

MINUTES OF THE BOARD OF ADJUSTMENT
October 15, 2003

PRESENT: Chair Harrison, Ms. Costello, Vice Chair Fleischer, Mr. Flood, Mr. Gallardo, Ms. Rock-Bailey and Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey and Mr. Haizel

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the September 17, 2003** regular meeting were adopted, Mr. Gallardo, Mr. Haizel, and Ms. Rock-Bailey abstaining.

On motion by Mr. Fleischer, seconded by Ms. Costello, the following Resolution memorializing the approval of the variance application of **John and Virginia Block, 300 Highland Avenue** was adopted, Mr. Gallardo, Mr. Haizel, and Ms. Rock-Bailey abstaining:

WHEREAS, David and Virginia Block, owners of property at **300 Highland Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40: 55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-33B(1)** in connection with the construction of a attached garage bay and front porch addition on property designated as Lot 29 in Block 601 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicants submitted a property survey prepared by Yannaccone Associates, Inc., dated June 19, 1997 and a site plan, floor plans, and elevations, prepared by Robert Silverman, AIA, Architect, dated June 4, 2003, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 17, 2003 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 36,246 square feet and contains a 2-story single-family dwelling with an attached garage for 2 vehicles.

2. The applicant testified that the average front yard setback of adjacent dwellings on Highland Avenue is approximately 45.33 feet, and therefore, as per the requirements of **Montclair Code Section 347-33B(1)**, the required front yard setback for the subject property is 50 feet.

3. The existing dwelling on the property has a nonconforming front yard setback of approximately 37 feet, as measured to the front corners of an existing raised entrance porch at the front of the dwelling.

4. The applicants' proposal is to remove ground level wall sections of the existing raised entrance porch at the front of the dwelling and construct new walls at the ground level to form a new attached garage bay. The applicant also proposes to enlarge the decking of the front porch to fit over the proposed attached garage below it and to reconfigure the exterior stairway of the front porch.

5. The proposed attached garage bay and front porch addition would not extend further towards Highland Avenue than the existing raised front entrance porch on the property and meets all other height and setback requirements.

6. A second floor dormer addition is also proposed that meets all height and setback requirements.

7. Based upon the Board's particular knowledge of local conditions, the proposed attached garage bay and front porch addition is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variance application of David and Virginia Block is hereby approved, subject to the following conditions:

1. The proposed dormer addition onto the dwelling shall conform to the 50-foot front yard setback requirement.
2. The proposed attached garage shall not encroach closer to Highland Avenue than the existing walls of the front entrance porch.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Mike Berlin, 27 James Street** was adopted, Mr. Gallardo, Mr. Haizel, and Ms. Rock-Bailey abstaining:

WHEREAS, Mike Berlin, owner of property at **27 James Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a westerly side yard setback less than that required pursuant to **Montclair Code Section 347-51** in connection with the construction of a third floor addition and an outdoor deck on property designated as Lot 7 in Block 2303 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Hallard & Associates, dated March 13, 2003 and floor plans and elevations, prepared by Susan M. Chandler, Architect, undated, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 17, 2003 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 has a street frontage width of approximately 40 feet and contains a 2½-story two-family dwelling and a detached garage at the rear of the lot.
2. The existing dwelling has a nonconforming westerly side yard setback of approximately 3.09 feet measured to the westerly rear corner of the dwelling.

3. The applicant's proposal is to construct a third floor addition at the southwesterly corner of the dwelling and a outdoor deck onto the rear of the dwelling, which conform to the height and rear yard setback requirements but do not meet the side yard setback requirement of 6 feet in the westerly side yard.

4. The proposed third floor addition would be aligned with the existing westerly wall of the dwelling and would not encroach closer to the westerly side property line than the existing dwelling.

5. The proposed outdoor deck would be aligned with the westerly wall of the dwelling and would encroach minimally closer to the westerly side property line due to the slightly angled position of the dwelling.

6. Based upon the Board's particular knowledge of local conditions, the proposed third floor addition and outdoor deck are not inconsistent with the character of the neighborhood and will not adversely impact the public good.

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

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

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

1. The third floor addition and outdoor deck shall be aligned with the westerly side wall of the existing dwelling.

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 Ms. Costello, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Anthony Martinez, Member of AAAM Investments, LLC, 132 Forest Street** was adopted, Mr. Gallardo, Mr.

Fleischer, Mr. Haizel, and Ms. Rock-Bailey abstaining:

WHEREAS, Anthony Martinez, Member of AAAM Investments, LLC, as owner, 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 the construction of a two-story addition, an enlarged front entrance porch, a rear wood deck, a second-floor balcony, and a new driveway and parking area on property designated as Lot 2 in Block 3302 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Borrie, McDonald & Watson, dated June 10, 2003, and a site plan, floor plans, and elevations prepared by Studio, Pedro E. Campos, AIA, dated July 8, 2003 that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 17, 2003 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 applicant requested variances pursuant to *N.J.S.A.40:55D-70c* for failure to comply with the following:

- (a) **Montclair Code Section 347-51** in that a minimum front yard setback of 25 feet is required for the proposed two-story addition, enlarged front entrance porch, and second-floor balcony and lesser front yard setbacks of approximately 10 feet 7 inches, 15 feet 6 inches, and 16 feet 6 inches, respectively, are proposed; and from
- (b) **Montclair Code Section 347-51** in that a minimum rear yard setback of 25 feet is required for the two-story addition and the rear wood deck, and lesser rear yard setbacks of approximately 10 feet 4 inches and 17 feet, respectively, are proposed; and from
- (c) **Montclair Code Section 347-51** in that a minimum northerly side yard setback of 6 feet is required for the enlarged front entrance porch and rear wood deck and lesser northerly side yard setbacks of approximately 2 feet 1 inch and 2 feet, respectively, are proposed; and from
- (d) **Montclair Code Section 347-51** in that a minimum southerly side yard setback of 10 feet is required for the second-floor balcony and a lesser southerly side yard setback of approximately 9 feet 3 inches is proposed; and from
- (e) **Montclair Code Section 347-102C** in that a minimum width of 10 feet is required for new driveways and a lesser width of 9 feet is proposed; and from

- (f) **Montclair Code Section 347-104** in that parking spaces are required to be setback 4 feet from property lines with the intervening space appropriately landscaped and a setback of 1 foot 7 inches is proposed from the southerly side property line;

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

1. The subject property is irregularly shaped and contains an existing 2½-story, two-family dwelling and an existing driveway, and has a street frontage width of 50 feet.

2. The applicant proposes to construct a two-story addition onto the southerly side of the building to enlarge the floor area of the existing two-family dwelling. The applicant also proposes to construct an enlarged front entrance porch, a rear wood deck, a second-floor balcony on the southerly side of the addition, and a new driveway that would also act as the parking area.

3. The variances requested for the front yard setbacks of the two-story addition and enlarged front entrance porch, for the rear yard setback of the two-story addition and rear wood deck, for the northerly side yard setback of the enlarged front entrance porch and rear wood deck, and the driveway width are appropriate given the physical constraints of the property and result in no adverse impact to the adjacent properties.

4. The variances requested for the front yard setback and southerly side yard setback of the second-floor balcony, and the setback of the parking spaces from the southerly side property line are not appropriate and result in adverse impact to the adjacent properties.

5. The proposed improvements to the dwelling on the property, with the exception of the second-floor balcony and deficient parking area setback, are consistent with the established development pattern of the neighborhood and would not cause any substantial detriment to the public good.

WHEREAS, the Board, based upon the foregoing findings, concluded that, with respect to the variances requested for the front yard setback of the two-story addition and the enlarged front entrance porch, the rear yard setback variances requested for the two-story addition and rear wood deck, the northerly side yard setback variances requested for the enlarged front entrance porch and rear wood deck, and the driveway width, the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that, with respect to the variances requested for the front yard setback of the two-story addition and the enlarged front entrance porch, the rear yard setback variances requested for the two-story addition and rear wood deck, the northerly side yard setback variances requested for the enlarged front entrance porch and rear wood deck, and the driveway width, the applicant did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of N.J.S.A.40:55D-70C(2); and

WHEREAS, the Board, based on the foregoing findings concluded that, with respect to the front yard setback and southerly side yard setback variances requested for the second-floor balcony and the variance requested for the setback of the parking area from the southerly side property line, 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 front yard setback and southerly side yard setback variances requested for the second-floor balcony and the variance requested for the setback of the parking area from the southerly side property line, the applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of *N.J.S.A. 40:55D-70C(2)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Anthony Martinez, Member of AAAM Investments, LLC, for variances pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to permit a front yard setback and a southerly side yard setback less than required for the second-floor balcony, and to permit a parking area setback less than required, is hereby denied; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Anthony Martinez, Member of AAAM Investments, LLC for variances pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to permit a front yard setback less than required for the two-story addition and enlarged front entrance porch, a rear yard setback less than the required for the two-story

addition and rear wood deck, a northerly side yard setback less than required for the enlarged front entrance porch and rear wood deck, and a driveway width less than required, is hereby approved subject to the following conditions:

1. The driveway, which is used for parking, shall be set back the 4 feet minimum required from the southerly side property line, and that setback area shall be appropriately landscaped, as required by **Montclair Code Section 347-104**.
2. The plans shall be revised in order to depict all floodplain information and the applicant shall obtain any required approvals from the New Jersey State Department of Environmental Protection. Should any such approval require any substantial changes to the plan, the applicant shall be required to return to the Board, as determined by the Planning Department.
3. The applicant shall provide drainage calculations for review and approval by the Board Engineer.
4. A detail for the proposed paving on the site shall be provided on the plan and submitted to the Board Engineer.
5. All broken sidewalk sections shall be replaced with an appropriate material as determined by the Township Engineering Department.
6. Any exterior lighting shall be shielded from adjoining properties.
7. The plans shall be corrected to indicate the correct address of the subject property.
8. The applicant shall be responsible for all inspection fees required pursuant to **Montclair Code Section 202-27**.

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 Ms. Costello, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Verizon, New Jersey, Inc., 50 Montclair Avenue** was adopted, Mr. Fleischer, Mr. Gallardo, Mr. Haizel, and Ms. Rock-Bailey abstaining:

WHEREAS, Verizon, New Jersey, Inc., did make application to the Board of Adjustment of the Township of Montclair to install a telecommunications equipment cabinet on property designated as Lot 17 in Block 3308 on the Township tax map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant sought relief as follows:

1. A variance pursuant to *N.J.S.A.* 40:55D-70d as the proposed telecommunications equipment cabinet is not permitted pursuant to Montclair Code Section 347-43.
2. A variance pursuant to *N.J.S.A.* 40:55D-70c(2) to allow a 1.2 foot rear yard setback where a minimum of 6 feet is required pursuant to Montclair Code Section 347-46A(3).
3. A variance pursuant to *N.J.S.A.* 40:55D-70c(2) to allow a 1.6 foot northeasterly side yard setback where a minimum of 6 feet is required pursuant to Montclair Code Section 345-46A(2)(b).

WHEREAS, the applicant submitted a site plan prepared by Innovative Engineering, Inc., dated October 16, 2002 revised through June 19, 2003; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 17, 2003 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 installation of a telecommunications equipment cabinet at grade level within an easement located in the northerly corner of the subject property.
2. The proposed cabinet measures approximately 5 foot 4 inches high, 4 foot 5 inches wide and would be located on a new concrete pad 6 inches above grade level.
3. The telecommunications equipment cabinet will replace an existing aerial mounted cabinet on the property and will provide customers with enhanced service which represents appropriate municipal action consistent with the purposes of the Municipal Land Use Law.
4. Based upon lot size and shape and existing improvements, the proposed site is particularly suited for the installation of the cabinet.
5. The testimony established the cabinet cannot be located under ground as the cables must be readily accessible.
6. As part of the application, a 6-foot high picket fence is proposed to shield the cabinet from view, which minimizes the visual impact on the neighborhood.

7. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

WHEREAS, the Board, based on the foregoing findings, concluded that the 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; 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 Verizon, New Jersey, Inc., for variances to install a telecommunications equipment cabinet is hereby approved subject to the following conditions:

1. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
2. The applicant shall notify the Township when the new equipment cabinet is operational and shall remove the aerial cabinet within 6 months thereafter.
3. The proposed picket fence shall be extended an additional 10 feet towards the front of the property to connect to the existing hedgerow.

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 that the variance application of **Donna Grant and Tim Gaydos, 89 High Street** has been postponed at the request of the applicants until the November 19, 2003 regular meeting of the Board of Adjustment, that the applicant has granted the Board an extension of time through November 19, 2003 for which to act on the application, and that no further notice would be given.

Chair Harrison called the variance application of **David and Mia Norrie, 26 Cross Street**. David Norrie was sworn and described the application and stated that

due to structural reasons, the proposed extension and enclosure of the rear porch can not be constructed in a conforming location and extends approximately 8 inches into the required 6-foot setback in the westerly side yard. He described the proposed second and third floor addition and stated that the existing dwelling has a westerly side yard setback of approximately 3.8 feet at its shortest point and that the addition would be aligned with the walls of the existing dwelling. He continued by stating that the interior space of the existing dwelling is limited and that constructing a conforming addition would compromise the architectural integrity of the dwelling.

The Board questioned Mr. Norrie.

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

The Board discussed the application.

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

1. The additions to the dwelling, including the second and third floor additions and the enclosed rear porch, shall not be constructed closer to the westerly side property line than the existing dwelling.

Chair Harrison called the variance application of **Mark Haefeli, 129 Llewellyn Road**. John Collins, Architect, appeared before the Board and stated that the applicant is unavailable to attend the hearing and asked if he could present the application on behalf of the applicant.

Mr. Sullivan stated that the applicant is required to be present for this application to be heard and that Mr. Collins could not proceed without the applicant being present.

Chair Harrison announced that the variance application would be carried to the November 19, 2003 regular meeting of the Board and that no further notice would be given.

Chair Harrison called the variance application of **Marc and Leslie Kunkin, 1 Kenneth Road**. Marc and Leslie Kunkin, owners, and Lawrence P. Quirk, Architect appeared before the Board. Mr. Quirk was sworn and stated that he is a Licensed Architect in the State of New Jersey. He described the property and the proposed addition and vestibule and stated that the existing dwelling contains one-story and is small in size. He stated that the proposed second floor addition would be constructed completely over the existing first floor of the one-story dwelling and that the addition would not project closer to any property than the existing dwelling. He also stated that a vestibule is proposed in the Kenneth Road front yard and that the proposed vestibule would provide the dwelling with a transition space from the entrance door to the interior

rooms. Mr. Quirk stated that the average front yard setback of the two nearest principal dwellings on Kenneth Road is 27.9 feet and that the proposed front yard setback for the new vestibule would be 26.30 feet. He continued by stating that the proposed addition and vestibule would be in keeping with the design of other homes in the neighborhood.

Leslie Kunkin, was sworn and stated that proposed addition and vestibule have been planned since the purchase of the property and that the space provided by the addition and vestibule are needed to provide the additional living space required for their family. She also stated that the next door neighbor on Kenneth Road has indicated support for the proposed project.

The Board questioned Mr. Quirk and the applicants.

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

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the variance requested for the front yard setback of the proposed vestibule was denied and the variance requested for the front yard setback of the proposed second floor addition was approved, subject to the following condition:

1. The proposed second floor addition shall not encroach closer to any property line than the existing dwelling.

Chair Harrison called the variance application of **Arthur J. and Alexandra Leale, 181 Summit Avenue**. Arthur J. and Alexandra Leale, owners, and Kevin Johns, Architect, appeared before the Board. Mr. Johns was sworn and stated that he is a Licensed Architect in the State of New Jersey and described the property and the proposed addition.

Marked into evidence was:

A-1 7-page packet, including a photograph of the existing dwelling, a section of the Zoning Map depicting the location of the subject property, and reduced copies of plan sheets SK-001 through SK-005

Mr. Johns stated that the property is located in the R-1 One-Family Zone and contains a legal nonconforming 3-family dwelling and that the applicants are proposing interior alterations to convert the dwelling into a 2-family dwelling. He stated that the first and second floors would be combined into one dwelling unit and that the third floor would contain the second dwelling unit. He further stated that the proposed conversion would be beneficial to the neighborhood because it would decrease the residential density and vehicular traffic on the site. He continued by describing the proposed 3-

story addition at the rear of the dwelling and stated that it meets all height and setback requirements. He described the floor plans of the dwelling units including the proposed addition and stated that the additional space provided by the addition is necessary to provide moderately sized and suitable interior space. He also stated that an existing iron fire escape at the rear of the dwelling would be removed and that the design and details proposed of the exterior of the dwelling and the addition would greatly improve the aesthetics of the structure.

Mr. Johns described the proposed front porch addition and stated that most of the houses on the street have a front porch. He stated that the required front yard setback for the subject property is 35 feet 2¼ inches and that a front yard setback of 34 feet 4 inches is proposed for the front porch. He also stated that the proposed front porch would be connected to the existing side entrance porch and that it improves the appearance of the dwelling. He continued by stating that the attic area would only contain storage and that the basement of the dwelling, which contained a dwelling unit in the past, would only be used as a finished basement for the dwelling unit on the first and second floor of the structure.

The Board questioned Mr. Johns.

Mr. Johns stated that the proposed porch encroaches 10¼ inches beyond the required front yard setback. He also stated that the proposed depth of the front porch is required to allow for a usable porch with typical porch furniture. He further stated that roof leaders from the porch extension of the easterly side of the dwelling could be directed away from the easterly property line.

Alexandra Leale was sworn and stated that the existing dwelling is in disrepair and that their long-term plans are to convert the dwelling to a single-family residence.

Chair Harrison called for questions and comments from the public.

Karen Cantine, 167 Summit Avenue, was sworn and stated her support for the applicants' proposal.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the variance requested for the front yard setback of the proposed front porch was denied and the variances requested for the conversion from a 3-family dwelling to a 2-family dwelling, the expansion of a nonconforming use, and the side yard setback of the front porch were approved, subject to the following conditions:

1. The proposed addition along the easterly side shall follow the line of the existing house and shall not encroach into the side yard any further than the existing structure.

2. The attic shall be utilized for storage.
3. The basement shall be utilized as part of the two dwelling units and shall not be utilized as a separate dwelling unit.
4. Downspouts in front shall be directed toward Summit Avenue and downspouts along the easterly side shall be directed away from the adjoining property to the east.

Chair Harrison called the site plan and variance application of **Vizzone Family Realty, LLC, 7 North Mountain Avenue**. Robert Gaccione, Esq., appeared as attorney for the applicant and described the application and the history of the subject property.

Mr. Gaccione called Dr. Gerald B. Vizzone, who was sworn and stated that he resides at 159 Gates Avenue in Montclair. Dr. Vizzone stated that he is an Orthopedic Surgeon with an office located 5 Franklin Avenue in Belleville, New Jersey and that he also has offices in Fort Lee and Union City, New Jersey. He also stated that he is under contract purchase the subject property contingent on receiving the requested use variance for a medical office at the subject property and that the existing office in Belleville would be closed if he were to relocate his practice to the subject property. He further stated that 6 employees from the existing Belleville office would be employed in the proposed Montclair office and that the office hours are approximately from 9 a.m. to 5 p.m.. He continued by stating that patients are seen on Mondays from 1 p.m. to 5 p.m., on Wednesdays from 1 p.m. to 6 p.m., and on Fridays from 10 a.m. to 2 p.m.. He further stated that on Tuesdays he is in the operating room and that no patients are seen on site, that on Thursdays he is in another office, and that he has no Saturday or evening hours.

Mr. Vizzone stated that he sees approximately 70 patients per week at the Belleville office and that he has no arrangements with any Health Management Organization, which leads to a significant reduction in patient volume. He also stated that patients are typically in the office for less than 1 hour, including the waiting room time, and that he works with 2 other doctors, including an orthopedic spine surgeon who comes to the office approximately once a month, and a pain management doctor who is the office for a couple of hours on Thursday afternoons. He further stated that he is not in the office at any of the times that the 2 other doctors are in the office. He continued by stating that the first floor of the subject property would be used for patient care, that the second floor would contain personnel offices, and that the third floor and basement would contain storage areas.

The Board questioned Dr. Vizzone.

Chair Harrison called for questions from the public.

Linda Daniher, 8 Francis Place, asked questions about the number of patients that would visit the site.

Mr. Gaccione called Francis Klein, Architect, who was sworn and stated his qualifications as a Licensed Architect in the State of New Jersey. Mr. Klein described the subject property.

Marked into evidence was:

A-1(a-f) Six (6) photographs of the subject property

Mr. Klein described the proposed changes to the exterior of the structure and stated that a barrier-free ramp is proposed in the North Mountain Avenue front yard. He also stated that revised plans have been prepared that depict the proposed signage for the site and that address the Board Engineer's comments.

Marked into evidence were:

A-2 Sheet A-4, Lighting and Landscape Plan, with color, on a board, prepared by Francis C. Klein and Associates, Architects, revised through October 14, 2003

A-3 Reduced Plan Sheets A-0 through A-13, prepared by Francis C. Klein and Associates, Architects, revised through October 14, 2003

Mr. Klein described the proposed floor plans and stated that 21 parking spaces are required for the site if the second floor is considered general office space and that 25 parking spaces are required if the second floor is considered medical office space. He stated that the ingress driveway is from North Mountain Avenue and that the egress driveway goes to Bloomfield Avenue. He continued by describing the parking area and stated that 21 parking spaces are proposed. He stated that an existing detached 2-car garage would be demolished and would be replaced by new striped paved parking spaces in the same area. He also described the proposed landscaping and freestanding signs for the site and stated that freestanding directional signage is proposed for the driveways and that a wall-mounted sign could be considered in place of the proposed freestanding sign in the North Mountain Avenue front yard. He continued by describing the proposed site lighting and stated that no new fencing is proposed for the site and that an existing trash enclosure area would remain at the north side of the building.

The Board questioned Mr. Klein.

Chair Harrison called for questions from the public.

Georgene Lane, 11 North Mountain, asked how patients who park in the parking lot enter the building.

Linda Daniher, 8 Francis Place, asked if the removal of the detached garage would affect stormwater runoff from the site. She also asked if the trash enclosure would remain in the location depicted on the plans.

Mr. Gaccione called Peter Steck, Professional Planner, who was sworn and stated his qualifications as a Licensed Professional Planner in the State of New Jersey. Mr. Steck described the subject property and the zoning and variance history of the site. He described the proposed medical office use, parking area, signage, and proposed exterior changes to the site and recommended that the existing detached garage not be demolished.

Marked into evidence was:

A-4 Photoboard of the subject property. Prepared by Peter Steck, P.P., AICP, dated October 10, 2003

Mr. Steck stated that the subject property is located in the R-3 Garden Group Zone, which is a residential zone that does not permit office uses. He described the variances requested and stated that the use variance can be supported by special reasons and that the bulk variance can be supported by hardship and the benefits outweighing the detriments. He addressed the positive and negative criteria and stated that the property already contains a nonconforming office building, and that the Board of Adjustment has decided in prior applications that an office use is appropriate on the site. He also stated that the building would retain its residential appearance and that the historic and architectural integrity of the building would be preserved. He also stated that the business identification signage at the corner of the property is necessary due to the location of the site at a busy intersection. He continued by stating that the proposed medical office is limited in size and scope and is comparable to the previously approved business office. He further stated that the total number of parking spaces on the site could be reasonably reduced from what is proposed and remain suitable for the intensity of the proposed use.

The Board questioned Mr. Steck.

Mr. Steck stated that the application encourages the most appropriate use of the property and is fundamentally the same as the previously existing business office.

Chair Harrison called for questions from the public.

Georgene Lane, 11 North Mountain Avenue, asked how the proposed freestanding signs would direct traffic to the site.

George Fanous, 10 North Mountain Avenue, asked how the applicant would prevent vehicles from parking on the street.

Linda Daniher, 8 Francis Place, asked if any studies were done that examined the hazards associated with vehicles turning onto North Mountain Avenue from Bloomfield Avenue and the vehicles accessing the ingress driveway. She also asked if it was likely that vehicles would stop in front of the subject property to drop patients off and if that would be traffic hazard.

Georgene Lane, 11 North Mountain Avenue, asked how disabled patients or other patients who have difficulty walking would get from the rear parking area to the front entrance where the barrier-free entrance is proposed.

The Board questioned Mr. Steck.

Mr. Gaccione stated that the ambulance drop-off area depicted on the plan on North Mountain Avenue is not being proposed.

Chair Harrison stated that he had visited the site and that he was inclined to park on North Mountain Avenue rather than pull into the ingress driveway and park in the parking area on the site.

Mr. Gaccione declined to cross-examine Chair Harrison.

Chair Harrison called for public comment.

Linda Daniher, 8 Francis Place, was sworn, and stated that she was concerned about the potential for vehicles associated with the proposed use parking on North Mountain Ave and causing traffic hazards. She also stated that she was concerned about the demolition of the detached garage on the site and the removal of the existing tree near the garage, which could increase stormwater runoff from the site onto her property. She also stated that safety and privacy of her property would be compromised if the garage and tree were removed.

Marked into evidence was:

O-1 (a-e) Five (5) photographs depicting the view of the subject property from the rear yard of 8 Francis Place

Ms. Daniher also stated that she was concerned about the possibility of overnight parking on the subject property that is not associated with the proposed use.

Mr. Gaccione questioned Ms. Daniher.

Chair Harrison called for questions from the Board for Ms. Daniher.

Georgene Lane, 11 North Mountain Avenue, was sworn and stated that the detached garage on the subject property should not be removed. She also stated that patients should not be required to walk up the ingress driveway from the parking area in order to enter the building and that an access should be provided at the rear of the building. She also stated that the proposed use should be limited to 1 doctor and that no freestanding signs should be permitted in the North Mountain Avenue front yard.

Mr. Gaccione requested that the voting on the application be postponed until the next meeting of the Board so that the applicant could examine the possibility of revising the plan and providing an elevator at the rear of the building.

Chair Harrison announced that the application would be continued at the November 19, 2003 regular meeting of the Board, that no further notice would be given, and that the testimony would be limited to the potential of adding an elevator to the building. Mr. Gaccione consented to an extension of time for the Board to act on the application.

On motion by Ms. Costello, seconded by Ms. Rock-Bailey, the meeting was adjourned.