

**MINUTES OF THE BOARD OF ADJUSTMENT  
NOVEMBER 7, 2001**

PRESENT: Chair Harrison, Ms. Brooks, Mr. Chapman, Ms. Costello, Mr. Haizel; also, Michael Sullivan, Esq., Ms. Kadus, Secretary, and Mr. Charreun, Planning Technician

ABSENT: Vice Chair Fleischer, Mr. Gallardo, Ms. Rock-Bailey, Mr. Susswein, and Mr. Sammet, Assistant Secretary

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

On motion by Ms. Costello, seconded by Ms. Brooks, the following Resolution memorializing the approval of the amended site plan and variance application of **Over The Rainbow Nursery, Inc., 32 Pleasant Avenue** was adopted, Mr. Haizel abstaining:

WHEREAS, Over The Rainbow Nursery, Inc., did make application to the Board of Adjustment of the Township of Montclair for amended preliminary and final site plan and amendment to a condition of use variance approval in connection with a proposed child care center on property located at 32 Pleasant Avenue and designated as Lot 21 in Block 2903 and a portion of 22 Pleasant Avenue designated as Lots 23 and 23.01 on the Township tax map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant previously received preliminary and final site plan and variances by resolution adopted on June 22, 2000 which was subsequently challenged by complaint filed in the Superior Court of New Jersey, Law Division, Essex County, Docket No. ESX-L-7593-00 entitled *Dean E. Dunbar and Pamela K. Heard v. Over the Rainbow Nursery, Inc. Lorraine Confair, and The Zoning Board of Adjustment of the Township of Montclair*; and

WHEREAS, plaintiffs Dunbar and Heard and defendant Over the Rainbow Nursery, Inc. and Confair entered into a settlement agreement dated October 5, 2001 which was incorporated in an amended site plan prepared by the Mylan Architectural Group bearing a final revision date of October 4, 2001; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on October 17, 2001 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

WHEREAS, the Board carefully reviewed the testimony presented and

established the following findings:

1. In lieu of a solid wood fence, the amended site plan provides for installation of a 6 foot high acoustical fence 132 feet in length along the westerly lot line and 72 feet in length along the westerly border of the play area. The acoustical fence shall conform to the specifications contained in Exhibit A-3 introduced into evidence at the public hearing.

2. The amended site plan includes a solid evergreen border along the westerly property line which supplements the landscaping required in condition number 6 of the June 21, 2000 resolution.

3. As stipulated by the applicant, condition 8 of the June 21, 2000 resolution shall be further limited as set forth in condition 2 below.

4. The proposed use advances the purposes of the Municipal Land Use Law namely, *N.J.S.A. 40:55D-2a* in that it provides a vital service recognized by the legislature in *N.J.S.A. 40:55D-66.5a* as well as the Master Plan Revision and Reexamination Report adopted by the Planning Board on December 13, 1999.

5. The applicant has operated a child care center in Montclair since 1981 at two different locations. The proposed move to the subject property will provide an appropriate location in which to meet the needs of the community consistent with *N.J.S.A. 40:55D-2g*.

6. Installation of the acoustical fences and additional landscaping will provide further protection to adjacent properties and approval of this application will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the amendment to the condition of the use variance, 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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Over The Rainbow Nursery, Inc., for amended preliminary and final site plan and amended use variance condition is hereby approved subject to the following conditions:

1. All conditions contained in the Board's June 21, 2000 resolution not modified herein shall remain in full force and effect.

2. Condition 8 of the June 21, 2000 resolution shall be amended to

include the following additional limitations:

- A. No special events will be held on federal holidays or Easter Sunday.
- B. Outdoor evening events will be limited to four per year.
- C. Weeknight evening events will conclude and the premises vacated no later than 10:30 p.m.
- D. Weekend events will conclude and the premises vacated no later than 11:00 p.m.

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. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Carol Cotugno, 55 South Fullerton Avenue** was adopted as modified, Ms. Brooks abstaining:

WHEREAS, Carol Cotugno, as owner, did make application to the Board of Adjustment of the Township of Montclair for preliminary and final site plan on property designated as Lot 14 in Block 3107 on the Township tax map and located in the OR-4 Three Story Apartment and Office Building Zone; and

WHEREAS, the applicant requested a waiver to permit a 12 foot driveway width where 18 feet is required pursuant to Montclair Code Section 281-9I; and

WHEREAS, the applicant received variances as set forth in a resolution adopted by the Board on September 19, 2001; and

WHEREAS, the applicant submitted a site plan prepared by Gerard Valk, Architect, revised through October 15, 2001; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on October 17, 2001; and

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

1. The applicant's initial site plan contemplated 10 exterior parking spaces and 4 garage spaces for a total of 14 parking spaces. The plan has been revised to eliminate parking in the front yard of Roosevelt Place and to provide for 5 exterior parking spaces and 4 garage spaces for a total of 9 parking spaces.

2. The application contemplates a waiver to provide a 12 foot driveway

width rather than 18 feet as required by the ordinance. The request is reasonable based upon the anticipated use of the property and additional green space that can be provided.

3. The application complies with municipal ordinances.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Carol Cotugno, for preliminary and final site plan and waiver to permit a 12 foot wide driveway is hereby approved subject to the following conditions:

1. All outstanding taxes shall be paid.
2. On-site parking spaces shall not be rented for use by parties other than the occupants of the building.
3. The plans shall be revised to provide a 12 foot wide driveway width and the parking area shall be moved an additional 3 feet from the easterly property line.
4. The plans shall be revised to provide for continuation of the Baltic Ivy in the 3 foot area created by the relocation of the parking area and to include 2 additional Coton Easter plantings along each side of the driveway entrance.
5. The plans shall be revised to reduce the size of the light poles and fixtures which shall be approved by the Board engineer. The maximum height shall not exceed 10 feet.
6. The storm water drainage plan shall be reviewed and approved by the Board engineer.
7. The applicant shall post inspection fees as required by the Board engineer.

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. Chapman, seconded by Ms. Costello, the following Resolution memorializing the approval of the variance application of **Howard and Stacie Mintz, 53 Melrose Place** was adopted, Ms. Brooks abstaining:

**WHEREAS, Stacie and Howard Mintz**, owners of property at **53 Melrose Place**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a side yard setback less than that required pursuant to **Montclair Code Section 347-33C(1)** in connection with the

construction of an addition on property designated as Lot 9 in Block 1210 on the Township Tax Map and located in the R-O Mountainside Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by Benjamin and Wizerik, Inc., dated April 24, 1996 and a site plan and elevations prepared by Douglas Pfendler, Architect, dated, June 18, 2001, that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on October 17, 2001 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is approximately 11,250 square feet in size and contains a 2 ½ story single-family dwelling.
2. The applicants' proposal is to construct a one-story addition onto the rear of the dwelling to expand their kitchen, create a family room and deck.
3. The proposed side yard setback is 6.6 feet as measured from the closest portion of the addition to the westerly side lot line.
4. The one-story expansion is parallel to the existing side wall of the dwelling, and all height, front and rear setback requirements are met.

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

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

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within variance application of Stacie and Howard Mintz is hereby approved; and

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

On motion by Mr. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **XM Satellite Radio, Inc., 10 Crestmont Avenue** was adopted:

**WHEREAS**, XM Satellite Radio, Inc., did make application to the Board of Adjustment of the Township of Montclair, to install one whip antenna, one parabolic antenna, and an equipment cabinet on the roof of the multi-story condominium apartment complex commonly known as the "Rockcliffe Apartments" and designated as Lot 25 in Block 407 on the Township tax map and located in the R-4 Three Story Apartment Zone; and

**WHEREAS**, the Applicant requested a variance from *N.J.S.A. 40:55D-70d(3)* for failure to comply with one of the conditional use standards contained in Montclair Code Section 347-17.1C(5); and

**WHEREAS**, the Applicant submitted a site plan and elevations prepared by Herbst & Musciano, Architects/Planners, dated June 29, 2001 and bearing a final revision date of July 9, 2001; and

**WHEREAS**, this matter came on to be heard at meetings of the Board of Adjustment held on September 19 and October 17, 2001, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served; and

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

1. The proposed whip antenna, parabolic antenna and equipment cabinet are necessary parts of a terrestrial repeater system which will improve Applicant's satellite digital audio radio service to its subscribers as per the applicant's FCC license which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare.

2. The application complies with all of the conditional use standards contained in the Montclair Township Zoning Ordinance except that the whip antenna is proposed to be located 14 feet higher than the roof of the penthouse (such penthouse located on the roof of the apartment building) which fails to comply with Montclair Code Section 347-17.1C(5)(d)

3. Based upon the height and location of the existing building which

contains other antennae for cellular telecommunications and other communications uses, the proposed penthouse rooftop location of the site is particularly suitable for the terrestrial repeater system proposed.

4. The proposed whip antenna will be barely visible and is inconsequential in light of the mass of the building and the number and size of the existing antennae on the penthouse rooftop, two of which are substantially taller than the proposed whip antenna.

5. The proposed terrestrial repeater system shall comply with all applicable State and Federal regulations for radiation transmission levels.

6. The application is not inconsistent with the intent and purpose of the Master Plan which recognizes the importance of new technology which in this case can be accomplished with minimal impact on the public.

7. The application does not involve any noise, vibrations, smoke, dust, odors, heat or glare and involves minimal noise and thus will not cause substantial detriment to the public good 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;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the application of XM Satellite Radio, Inc. for a variance pursuant to *N.J.S.A. 40:55D-70d(3)* is hereby approved subject to the following conditions:

1. The tip of the whip antenna shall not exceed 14 feet in height above the top of the penthouse roof.

2. With the exception of the height of the single whip antenna, all other structures associated with this application shall comply with all applicable zoning standards.

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

Secretary Kadus announced the postponement of the site plan and variance application of **Pasquale Gangala, 151 Pine Street**, to the Board's December 12, 2001 meeting and that no further notice will be given.

Chair Harrison announced the continuation of the variance application of **Dawn Ciamacco, 198 Forest Street.**

Dawn Ciamacco, applicant and owner of property at 198 Forest Street, Joanne and Jack Mancini, family members and former property owners at 198 Forest Street, appeared before the Board and were still under oath.

Ms. Mancini stated that she had spoken to the Township Engineer, and that measurements had been done by the Public Works Department to determine the location of the boundary between the applicant's property and the public right-of-way. Ms. Mancini stated that although the final determination of this measurement had not been provided to them yet, it was very likely, based on initial findings, that indeed the applicant's proposed parking space would overlap into the public right-of-way. She then stated that the applicant would like to request that the Board postpone a decision on this application at this time to allow the applicant to pursue permits for parking spaces on Forest Street, and also requested that the Board give a written recommendation to the Parking Committee on behalf of the applicant.

The Board questioned the applicant.

Chair Harrison called for a continuation of this application at the next meeting of the Board to allow for a final determination on the location of the boundary between the applicant's property and the public right-of-way prior to any further testimony and Board discussion on this application.

Chair Harrison announced the variance application of **Denis Orloff and Amy Wax-Orloff, 349 Park Street.** Grant Gille, Esq., appeared as attorney for the applicant. Mr. Gille stated that the applicant is seeking a variance for the front yard setback. Mr. Gille then described the previous non-conforming use of the property as a medical office. He continued by describing the applicant's proposed conversion of the existing structure to a single-family residence and its conformity with the character of the area.

Mr. Gille stated that the applicant is facing undue hardship in meeting the required front yard setback on Park Street due to the location of the existing structure on the property relative to the size of the lot in comparison with the adjacent property on Park Street.

Marked into evidence was:

- A-1 Site plan and floor plans prepared by Oasis Architecture, dated October 22, 2001
- A-2 Enlarged color version of Page 1 of exhibit A-1, on board
- A-3 Enlarged Sanborn map of the subject property taken from page 1 of exhibit A-1, on board



Mr. Gille called Jonathan Perlstein, Architect, of Oasis Architecture, who was sworn. Mr. Gille questioned Mr. Perlstein. Mr. Perlstein described the design of the proposed residence and front yard setback. He stated that the adjacent property on Park Street has an excessive front yard, and that that proposed front yard setback for the subject property would not be detrimental to the neighborhood because it is consistent with the remainder of the nearby properties. Mr. Perlstein continued by describing the proposed elevations and floor plans.

Chair Harrison called for questions from the Board.

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

Mr. Gille called Denis Orloff, applicant and owner of 349 Park Street, who was sworn. Mr. Gille questioned Mr. Orloff. Mr. Orloff described the design of the proposed residence and how it would blend in with the existing neighborhood.

The Board questioned the applicant.

Mr. Orloff stated that if the building footprint were to be moved to conform to the front yard setback, many trees in the rear yard would need to be removed.

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

Chair Harrison called for public comment.

Carl Freed, of 357 Park Street, was sworn. Mr. Freed stated that he has met with the applicants concerning their application and voiced his support for the proposed residence.

Jim Kennedy, of 141 Summit Avenue, was sworn. Mr. Kennedy stated the applicants have been cooperative in communicating with the residents of the neighborhood and stated his support for the proposed residence.

Mr. Gille summarized the application.

The Board discussed the application.

On motion by Ms. Costello, seconded by Mr. Chapman, it was resolved to approve the variance application, subject to the following condition:

1. The addition shall be built no closer to the front property line along Park Street than the existing structure.

On motion by Mr. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Don and Sue Clark, 175 Cooper Avenue** was adopted, Ms. Brooks abstaining:

**WHEREAS, Don and Sue Clark**, owners of property at **175 Cooper 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 side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of an addition on property designated as Lot 12 in Block 2605 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by James M. Helb, PE, LS, PP, dated January 25, 1997 and drawings prepared by John Thomas Collins, Architect, dated August 2001 that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on October 17, 2001 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is approximately 15,770 square feet in size and contains a 2 ½ story single-family dwelling.
2. The applicants' proposal is to construct a one-story addition onto the rear and side of the dwelling to enlarge a family room.
3. The proposed location of the addition is appropriate given the architectural features and characteristics of the existing dwelling.
4. The proposed side yard setback is 9.1 feet as measured from the closest portion of the addition to the side lot line.
5. The proposed chimney is exempt from side yard setback requirements, however, any proposed cabinetry constructed on either side of the chimney structure is not exempt and must meet the required setbacks.

**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 applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the

variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within variance application of Don and Sue Clark is hereby approved, subject to the following conditions:

1. The addition shall be located no closer than 7.1 feet to the property line at a location south of the chimney structure.

2. The addition including any storage cabinets proposed as part of the chimney structure shall be no closer than 10 feet to the property line at locations north of the chimney structure.

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

Chair Harrison announced the variance application of **Penelope and William Hobbie, 241 North Mountain Avenue.**

William Hobbie, applicant and owner of property at 53 Melrose Place, was sworn.

Mr. Hobbie described the addition, deck, and 2 roofed porches which are proposed to be built onto his existing home. He also described the irregular shape of his property as well as the existing front yard setback of the home. Mr. Hobbie stated that he has worked with Paul Sionas, Architect, on developing plans which will be in keeping the existing style and design of the home .

Chair Harrison called for questions from the Board.

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

Paul Sionas, Architect, was sworn. Mr. Sionas described the variances sought by the applicant for two roofed porches and one open porch located in the front yards of the property. He stated that the design of the addition, deck, and roofed porches would match the existing house lines and enhance the appearance of the home. Mr. Sionas further stated that that the encroachment of the proposed structure decreases moving in a southeasterly direction.

Marked into evidence was:

A-1 Site plan with color illustrating existing and proposed front yard setbacks, on board

- A-2 Photograph of front elevation from the west
- A-3 Photograph of front elevation along Watchung Avenue
- A-4 Photograph of the adjacent property on Watchung Avenue
- A-5 Photograph of house directly across the street on North Mountain Avenue

The Board questioned Mr. Sionas.

The Board questioned Mr. Hobbie.

Mr. Hobbie stated that he has had discussions with surrounding neighbors concerning his plans and that that he has received support to proceed.

Chair Harrison called for question from the public. None were offered.

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Costello, seconded by Mr. Haizel, it was resolved to approve the variance application.

On motion by Mr. Chapman, seconded by Ms. Brooks, the **Minutes of the October 17, 2001** regular meeting were adopted as modified.

Chair Harrison announced the variance application of **Steven Lauda and Ralph Latoracca, Murray Street**. Calvin Trevenen, Esq., appeared as attorney for the applicant. Mr. Trevenen described the history of the subject property as dating back to 1986 when it went before the Planning Board for major subdivision approval.

Marked into evidence was:

- A-1 Enlarged copy Township of Montclair Tax Map depicting the subject property on Murray Street

Mr. Trevenen explained that a portion of the property is located in the Township of West Orange. He stated that the section of Murray Street which lies in West Orange is paved road. He continued by describing the applicant's proposal to build a single-family residence and the variance request to construct a dwelling on an unimproved public street.

Mr. Trevenen cited N.J.S.A. 40:55D-35 which grants the Zoning Board of Adjustment the power to issue a permit for a building or structure not related to a street subject to a condition that prior to the issuance of the permit, the street be suitably improved to the satisfaction of the governing body with regard to the public health, safety, and general circumstance of the particular street. Mr. Trevenen also cited

N.J.S.A. 40:55D-36 which states that where the enforcement of N.J.S.A. 40:55D-35 would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the building or structure to be related to a street, the Board of Adjustment may upon application or appeal, direct the issuance of a permit subject to conditions that would provide adequate access for fire fighting equipment, ambulances, and other emergency vehicles.

Marked into evidence was:

A-2 Copy of the 1986 Resolution of the Planning Board approving a major subdivision application for the subject property

Mr. Trevenen described the 1986 major subdivision application of Joseph Winston and stated that final approval was never obtained. Mr. Trevenen continued by stating that the West Orange Planning Board also approved the major subdivision application in September of 1985.

Marked into evidence was:

A-3 A map of Murray Street, entitled "Map of Building Lots Owned by John Cox" dated 1894

Mr. Trevenen stated that the 1894 map was referenced in the 1985 resolution of the West Orange Planning Board and depicts Murray Street as being divided into a number of small lots. He continued by stating that the Murray Street in Montclair would be better characterized as a "paper street" rather than an unimproved private road due to the fact that it was dedicated as a street but never accepted by the governing body.

Mr. Trevenen referenced the litigation involving the Highway Holding Company in 1956 to demonstrate that the vacating of a street by a governing body does not remove the rights of the private property owners on that street and that these property owners have a private right up to the midline of the street.

Mr. Trevenen stated the parcel appears to be landlocked due to the existence of Murray Street as a paper street and that the parcel has an existing grade of 14 to 15 percent.

Mr. Trevenen stated that he, on behalf of the applicants, has been working closely with counsel representing the opposition to this proposal, as well as the project engineer in an attempt to develop a plan agreeable to all parties involved. He again stated that it would not be necessary to place Murray Street on the map to permit the building on the property. Mr. Trevenen suggested that this could be accomplished by allowing a 12-foot wide private driveway to supply access to the property rather than a public roadway. He continued by stating that applicants as well as the adjacent property owners prefer the driveway to a roadway.

Mr. Trevenen stated that he and the applicant had met with Chief McLoughlin of the Township of Montclair Fire Department, and that it had been resolved that emergency vehicle access to the property would be best provided from the West Orange portion of Murray Street to the west of the property.

Mr. Trevenen stated that the proposed residential driveway off of Valley Way would be constructed on the southern half of the Murray Street right-of-way so as to prevent access to the neighboring properties on Briar Hill Road north of Murray Street.

Chair Harrison called for opening remarks from David Owen, Esq. representing Donald Zief, of 143 Eagle Rock Way.

Mr. Owen stated that he and his client have worked together with the applicants in developing stipulated conditions of approval that he would recommend be incorporated into any conditions of approval set forth by the Board. He stated that he and his client would defer until a later point of the meeting to speak further.

Mr. Trevenen called John DeGrace, Professional Engineer, who was sworn. Mr. DeGrace described the plans for the proposed residence. He stated that the proposed 12-foot residential driveway providing access from Valley Way would be constructed in the southern half of the Murray Street one foot off of the center line. He continued by describing the proposed public water connections to the property.

Mr. DeGrace stated the proposed access for fire and other emergency vehicles would be provided by a 16-foot wide gravel drive, which would be an extension of the paved portion of Murray Street in West Orange. He stated that break-away wooden fencing would be placed at the entrance to this gravel drive in order to limit access to emergency vehicles only.

Mr. DeGrace stated that the current plans indicate the limit of clearing and the location of trees on the property which are to remain undisturbed. He also stated that details have been added to the plan to illustrate detail for the type B inlet.

Mr. DeGrace stated that the final plans will comply with all of the engineering recommendations of the Board Engineer's memorandum dated October 3, 2001.

Mr. DeGrace stated that the proposed residential drive will not disturb the large planter placed in the Murray Street right-of-way by an adjacent neighbor. He stated that the driveway will curve to avoid this planter. He further stated that the proposed residential driveway conforms with all steep slope and grade requirements.

The Board questioned Mr. DeGrace.

Chair Harrison called for questions from the public.

Craig Wilensky, of 5 Briar Hill Road, stated that the slope of the gravel driveway was too steep and would produce a high level of storm water runoff.

Regina Lisko, of 1 Briar Hill Road, stated that the erosion caused by storm water runoff would make the paved residential driveway a mess.

Mr. DeGrace stated that the increased amount of storm water runoff produced by the gravel drive as opposed to natural terrain would be miniscule. He also stated that the storm water would flow in a southeasterly direction across the residential drive into 3 drainage inlets. He further stated that, to his knowledge, the drainage plan previously reviewed by the Board Engineer did not include the gravel driveway.

Chair Harrison called for comment from David Owen, Esq. representing Donald Zief, of 143 Eagle Rock Way.

Mr. Owen stated that the proposed driveways providing access to the proposed residence are preferable to a through street being developed as access. He stated that the existing topography, the presence of 2 large water mains, and preventing public vehicle access are all reasons why a private driveway is the best alternative. He further stated that the proposed driveways prevent the creation of undesirable conditions for the adjacent neighbors including a through street and lots with double frontage.

Mr. Owen stated that the applicants have given due regard to emergency vehicle access. He reiterated that he and his client have worked together with the applicants in developing stipulated conditions of approval that he would recommend be incorporated into any conditions of approval set forth by the Board.

Marked into evidence was:

O-1 Stipulated Conditions of Approval

Mr. Owen described the Stipulated Conditions of Approval and asked that the Board approve the application subject to these conditions.

The Board questioned the applicants.

Mr. Trevenen stated that the applicants prefer the residential access to be from the Montclair portion of Murray Street to the east of the property. He stated that the applicants prefer that the property have a Montclair address. He also stated that the West Orange portion of Murray Street is in disrepair and that the applicant would like more control in maintaining the residential access which can only be done with a private drive.

Mr. Trevenen called Donald Zief, of 143 Eagle Rock Way, who was sworn.

Mr. Trevenen questioned Mr. Zief. Mr. Zief stated that he has no objection to the current plans for the proposed development.

Chair Harrison called for comment from the public.

Fred Muluzia, of 147 Eagle Rock Way, was sworn. Mr. Muluzia stated that he opposes the proposed development because he would prefer the property to remain in its natural undisturbed state.

Regina Lisko, of 1 Briar Hill Road, was sworn. Ms. Lisko stated that she was opposed to the development because of the potential flooding it may cause and because of the removal of trees on the property.

Craig Wilensky, of 5 Briar Hill Road, was sworn. Mr. Wilensky again stated that the slope of the gravel driveway was too steep and would produce a high level of storm water runoff. He also stated that it should be taken into consideration that the area of the proposed residence is occupied by wildlife.

Mr. Owen stated the proposed development as currently submitted is the best alternative for developing the property.

Mr. Trevenen summarized the application.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Ms. Costello, it was resolved to approve the variance application, Chair Harrison and Ms. Brooks voting in the negative, subject to the following conditions:

1. The applicants have abandoned the preliminary subdivision approval granted by the Montclair Township Planning Board by resolution adopted on May 22, 1986.
2. As set forth in the site plan, the applicants' development shall be limited to one single family dwelling without accessory structures on Block 103, Lot 20.
3. As also set forth in the site plan, access to the aforesaid single family dwelling shall be via a private driveway that will run between the single family dwelling and Valley Way in Montclair Township, and this driveway shall conform in width (12 feet maximum), layout, and all other respects to the site plan.
4. The aforesaid driveway shall not extend westward (i.e., towards West Orange Township) any greater distance than as set forth in the site plan and, as a consequence, shall not extend into West Orange Township or provide access to any



road or street in West Orange Township (however, a 16 foot wide gravel drive, shall be constructed as set forth in the site plan, shall meet existing Murray Street in West Orange Township, and shall be used only for fire protection purposes).

5. The aforesaid driveway shall be used only for access and only for the owner of Block 103, Lot 20 and shall not be used as a joint driveway by any other person or for any other purposes.

6. The applicants, as well as any of their successors in interest who might acquire or receive Block 103, Lot 20, having agreed to the special conditions of their application, hereby release and give up any and all rights to seek to construct or to construct either a private or public street in the area now designated on the Montclair Township tax maps and in the site plan as Murray Street or the Murray Street right of way and commonly known as the Murray Street "paper street".

7. The applicants shall apply to the governing body of the Township of Montclair prior to issuance of any building permits and in any event no later than one year from the date of this resolution to request that portion of Murray Street between the boundary of West Orange Township and Valley Way in Montclair Township be vacated except for easements allowing utility connections.

8. The applicants shall comply with items 2, 4, 5, 6, and 7 contained in the Board of Adjustment Engineer's memorandum dated October 3, 2001.

9. The owner of the subject property shall be responsible for maintaining the sanitary sewer up to the right of way line of Valley Way.

10. No disturbance of the right of way shall be permitted in the area between the 16 foot wide gravel drive and the 12 foot wide paved driveway.

11. Prior to commencing any clearing or other development, the applicants shall submit, with copies to Peter Meyer, P.E., storm water calculations for review and approval of the Board of Adjustment Engineer considering the runoff from the paved portion of Murray Street and the 16 foot wide gravel drive.

12. The limit of construction and the proposed silt fence as shown on the site plan shall be relocated so that there shall not be any disturbance to the existing planter on Block 103, Lots 15 and 19.

On motion by Mr. Chapman, seconded by Ms. Costello, the meeting was adjourned.