of the Township of Montclair for variances, waivers and site plan approval in connection with its proposal to utilize the one-story section at the front of the subject building as an archive, conference room and classroom; and

WHEREAS, the applicant sought the following relief:

1. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit an aggregate site area of the school, in addition to the area of the site covered by buildings of less than 250 square feet per student contrary to Montclair Code Section 347-12A(1).
2. Variances pursuant to N.J.S.A. 40:55D-70d(3) to permit a school on property with a lot area of 0.103 acres and street frontage of 30 feet, whereas a lot area of 1.75 acres and street frontage of 300 feet is required pursuant to Montclair Code Section 347-12A(3).
3. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit a school on a lot that has frontage on a street having a paved width of 32 feet, whereas 35 feet is required pursuant to Montclair Code Section 347-12A(4).
4. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit a school on a lot with no driveways, whereas two separate driveways are required pursuant to Montclair Code Section 347-12A(6).

5. Variances pursuant to N.J.S.A. 40:55D-70d(3) to permit side yard setbacks of 2 feet and 3 feet, a rear yard setback of 75 feet, and a front yard setback of 1 foot, whereas a minimum side yard setback of 50 feet, a minimum rear yard of 100 feet and a minimum front yard of 25 feet is required pursuant to Montclair Code Section 347-12A(7).

6. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit a school building with no play area, whereas play areas shall be set back a minimum of 50 feet from any street or property line pursuant to Montclair Code Section 347-12A(8).

7. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit no on-site parking, whereas one space for every full-time or full-time equivalent staff member or employee, one space for every 4 students eligible to drive, and visitor parking at a rate of 2 spaces per elementary and intermediate classroom is required pursuant to Montclair Code Section 347-12A(9).

8. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit 37% building coverage, whereas a maximum building coverage of 25% is permitted pursuant to Montclair Code Section 347-12A(11).

9. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit no parking areas or driveways, whereas parking areas and driveways are required to be setback at least 15 feet from property lines with landscaping pursuant to Montclair Code Section 347-12A(12).

10. A waiver from the requirement to submit a parking study in connection with site plan approval pursuant to Montclair Code Section 347-12A(13).

11. Waivers from the requirements to submit a traffic study, landscaping plan and play area plan in connection with site plan approval pursuant to Montclair Code Section 347-12B.

WHEREAS, the applicant submitted a property survey prepared by Farro Brothers dated December 1960, and a floor plan of the proposed classroom space; and

WHEREAS, this matter came to be heard at a special meeting of the Board of Adjustment held on August 2, 2006 and a regular meeting of the Board of Adjustment held on August 16, 2006, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is located in the R-2 zone, which permits public and private schools as a conditional use. The lot has an area of 0.103 acres and is across the street from the existing Montclair Community School at 65 Chestnut Street. It is developed with a mixed commercial/residential use building.

2. The applicant proposes to convert the one-story section at the front of the building measuring 454 square feet from commercial space to archive, conference room and classroom use.

3. The applicant testified that the need for additional classroom space is due to the overcrowding of The Montclair Community School. The proposal is made to accommodate the students already enrolled and will not result in an increase in the number of students and staff.

4. The subject property is located across the street from the principal school building located at 65 Chestnut Street. The Board determined that use of the property for classroom use would require students to cross a heavily trafficked street and represents a substantial safety hazard. In addition, student use of the property would represent a further incursion on the R-2 Zone and would adversely impact area properties.

5. The applicant has requested several variances in connection with its application. The applicant's proposal, subject to the conditions below, will be essentially an administrative use consistent with past usage of the property. In addition, the property is already developed with an existing structure, and compliance with the conditional use requirements of the Code is not possible.

6. The conversion of the subject space, as limited however, will have little or no impact on the zone plan or zoning ordinance. The property is already developed and expansion of the existing structure is not contemplated. Furthermore, the proposed use is an inherently beneficial use and a permitted conditional use within the zone, whereas the existing commercial use is not a permitted use within the zone. The proposed use is less intense than the existing use, and will not cause a substantial detriment to the public good.

7. The requested waivers relating to submission of a parking study, traffic study, landscaping plan and play area plan are reasonable and consistent with the intent and purpose of the Site Plan Ordinance and submission would be impracticable and unnecessary for a project of such limited scope.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant satisfied the requisite special reasons for 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 The Montclair Community School for site plan approval, variances from the conditional use provisions of the Code and waivers is hereby approved subject to the following conditions:

1. Any signage installed shall conform to the Ordinance requirements.
2. This approval is limited to school related uses in conjunction with the school use at 65 Chestnut Street that do not involve pupils on the premises.
3. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

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

Ms. Cockey joined the meeting.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **The Montclair Community School, 152 Forest Street** was adopted, Ms. Cockey and Mr. Whipple abstaining:

WHEREAS, The Montclair Community School did make application to the Board of Adjustment of the Township of Montclair for variances, waivers and site plan approval in connection with its proposal to utilize the first floor of the subject property as a classroom for music instruction on property designated as Lot 10 in Block 3302 on the Township Tax Map and located in the R-2 Two-Family Residential Zone; and

WHEREAS, the applicant sought the following relief:

1. Variances pursuant to N.J.S.A. 40:55D-70d(3) to permit a school on property with a lot area of 7,637 square feet and street frontage of 50 feet, whereas a lot area of 1.75 acres and street frontage of 300 feet is required pursuant to Montclair Code Section 347-12A(3).
2. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit a school on a lot that has frontage on a street having a paved width of 32 feet, whereas 35 feet is required pursuant to Montclair Code Section 347-12A(4).
3. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit a school on a lot with no driveways, whereas two separate driveways are required pursuant to Montclair Code Section 347-12A(6).

4. Variances pursuant to N.J.S.A. 40:55D-70d(3) to permit side yard setbacks of 3 feet and 7 feet, a rear yard setback of 54 feet, and a front yard setback of 1 foot, whereas a minimum side yard setback of 50 feet, a minimum rear yard of 100 feet and a minimum front yard of 25 feet is required pursuant to Montclair Code Section 347-12A(7).

5. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit an outdoor play area at the rear property line, whereas a minimum setback of 50 feet is required pursuant to Montclair Code Section 347-12A(8).

6. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit no on-site parking, whereas one space for every full-time or full-time equivalent staff member or employee, one space for every 4 students eligible to drive, and visitor parking at a rate of 2 spaces per elementary and intermediate classroom is required pursuant to Montclair Code Section 347-12A(9).

7. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit 40% building coverage, whereas a maximum building coverage of 25% is permitted pursuant to Montclair Code Section 347-12A(11).

8. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit no parking areas or driveways, whereas parking areas and driveways are required to be setback at least 15 feet from property lines with landscaping pursuant to Montclair Code Section 347-12A(12).

9. A waiver from the requirement to submit a parking study in connection with site plan approval pursuant to Montclair Code Section 347-12A(13).

10. Waivers from the requirements to submit a traffic study, landscaping plan and play area plan in connection with site plan approval pursuant to Montclair Code Section 347-12B.

WHEREAS, the applicant submitted a property survey prepared by Troast Surveying Associates, and a floor plan of the proposed classroom space; and

WHEREAS, this matter came to be heard at a special meeting of the Board of Adjustment held on August 2, 2006 and a regular meeting of the Board of Adjustment held on August 16, 2006, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is located in the R-2 zone, which permits public and private schools as a conditional use. The lot has an area of 7,637 square feet and is adjacent to the existing Montclair Community School at 65 Chestnut Street. It is developed with a mixed commercial/residential use building.

2. The applicant proposes to convert the northern 600 square feet of commercial space located on the first floor of the building to be utilized in conjunction with the existing Montclair Community School. 350 square feet would be dedicated for a music studio that could accommodate approximately 10 students, and the remainder of the space would be dedicated for storage and office use.

3. The applicant testified that the need for additional classroom space is due to the overcrowding of The Montclair Community School. The proposal is made to accommodate students already enrolled and will not result in an increase in the number of students or staff. The use of classroom space at the subject property is a logical solution to the overcrowding, as it is adjacent to the principal school building.

4. The applicant has requested several variances in connection with its application. In this regard, this is a unique application in that the application is being made for an auxiliary classroom to the principal school located at 65 Chestnut Street. In addition, the property is already developed with an existing structure, and compliance with the conditional use requirements of the Code is not possible. Additionally, the existing structure is not suitable for conversion to residential use.

5. The conversion of the subject space to classroom use will have little or no impact on the zone plan or zoning ordinance. The property is already developed and expansion of the existing structure is not contemplated. Furthermore, the proposed classroom use is an inherently beneficial use and a permitted conditional use within the zone, whereas the existing commercial use is not a permitted use within the zone. The proposed use is less intense than the existing use, and will not adversely impact area properties.

6. The requested waivers relating to submission of a parking study, traffic study, landscaping plan and play area plan are reasonable and consistent with the intent and purpose of the Site Plan Ordinance and submission would be impracticable and unnecessary for a project of such limited scope.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant satisfied the requisite special reasons for 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 The Montclair Community School for

site plan approval, variances from the conditional use provisions of the Code and waivers is hereby approved subject to the following conditions:

1. Any signage installed shall conform to the Ordinance requirements.
2. As stipulated by the applicant, the use of the property, as approved, shall be utilized in conjunction with the school use at 65 Chestnut Street.
3. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

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. Fleischer, the following Resolution memorializing the approval of the application of **Terence Cummings, 45 Irving Street** was adopted, Ms. Cockey abstaining:

WHEREAS, **Terence Cummings**, owner of property at **45 Irving Street**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to permit a front yard setback and a rear yard setback less than required pursuant to **Montclair Code Section 347-51**, in connection with a proposed addition to a dwelling on property designated as Lot 1 in Block 3005 on the Tax Map of the Township of Montclair and located in the R-2 Two-Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Clark Surveying & Mapping Co., dated April 25, 2000, and a plot plan, a floor plan, and elevations, prepared by Edmundo Lopez, Architect, P.C., dated June 6, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 16, 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 Irving Street and Lexington Avenue and is located in the R-2 Two Family Residential Zone. The subject property contains a 2½-story single-family dwelling and a detached garage at the rear of the lot that is accessed by a driveway from Lexington Avenue. The subject property measures 60.18 feet along the frontage on Irving Street, 153.53 feet along the frontage on Lexington Avenue, and contains 8,002 square feet in lot area.

2. A 2½-story addition is proposed at the rear of the dwelling that would contain a new kitchen and mudroom on the first floor, and a master bedroom and master bathroom on the second floor. A one-story section is proposed that would contain a breakfast room attached to the new kitchen.

3. The average front yard setback of the 2 nearest principal structures on Lexington Avenue is approximately 7.33 feet; therefore, a front yard setback of 25 feet is required from Lexington Avenue. The existing dwelling has a nonconforming front yard setback of 10.75 feet in the Lexington Avenue front yard at its closest point and no part of the proposed additions are located closer than the existing dwelling to Lexington Avenue.

4. The required rear yard setback for the subject property is 45.3 feet, which is equal to 30 percent of the lot depth. A lesser rear yard setback of 43 feet, as measured to the one-story section of the addition, is proposed.

5. Based on the front yard setback of the 2 nearest dwellings on Lexington Avenue and the position of the dwelling on the subject property, the proposed front yard setback from Lexington Avenue can be approved. The rear yard setback is acceptable since the addition can not be reduced in size without losing its usefulness and the encroachment is minor.

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Terence Cummings 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. Whipple, the following Resolution memorializing the approval of the application of **Mark Wyville, 15 Macopin Avenue** was adopted, Ms. Cockey abstaining:

WHEREAS, **Mark Wyville**, owner of property at **15 Macopin Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance 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(1)**, in connection with a proposed addition to a dwelling on property designated as Lot 26 in Block 2804 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 JMH Associates, dated June 10, 2000, and a plot plan, floor plan, and elevations, prepared by John Thomas Collins, Architect, revised to May 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 16, 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 located in the R-1 One Family Residential Zone and contains a 2½-story single-family dwelling with an attached garage at the easterly side of the dwelling. The subject property measures 102.25 feet in width along its frontage and contains 13,200 square feet in lot area.

2. The applicant proposes to construct an addition on the westerly side of the dwelling. The proposed addition is one-story on the front elevation, and due to the steep grade of the lot going towards the rear, the addition is 2 stories on the rear elevation. The addition would contain a family room on the first floor level and a crawl space in the basement level.

3. The average front yard setback of the 3 nearest dwellings, 2 to the east and 1 to the west before Patton Place, is approximately 45.64 feet, which is the front yard setback requirement for the subject property.

4. The existing dwelling has a nonconforming front yard setback of 35.15 feet to the dwelling. The proposed addition would be set back from the front wall of the existing dwelling by 16 inches and would have a front yard setback of approximately 36.45 feet, and a variance is required. The proposed addition meets all other zoning requirements.

5. The requested front yard setback is acceptable since the required front yard setback for the subject property is skewed by the larger front yard setback of 7 Macopin Avenue, which is atypical on the street. Furthermore, the proposed addition is set back slightly more than the front wall of the dwelling and the proposed setback is in keeping with the majority of the dwellings on the north side of Macopin Avenue.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Mark Wyville 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. Whipple, the following Resolution memorializing the approval of the application of **Dennis and Karen Casey, 11 Marion Road** was adopted, Ms. Cockey abstaining:

WHEREAS, **Dennis and Karen Casey**, owners of property at **11 Marion 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(1)** and a side yard setback less than required pursuant to **Montclair Code Section 347-45C(1)**, in connection with a proposed front porch addition to a dwelling on property designated as Lot 10 in Block 1804 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicants submitted a property survey prepared by Farro Associates, dated October 17, 1990, and a plot plan, floor plan, and elevations, prepared by William Godsall & Associates, dated April 28, 2006.; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 16, 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 located in the R-1 One Family Residential Zone and contains a 2½-story single-family dwelling and a detached garage at the rear of the lot. The subject property measures 100 feet in width along its frontage and contains 17,512 square feet in lot area.

2. The applicants propose to demolish the existing front entry stoop and steps and construct a roofed front porch that would span across the width of the dwelling and have a larger semi-octagonal shaped end at the westerly side of the porch.

3. The existing dwelling has a conforming front yard setback of 41.18 feet to the dwelling and approximately 37.18 feet the existing front entrance stoop, which is about 4 feet deep. The plan indicates that the average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property, is 33.13 feet, which is the required front yard setback for the subject property.

4. The proposed porch would have a conforming front yard setback of 33.2 feet for the majority of its width. The larger semi-octagonal section would have a front yard setback of 28.9 feet, and a variance is requested. The existing dwelling has a nonconforming easterly side yard setback of 3.2 feet to the dwelling and approximately 4.2 feet to the existing entrance stoop. The proposed porch would also be located 4.2 feet from the easterly side property line and a variance is requested.

5. The requested side yard setback for the front porch is acceptable based on the existing side yard setback of the dwelling and existing entrance stoop, as well as the location of the existing front door.

6. The requested front yard setback variance is not acceptable since there are conforming options that would provide the space on the porch the applicants seek for gathering and entertaining.

WHEREAS, the Board, based on the foregoing findings regarding the requested side yard setback variance, concluded that the applicants 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 aforementioned findings regarding the requested side yard setback variance, 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

WHEREAS, the Board, based on the foregoing findings regarding the requested front yard setback variance, concluded that the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variance could not 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 regarding the requested front yard setback variance, 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 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 requested front yard setback variance is denied and the requested side yard setback 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. Whipple, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the application of **Mr. and Mrs. Andrew Lacey, 445 Park Street** was adopted, Ms. Cockey abstaining:

WHEREAS, **Mr. and Mrs. Andrew Lacey**, owners of property at **445 Park Street**, did make application to the Board of Adjustment of the Township of Montclair to construct a one-story addition, deck, and terrace onto the rear of their single-family dwelling on property designated as Lot 1 in Block 3604 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicants sought variances pursuant to N.J.S.A. 40:55D-70c as follows:

1. A variance from **Montclair Code Section 347-45B(2)** in that a minimum front yard setback in keeping with the average front yard setback of the 2 nearest dwellings on Clarewill Avenue, which is 39.5 feet, is required and a lesser front yard setbacks of 35 feet for the addition, and 25 feet for the deck and terrace, are proposed.

2. A variance from **Montclair Code Section 347-45D** in that a minimum rear yard setback of no less than 30 percent of the lot depth, which is 50.85 feet for the subject property, is required and a lesser rear yard setbacks of 25 feet for the addition and deck, and 10 feet for the raised stone terrace, are proposed.

WHEREAS, the applicants submitted a property survey prepared by JMH Associates, dated November 1, 2001, and 2 plot plans, 1 on a copy of the survey and 1 enlarged, a floor plan, and elevations, prepared by John Way, AIA, dated April 19, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 16, 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 Park Street and Clarewill Avenue and is located in the R-1 One Family Residential Zone. The subject property contains a 3-story single-family dwelling and a detached garage at the northeasterly corner of the lot that is accessed by a driveway from Park Street. The subject property measures 138.39 feet along the frontage on Park Street, 169.71 feet along the frontage on Clarewill Avenue, and contains 24,020 square feet in lot area.

2. A one-story addition is proposed at the rear of the dwelling that would contain a family room. A wood deck is proposed between the proposed addition and Clarewill Avenue, and a stone terrace, which is raised approximately 30 inches to its floor surface from the existing grade level, is also proposed at the rear of the proposed addition.

3. The average front yard setback of the 2 nearest dwellings on Clarewill Avenue is approximately 39.5 feet. The existing dwelling has a nonconforming Clarewill Avenue front yard setback of 23.06 feet measured at the southeasterly rear corner of the dwelling, and 22.3 feet measured to a corner of a one-story section of the dwelling located closer to the westerly side of the dwelling.

4. A front yard setback of 35 feet is proposed from Clarewill Avenue for the addition, and 25 feet is proposed from Clarewill Avenue for the deck and terrace, and variances are requested. The Board determined that the proposed front yard setbacks

for the addition and wood deck are acceptable given the existing location of the dwelling and the fact that none of the proposed work would encroach beyond the existing dwelling.

5. The required rear yard setback for the subject property is 50.85 feet, which is equal to 30 percent of the lot depth. The existing dwelling has a nonconforming rear yard setback of approximately 45 feet, as measured to the rear wall of the dwelling. All of the new construction is located less than 50.85 feet from the rear property line and variances are requested.

6. The Board determined that a rear yard setback of no less than 25 feet is acceptable for the subject property, given the position of the dwelling on the lot caused by its large front yard setback from Park Street, as well as the fact that the dwelling with the proposed addition and deck would not be oversized in comparison to the size of the lot it is located on.

7. In considering the front yard setback and rear setback, the Board determined that the proposed raised stone terrace should not be constructed.

8. The Board also determined that the existing dwelling exceeds the height requirement of 35 feet, and that the proposed addition would slightly increase the height measurement of the dwelling because it is built into the sloping grade at the rear of the lot, which would lower the starting point for the height measurement, thereby increasing the overall height. To the extent that it is required, the Board grants a height variance from **Montclair Code Section 347-45A(1)** for a principal building height exceeding 35 feet.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and 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 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. Andrew Lacey is approved, subject to the following conditions:

1. The raised stone terrace shall not be constructed.
2. Any central air conditioning units shall conform to the zoning requirements.
3. The rear yard setback for the proposed addition and wood deck shall be no less than 25 feet.
4. The front yard setback from Clarewill Avenue shall be no less than the existing front yard setback of 23.06 feet, which is measured to the existing southeasterly corner of the dwelling.
5. Stormwater produced by the proposed work shall be controlled as per the testimony and plans provided. The Township Engineering Department shall review and approve any proposed stormwater discharges out to the street or storm sewers, as well as on-site drainage improvements, such as drywells.

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. Fleischer, the following Resolution memorializing the approval of the application of **Roger Dolden, 46 Wayside Place** was adopted, Ms. Cockey abstaining:

WHEREAS, **Roger Dolden**, owner of property at **46 Wayside Place**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to permit more than 2½ stories pursuant to **Montclair Code Section 347-45A(2)**, in connection with proposed additions to his dwelling on property designated as Lot 38 in Block 1102 on the Tax Map of the Township of Montclair and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant submitted a property survey prepared by Brickner and Associates, Inc., dated June 25, 2003, and a site plan, floor plan, and elevations, prepared by John Reimnitz, Architect, P.C., revised to June 30, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 16, 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 located in the R-0 Mountainside Zone and contains a single-family dwelling with an attached garage that is located in the ground level on the southerly side of the dwelling. The subject property measures 118 feet in width along its slightly curved frontage on Wayside Place and contains 20,123 square feet in lot area.

2. Additions are proposed at both sides of the second floor of the dwelling to widen the usable second floor space of the dwelling. The only expansion of the footprint of the dwelling would occur along 2 sections of the rear wall where additions are proposed that would extend further into the rear yard.

3. The grade level of the subject property is lower on the southerly side and rear of the dwelling. At these areas of the dwelling, the basement level, where the attached garage on the southerly side is located, is more exposed than the rest of the dwelling and the first floor level is more than 6 feet above the adjoining grade, which makes the basement level at these areas of the dwelling a story. The second floor additions at the southerly side and rear of the dwelling are considered a third story on those sides of the dwelling, and a variance is requested.

4. The proposed additions conform to the overall height limit of 35 feet and all other zoning requirements.

5. The Board determined that the variance requested for exceeding 2½ stories is acceptable since the topography of the lot is irregular and causes certain areas of the first floor of the dwelling to be more than 6 feet above grade where the grade level is naturally lower and the proposed additions offer a good solution to provide space within the dwelling without causing too much site disturbance.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Roger Dolden 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. Whipple, the following Resolution memorializing the approval of the application of **Richard Shaffer and Nataalka Bukalo, 34 Park Street** was adopted, Ms. Cockey abstaining:

WHEREAS, **Richard Shaffer and Nataalka Bukalo**, owners of property at **34 Park Street**, did make application to the Board of Adjustment of the Township of Montclair to convert an existing office building into a one-family dwelling and to construct a detached one-car garage on property designated as Lot 12 in Block 2213 on the Tax Map of the Township of Montclair and located in the OR-3 Garden Apartment and Office Building Zone; and

WHEREAS, the applicants sought variances pursuant to N.J.S.A. 40:55D-70c as follows:

1. A variance from **Montclair Code Section 347-62** in that a minimum lot frontage of 60 feet and lot area of 6,000 square feet is required for single-family dwellings and the lot width is 42.60 feet and the lot area is 3,516 square feet.
2. A variance from **Montclair Code Section 347-58E** in that the proposed detached garage is required to be set back a minimum of 6 feet from the southerly side property line and the rear property line, and setbacks of 3 feet are proposed for each; and

WHEREAS, the applicants submitted a property survey prepared by Farro Associates, dated November 19, 1998 and a floor plans and elevations prepared by Taneja Architecture & Design, dated May 23, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 16, 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 located in the OR-3 Garden Apartment and Office Building Zone and contains a 2½-story office building with one-story section at the rear and southerly side. A driveway exists on the southerly side of the building, which does not lead into the rear yard. The subject property measures 42.60 feet in width on Park Street and contains 3,516 square feet in lot area.

2. The building was converted from a single-family dwelling to offices with no dwelling units in 1988. The applicants propose to convert the building back to a single-family dwelling and a variance is required since the existing lot size does not conform to the minimum requirement for single-family dwellings.

3. The Board determined that lot size variance could be approved since there is no opportunity to obtain land from any adjoining property, all of which are presently developed and have structures near the property lines. Furthermore, the proposed use of the structure as a single-family dwelling is a less intensive use than the existing office use of the structure.

4. The applicants also propose to construct a one-car detached garage in the rear yard. The proposed garage would be set back 3 feet from the side and rear property lines, and variances are requested. The height and coverage of the proposed garage and the proposed driveway extension conform to the zoning requirements.

5. The Board determined that the variances requested for the side yard and rear yard setbacks of the proposed garage are acceptable since the proposed garage is located in an appropriate location on the property and the setbacks provided are as large as possible considering the small size of the property.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and 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 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 Richard Shafer and Nataalka Bukalo 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. Whipple, the following Resolution memorializing the approval of the application of **Ruggiero Real Estate, LLC, 98 Watchung Avenue** was adopted, Ms. Cockey abstaining:

WHEREAS, Ruggiero Real Estate, LLC, as owner, did make application to the Board of Adjustment of the Township of Montclair for variances, waiver and site plan approval in connection with a proposed garage addition on property designated as Lot 27 in Block 2503 on the Township Tax Map and located in the N-C Neighborhood Commercial Zone;

WHEREAS, the applicant sought the following relief:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to expand a preexisting nonconforming use contrary to Montclair Code Section 347-112.
2. A variance pursuant to N.J.S.A. 40:55D-70c to permit an easterly side yard setback of 1.5 feet where either 0 feet or 6 feet are required pursuant to Montclair Code Section 347-96.
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit accessory structures to occupy 29.1 percent of the rear yard where a maximum of 25 percent is permitted pursuant to Montclair Code Section 347-22A.
4. A waiver to permit a two-way driveway 9.5 feet in width where a minimum of 18 feet is required pursuant to Montclair Code Section 281-9I.

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by GI Design Studio dated March 21, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 16, 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 consists of 8,795.3 sq. ft., is irregularly shaped and contains a one story principal building at the front of the lot utilized as a business office for Zimmerman Fuel Oil delivery service and an existing one story garage at the rear of the lot.
2. The footprint of the detached garage would be widened by 3 ft. 11 in. towards the west and lengthened at the front with an addition measuring 40 ft. in width

by 31 ft. 11 in. in depth. The footprint size of the garage as proposed would measure 40 ft. in width by 64 ft. in length.

3. Currently, a number of the applicant's tanker trucks and vans remain parked in the existing asphalt area between the office building and the garage outside normal business hours. The purpose of the addition would be to house all commercial vehicles in the garage outside normal business hours which represents an aesthetic benefit consistent with the purposes of the Municipal Land Use Law.

4. The garage addition will maintain the preexisting nonconforming easterly side yard setback and is appropriate given the location of the existing structure.

5. Although the construction of the garage addition exceeds the coverage limitation for accessory structures in the rear yard, the aesthetic benefits of granting this application substantially outweigh any adverse impact.

6. There is inadequate area to expand the existing two-way 9.5 feet driveway width which provides adequate ingress and egress and, as a result, the requested waiver for insufficient width is reasonable and within the general purpose and intent of the provisions for site plan review.

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Ruggiero Real Estate, LLC for site plan approval, variances to expand a preexisting nonconforming use, insufficient side yard setback and accessory structure coverage, and waiver for insufficient driveway width is hereby approved subject to the following conditions:

1. The existing inlet between the proposed building and the office which is clogged shall be cleaned so it will function properly as recommended in a memorandum dated June 5, 2006 from the Montclair Planning Board Engineer.
2. The three wall mounted light fixtures on the westerly side of the garage shall be shielded to prevent glare onto the adjacent residential properties.
3. No outdoor storage of commercial vehicles shall be permitted outside normal business hours.

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

The Board discussed the request for an extension of time for the application of **The Salvation Army Montclair Citadel, 13 Trinity Place**, which has been requested to April 20, 2007. On motion by Mr. Susswein, seconded by Mr. Fleischer, the request was granted.

Chair Harrison called for a discussion on the request for a special meeting for the application of **Alter Family, LLC for the Deron School (II), 130 Grove Street**. Jerry Friedland, Esq. appeared as attorney for the applicant. After some discussion, Chair Harrison announced that the application would begin at a special meeting on Wednesday, October 25, 2006 at 7:30 p.m. and that no further notice would be given.

Chair Harrison called the application of **Lisa Cole, 25 Ramsay Road**. Lisa Cole was sworn and described the application and stated that an enclosure for the existing inground swimming pool in the rear yard of her property is proposed. She stated that she her son has special needs, and that the proposed pool enclosure would allow them to engage in the recreational and therapeutic activities needed for her son throughout more of the year.

Marked into evidence were:

- A-1 Photograph of the existing inground swimming pool
- A-2 Photograph of the existing inground swimming pool
- A-3 Photograph of the existing inground swimming pool

- A-4 Photograph of the existing inground swimming pool
- A-5 Photograph of the existing inground swimming pool
- A-6 Photograph of the existing inground swimming pool
- A-7 Libart Enclosure Systems Catalogue

Ms. Cole described the photos submitted and stated that the existing location of the pool limits her ability to provide the required 12-foot side yard setback from the northerly side property line. She stated that due to the location of the pool and the large size of the property and other properties in the neighborhood, the proposed enclosure should not impact any other property in the neighborhood.

Ms. English joined the meeting.

The Board questioned the applicant. Ms. Cole stated that the swimming pool is set back 18 feet from the northerly side property line, and that the 12-foot conforming setback would leave only 6 feet of patio space on the northerly side of the pool within the proposed enclosure. She stated that she would like to have between 8 and 10 feet of patio space available on the northerly side of the pool within the proposed enclosure, which would yield a northerly side yard setback of between 10 and 8 feet. Ms. Cole agreed that the drawings submitted are inconsistent in terms of the dimensions of the proposed enclosure and its setback from the northerly property line. She stated that the existing pool has not been modified from what is depicted on the property survey, and that changes have only been made to the patio areas and retaining walls surrounding the pool during recent years that are not depicted on the survey.

Chair Harrison called for questions and comments from the public.

Michael Oliveira, Esq. appeared as attorney for Dr. Arnaldo Apolito, 80 Undercliff Road, whose is objecting to the application. Mr. Oliveira stated that the Board can not approve the application based on the plans submitted and that the conforming option is acceptable. He called Dr. Arnaldo Apolito, who was sworn. Dr. Apolito stated that his property would be directly impacted by the application and that granting a variance for the proposed pool enclosure would have a negative impact on his property. Mr. Oliveira proceeded by giving his closing comments.

Ms. Cole summarized her application. The Board discussed the application and it was determined that a variance could not be granted based on the drawings submitted. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was unanimously denied, with Ms. English, who arrived after testimony had begun, abstaining from the vote.

Chair Harrison called the application of **Martin C. Felder, 91 Wildwood Avenue.** Mr. Felder stated that his existing detached garage was destroyed by a fallen tree during a storm this past July, and that he is requesting a side yard setback variance for a new garage. He stated that he is presenting 2 plans for the Board to consider: an exact rebuild of the existing garage, and an alternative plan for a garage with a larger footprint and a lower height. He stated his preference is for the garage with a larger footprint and lower height, which would provide additional storage space and would be in keeping with detached garages on nearby properties.

Marked into evidence was:

A-1 Photograph of a detached garage on the adjoining property

The Board questioned the applicant. Mr. Felder stated that the proposed larger garage would have the same side yard setback as the existing garage. Chair Harrison called for questions and comments from the public. None were offered.

The Board discussed the application. A motion made by Ms. English, seconded by Mr. Whipple, to approve the alternative plan with the larger footprint and lower height did not receive enough affirmative votes to pass. On motion by Mr. Susswein, seconded by Ms. Cockey, the plan to rebuild the garage as it existed was approved.

Chair Harrison called the application of **Thomas Byrnes, 66 Dryden Road.** Thomas Byrnes, owner, and James Byrnes, builder, were sworn. Thomas Byrnes described the application and stated that his detached garage was destroyed by a fallen tree during a storm this past July. He also stated that a new foundation is needed, that the side yard setback would be increased to 2 feet, and that the rear setback would be 3 feet.

A-1 Photograph of existing destroyed garage

A-2 Photograph of existing destroyed garage

A-3 Photograph of existing destroyed garage

A-4 Photograph of existing destroyed garage

The Board questioned the applicant. James Byrnes stated that the footprint is being increased in width by 2 feet to a total of 22 feet in order to allow for use as a two-car garage.

Chair Harrison called for questions and comments from the public.

Karen Crawford, 68 Dryden Road, was sworn. Ms. Crawford stated that she is the adjoining neighbor on the westerly side and that the proposed side yard setback of 2

feet from the westerly side property line should be increased. She stated that she believes her fence will be damaged by construction occurring that close to the property line.

Ann Socha, 67 Dryden Road, was sworn. Ms. Socha stated that the fence on Ms. Crawford's property was also destroyed by the fallen tree and was recently replaced with even though it was known that a garage on Mr. Byrnes' property would have to be rebuilt. Ms. Crawford responded by stating that the fence had to be replaced due her dog's illness that requires it to be outside for an extended period.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved, subject to the following condition:

1. The existing fence belonging to the adjoining property owner located along the westerly side property line shall not be removed in order to construct the proposed garage.

Chair Harrison called for a short recess.

Chair Harrison called the application of **Nina Rosenstein, 141 Upper Mountain Avenue**. Nina Rosenstein, owner, and John Reimnitz, Architect, were sworn. Ms. Rosenstein described the application and stated that it is difficult to add to the rear of the dwelling because of the sloping terrain in the rear yard. She also stated that the existing one-story section at the southerly side of the dwelling is in a state of disrepair and that the southerly side of the dwelling is the most logical place to propose an addition to the dwelling.

Mr. Reimnitz described the existing conditions on the property. He stated that the front yard setback of the existing dwelling is nonconforming and is caused by the larger front yard setback of the 2 dwellings to the south of the subject property. He described the steep grade at rear of the dwelling and the problems associated with constructing an addition in that location. He continued by describing the existing one-story section on the southerly side of dwelling and the problems associated with it as it exists.

Marked into evidence were:

- A-1 Enlarged copy of the Sanborn Map, with color added, depicting the subject property and the required front yard setback
- A-2 3 photographs of the existing dwelling on a board
- A-3 Photograph of the existing sunroom on the southerly side of the dwelling.
- A-4 Photo-simulation of proposed addition on southerly side of dwelling

A-5 Floor Plan on a board, with color added

A-6 Elevations on a board, with color added

Mr. Reimnitz stated that the proposed addition on the southerly side of the dwelling requires a front yard setback variance. He also stated that the proposed addition would add width to the dwelling and is 3 foot 7 inches beyond the limitation imposed by the ordinance that limits the width of a dwelling to no more than 65 percent of the lot frontage width.

The Board questioned the applicant and Mr. Reimnitz. Reimnitz stated that the existing sunroom is octagonal in shape and that the proposed sunroom is squared off and similar in its dimensions. He stated that the enlargement of the dwelling comes as a result of section of the addition that connects the proposed sunroom to the dwelling, which serves the purpose of allowing the ceiling height of the sunroom to increase without affecting second floor windows on the southerly side of the dwelling.

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

The Board discussed the application. On motion by Susswein, seconded by Mr. Fleischer, the variance requested for front yard setback was approved, and on motion by Mr. Susswein, seconded by Ms. English, the variance requested for principal structure width was denied.

Chair Harrison called the application of **105 Grove, LLC, 105 Grove Street**. Calvin Trevenen, Esq., appeared as attorney for the applicant and described the application and stated that a parking variance is requested.

Marked into evidence was:

A-1 Copy of a portion of the Montclair Tax Map depicting the subject property

Mr. Trevenen called Robert H. Silver, 145 Inwood Avenue, one of the principals of 105 Grove, LLC, who was sworn. Mr. Silver described the origins of the partnership seeking to purchase and renovate the building on the subject property and described the history of the property and its previous uses.

Marked into evidence were:

A-2 Logo of original brass and glass company established on the site on 1870

A-3 Logo of original brass and glass company established on the site on 1870

A-4 Proposed logo and name for the new ownership

Mr. Silver described the proposed and existing uses in the building, including the existing wholesale auto parts warehouse in the newer section of the building that has been on the site since 1972. He stated that, although they are required to have 11 spaces by ordinance, the existing auto parts warehouse is given 6 spaces by lease and only has 3 workers on site at any one time. He also stated that the proposed conversion of the older warehouse section of the building to offices increases the on-site parking requirements from 36 to 41 and continued by stating that they have attempted to obtain parking permits from the Township and to date have obtained 1 permit in the Grove Street lot. He further stated that they have an agreement with the adjoining property owned by Peptco and Mitchell Supreme Fuel to allow them to park 5 vehicles on that property as well.

- A-5 Copy of the existing lease with the existing auto parts warehousing business on the site
- A-6 Copy of the parking permit obtained by the applicant for Grove Street municipal parking lot

The Board questioned Mr. Silver. Mr. Silver stated that the lease with the wholesale auto part business expires on September 2008 and that there would not be a medical office on the site. Chair Harrison called for questions from the public.

Lorraine Gardner, 98 Grove Street, inquired about the number of vehicles accessing the site and the type of vehicles that access the site.

Chair Harrison requested that the applicant pause while the Board discusses possible adjournments of the remaining 2 applications on tonight's agenda. Chair Harrison announced that the application of **Redeemer Church of Montclair, 105 Walnut Street**, would be carried to the regular meeting on October 18, 2006 and that no further notice would be given. **Paul Anderson, 34 North Willow Street** stated that he would prefer to wait and see whether his application could be heard this evening.

Mr. Trevenen called John Reimnitz, Architect, who was sworn and stated his qualifications as an Architect.

Marked into evidence were:

- A-7 Photographs of the existing conditions, on a board
- A-8 Photographs of the existing conditions, on a board
- A-9 Rendering of the façade of the warehouse building which would be renovated and converted to offices, on a board

A-10 Photographs of the existing interior of the building that would be renovated and renderings of the proposed interior layout, on a board

A-11 Site Layout on a board

Mr. Reimnitz described the exterior renovations that would be performed as part of the proposed conversion into office space. He described the interior layout and also described the paved parking area on the site. He stated that the site plan depicts what has been utilized as parking on the site and illustrates it at its maximum capacity.

The Board questioned Mr. Reimnitz. Mr. Reimnitz stated that the driveway is also utilized by the adjoining property and that some of the observed truck traffic is associated with the adjoining property. Mr. Trevenen stated that the condition of the shared driveway has existed for many years in its current form. Mr. Reimnitz stated that the parking area is not presently striped and would be striped if the application is approved. Assistant Secretary Charreun stated that the applicant has met with the Planning Director and the Township Attorney, and that it was determined that the striping of this parking lot would not trigger site plan review from the Planning Board, since it was considered to be the restriping of an existing parking lot without creating new parking or redesigning a parking lot. Mr. Trevenen stated that due to the fact that there is an existing lease with the auto parts business on the site, the applicant has chosen not to reconstruct or redesign the parking area at this time.

Chair Harrison requested that the applicant pause while he announced that the application of **Paul Anderson, 34 North Willow Street**, would be carried to the regular meeting on October 18, 2006 and that no further notice would be given.

The Board continued with the application and questioned Mr. Reimnitz. Chair Harrison called for questions from the public. None were offered.

Mr. Trevenen called Michael Petry, who was sworn and stated his qualifications as a Professional Planner.

Marked into evidence was:

A-12 Aerial photograph of the subject property, with a Tax map and Sewer map superimposed on the image

Mr. Petry described the application and the parking variance requested. He stated that the proposed conversion of the warehouse space to office space is a permitted use in the C-2 General Business and Light Manufacturing Zone; however it triggers a parking deficiency variance. He stated that the site presently contains 36 parking spaces and that based on the calculations required by the zoning ordinance, the site would require 41 parking spaces as proposed. He stated that the aerial photograph submitted as Exhibit A-12 depicts the parking as it has been observed by the applicants

and as it has been depicted on Exhibit A-11. He also stated that the wholesale auto parts business on the site has a lease for 2 more years, and that the applicant is hesitant to proceed with a full blown site plan and site work at this time since the uses and parking requirements of the site may change after this lease expires and more changes are proposed.

Mr. Petry stated that based on the actual parking requirements and usage of the wholesale auto parts business on the site, the number of parking spaces on the site is adequate. He also stated that the applicant has gone beyond that by acquiring 1 permit parking space in a nearby lot, has been placed on the waiting list for an additional 9 parking permits, and has received permission from an adjoining neighbor for another 5 spaces. He further stated that there is also available metered or otherwise time regulated street parking for short term visitors to the site. He stated that the proposed building improvements represent a desirable visual environment and upgrade conditions in the neighborhood. He also stated that the project site is a suitable location for proposed office use, and that the application promotes the general welfare of the public by renewing the site. He further stated that the project can serve as a catalyst for other improvements in neighborhood.

The Board questioned Mr. Petry. Mr. Silver stated that small trucks and not the tractor trailer type are the only trucks that access their property. Mr. Petry described the parking study that was done in support of the application in more detail. He also stated that the Board could consider a condition of approval that requires the applicant to seek site plan approval at the time the lease with the wholesale auto parts business expires or is renewed, because the lease has been the subject of discussion tonight, is directly related to the variance requested in terms of the number of parking spaces required, and has been cited as the reason why the applicant has not sought site plan approval at this time.

Chair Harrison called for questions and comments from the public.

Lorraine Gardner, 98 Grove Street, was sworn and stated that she is not opposed to the application. She also stated that the parking lot should be required to be striped as a condition of any approval and described the types of trucks she has observed entering and leaving the site.

Joel Patenaude, 131 Heller Way, was sworn. He stated that he also the owner of 1 Willard Place, which contains his business, World Pottery, and is located across the street from the subject property. He stated his full support for the application.

James L. Lott, Jr. Esq. appeared as attorney for Peptco and Mitchell Supreme Fuel, who own the adjoining property. He stated that his client and the applicant have agreed on a lease agreement to allow 5 parking spaces on is clients' property. He stated that his clients are in support of the application and that the lease for the 5 parking spaces would be for 2 years.

Mr. Trevenen gave his closing statements.

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

1. The parking spaces depicted on the site layout plan shall be striped.
2. As stipulated by the applicant, an application for site plan approval shall be filed with the appropriate municipal board prior to September 30, 2008 to address parking lot improvements, traffic circulation and other site related issues.
3. The applicant shall have access to 5 off site parking spaces which may be achieved through agreement with an adjacent property owner or by obtaining Municipal parking permit(s) in the lot behind Grove Street Pharmacy until September 30, 2008 which will then be the subject of further review as part of the site plan application referenced in the preceding condition.

On motion by Mr. Fleischer, seconded by Mr. Whipple the **Minutes of the May 17, 2006** were adopted.

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