

**MINUTES OF THE BOARD OF ADJUSTMENT
DECEMBER 11, 2002**

PRESENT: Chair Harrison, Ms. Brooks, Mr. Chapman, Ms. Costello, Vice Chair Fleischer, Mr. Gallardo, Ms. Rock-Bailey; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Planning Technician

ABSENT: Mr. Haizel, Mr. Susswein

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.

Secretary Sammet announced that at the request of the applicant, the minor subdivision and variance application of **BJM Construction, 99 Willowdale Avenue** has been postponed until the January 15, 2003 regular meeting of the Board of Adjustment, that the Board has been granted an extension of time for which to act on the application, and that no further notice would be given.

Secretary Sammet announced that at the request of the applicant, the site plan and variance application of **Keith Ballentine, 395 Claremont Avenue** has been postponed until the January 15, 2003 regular meeting of the Board of Adjustment, that the Board has been granted an extension of time for which to act on the application, and that no further notice would be given.

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, the **Minutes of the November 20, 2002** regular meeting were adopted as modified.

On motion by Mr. Gallardo, seconded by Mr. Chapman, the following Resolution memorializing the approval of the variance application of **John Ceraso, 21 Macopin Avenue** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, John Ceraso, owner of property at **21 Macopin 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 347-45B(2)** in connection with the construction of an second-story addition on property designated as Lot 13 in Block 2802 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Frederick C. Losowski, dated April 4, 2002 and sunroom plans prepared by Douglas R. Long, R.A., P.E., P.P., C.L.A., L.S., dated March 1, 2002, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 13, 2002 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is a corner lot at the intersection of Macopin Avenue and Patton Place and contains a 2½-story single-family dwelling with a one-story section located at the easterly side of the dwelling.

2. The existing structure on the property has a non-conforming front yard setback of approximately 10.5 feet along Patton Place measured from the northeasterly corner of the one-story section of the dwelling.

3. The applicant's proposal is to construct a second-story addition over the existing one-story section of the dwelling in order to enclose an existing open-air porch/terrace on the roof of the one-story section.

4. The proposed second-story addition would be aligned with the exterior walls of the existing one-story section of the dwelling.

5. The proposed addition meets the height and side yard setback requirements.

6. Based upon the Board's particular knowledge of local conditions, the proposed 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 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 variance application of John Ceraso is hereby approved.

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

On motion by Mr. Gallardo, seconded by Mr. Chapman, the following Resolution memorializing the approval of the variance application of **John and Maria Block, 20 Skytop Terrace** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, John and Maria Block, as owners, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a rear yard setback less than that required pursuant to **Montclair Code Section 347-45D** in connection with the construction of an addition and outdoor deck on property designated as Lot 133 in Block 3802 on the Township Tax Map and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Capasso and Hingos, Inc., dated September 7, 1984 and a site plan, floor plans and elevations prepared by Downtown Group, Architects, dated July 19, 2002, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 13, 2002 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 irregularly shaped lot measuring approximately 7,700 square feet in area, and contains a 1½-story, single-family dwelling.
2. The applicants propose to construct a one-story addition and an outdoor deck onto the rear of the dwelling, both of which meet the height and side yard setback requirements, but do not meet the rear yard setback requirements.
3. The rear yard setback of the proposed addition is approximately 19 feet 10 inches, measured from the northwesterly corner of the addition, and the rear yard setback of the proposed outdoor deck measures approximately 19 feet 8 inches, measured from the northeasterly corner of the deck.
4. The Board determined that, with respect to the requested variance for the rear yard setback of the one-story addition, the size and shape of the property, as well as the placement of the existing dwelling on the lot, places undue hardship on the applicants in constructing a fully conforming addition.

5. The Board also determined that applicants did not demonstrate the necessary burden of proof regarding the requested variance for the rear yard setback of the outdoor deck, and that the proposed outdoor deck could be reasonably constructed without the need for a rear yard setback variance.

WHEREAS, the Board, based upon the foregoing findings, concluded that, with respect to the rear yard setback variance for the one-story addition, 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, with respect to the rear yard setback variance for the one-story addition, 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

WHEREAS, the Board, based on the foregoing findings concluded that, with respect to the rear yard setback variance for the outdoor deck, the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variance could be granted without substantial detriment to public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to *N.J.S.A. 40:55D-70C(1)*; and

WHEREAS, the Board, based on the aforementioned findings, concluded that, with respect to the rear yard setback variance for the outdoor deck, the applicants did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of *N.J.S.A. 40:55D-70C(2)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of John and Maria Block, for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to allow a rear yard setback less than the required rear yard setback for the proposed outdoor deck 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 John and Maria Block for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to permit a rear yard setback less

than the required rear yard setback for the proposed one-story addition is hereby approved subject to the following conditions:

1. The proposed one-story addition shall not encroach into the required 25-foot rear yard setback requirement at the northeasterly corner of the proposed addition, and shall not project further than 3 feet and 7 inches into the required rear yard setback for the remainder of the addition.
2. The proposed outdoor deck shall be constructed within the required setbacks.

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. Gallardo, seconded by Mr. Chapman, the following Resolution memorializing the approval of the variance application of **Sharon DiDonato, 521 Upper Mountain Avenue** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, Sharon DiDonato, owner of property at **521 Upper Mountain 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 northerly and southerly side yard setbacks 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 30 in Block 803 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated June 14, 1996, with the proposed addition indicated, and floor plans and elevations prepared by the applicant, 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 November 13, 2002 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 50 feet and contains a one-story, single-family dwelling with nonconforming side yard setbacks in both the northerly and southerly yards.
2. The applicant's proposal is to construct a complete second-story addition over the existing one-story dwelling, and a roofed front porch, which conform to the

height requirements and the front and rear yard setback requirements, but do not meet the side yard setback requirements.

3. The proposed second-story addition would be aligned with the existing exterior walls of the dwelling and the southerly side of the proposed front porch would be aligned with the southerly wall of the dwelling.

4. Based upon the Board's particular knowledge of local conditions, the proposed 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 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 Sharon DiDonato is hereby approved subject to the following condition:

1. The proposed second level addition and front porch shall not be built closer to the northerly and southerly property lines than the existing dwelling.

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. Gallardo, seconded by Mr. Chapman, the following Resolution memorializing the approval of the variance application of **Joe Spruill, 177 Orange Road** was adopted as modified, Ms. Rock-Bailey abstaining:

WHEREAS, **Joe Spruill**, owner of property at **177 Orange Road**, 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 northerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)**, and a rear yard setback less than that required pursuant to **Montclair Code Section 347-45D**, in connection with the

construction of an addition and outdoor deck on property designated as Lot 20 in Block 2109 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Surveyors, Inc., dated July 29, 1991 and a site plan, floor plans, and elevations prepared by Susan Chandler, Architect, dated July 30, 2002, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 13, 2002 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 50 feet, is irregularly shaped, and contains a 2½-story single-family dwelling.
2. The existing dwelling has a nonconforming northerly side yard setback of approximately 4.65 feet measured from the northeasterly corner of the dwelling and approximately 4.0 feet measured from the stoop of the rear porch located at the northeasterly corner of the dwelling.
3. The applicant's proposal is to remove the existing rear porch at the northeasterly corner of the dwelling and construct a one-story addition to the dwelling that conforms to the height and rear yard setback requirements, but does not meet the side yard setback requirement of 6 feet. The applicant also proposes to construct an outdoor deck onto the rear of the dwelling that conforms to the height and side yard setback requirements, but does not meet the rear yard setback requirement of 25 feet.
4. The proposed addition will be aligned with the existing northerly and easterly walls of the dwelling and a 4-foot northerly side yard setback is proposed for the addition. The proposed deck is moderately sized, placed in the most suitable location for the property and set back 15 feet from the rear property line.
5. The subject lot is irregularly shaped and the placement of the existing dwelling on the lot places undue hardship on the applicant to meet the side yard setback requirement for the addition and the rear yard setback for the deck.
6. Based upon the Board's particular knowledge of local conditions, the proposed 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 variances could be granted without substantial

detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

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

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

1. The exterior walls of the addition shall follow the exterior walls of the existing dwelling.
2. The outdoor deck shall be built no closer than 15 feet to the rear property line.

On motion by Ms. Brooks, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **Philip C. Haws, 44 Saint Lukes Place** was adopted as modified, Ms. Rock-Bailey abstaining:

WHEREAS, Philip C. Haws, owner of property at **44 Saint Lukes Place**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c, and in connection with the construction of a driveway partially located on adjoining property at **46 Saint Lukes Place**, to allow for a driveway width less than that required pursuant to **Montclair Code Section 347-102C** and to allow a parking area and driveway to be less than 6 feet away from a principal building, and allow the driveway to be set back from the side property line less than that required pursuant to **Montclair Code Section 347-58D** on property designated as Lot 16 in Block 1406 on the Township Tax Map and located in the R-3 Garden Group Zone; and

WHEREAS, the applicant submitted a property survey of 44 Saint Lukes Place, prepared by Hallard and Associates, dated May 10, 2001, a property survey of 46 Saint Lukes Place, prepared by Richard S. Hudson, dated July 26, 1980, the text description of the driveway easement between the subject properties, prepared by Mark Lee Baker Professional Engineering and Land Surveying, dated May 16, 2002, and a site plan, prepared by the applicant, made up of a composite of the surveys of the properties in question, undated, and a signed letter from the owner of 46 Saint Lukes Place, Kenneth Brower, acknowledging the application; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 13, 2002 at which time it was established that notice was

properly published and the property owners within 200 feet of the properties in question had been properly served notice; and

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

1. The property located at 44 Saint Lukes Place is an interior lot, measuring approximately 38.5 feet in width and contains a 2-½ story two-family dwelling, but no driveway or off-street parking.

2. A paved driveway, measuring approximately 8.5 feet in width, and partially located on the adjoining southerly property located at 46 Saint Lukes Place, is proposed and would lead to a parking area for 3 vehicles at the rear of the dwelling at 44 Saint Lukes Place.

3. The testimony of the applicant indicated that a cross-easement has been negotiated and entered into by he and the owner of 46 Saint Lukes Place, which also has no driveway or off-street parking, allowing for common use of the driveway leading to the rear of the subject properties. The testimony of the applicant further indicated that the owner of 46 Saint Lukes Place intends to construct a parking area in the future on that property for his use, and that the proposed 3-vehicle parking area at the rear of 44 Saint Lukes Place would not be shared with the adjoining property.

4. At the hearing, the applicant submitted an alternative parking plan, titled Plan 2, which depicted the 3 proposed parking spaces positioned parallel with the side property lines and providing the required 6-foot separation from the principal dwelling on the property. The Board rejected the alternative plan and determined that the required 6-foot separation could be accomplished by modifying the layout and maintaining the perpendicular orientation of the parking stalls to the side property lines.

5. With respect to the requested variance for a deficient driveway width, the applicant demonstrated that the proposed driveway width would allow for viable and effective ingress and egress of vehicles accessing the parking area.

6. The Board determined that the variance for the deficient driveway setback from the southerly side property line was justified being that the adjoining southerly property at 46 Saint Lukes Place and the applicant have entered into a negotiated cross-easement allowing for common use by both properties; therefore strict application of the ordinance under the present circumstances would be impractical.

WHEREAS, the Board, based on the foregoing findings, concluded that, with respect to the requested variance to locate the parking area within 6 feet of a principal building, the applicant failed to prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not prove that the variance to locate a parking area less than 6 feet from a principal building could be granted without substantial

detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to N.J.S.A. 40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that, with respect to the requested variance to locate the parking area within 6 feet of a principal building, the applicant did not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variance to locate a parking area less than 6 feet from a principal building could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA 40:55D-70c(2); and

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

WHEREAS, the Board, based on the aforementioned findings, concluded that, with respect to the driveway width and setback, 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 for deficient driveway width and deficient driveway setback could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA 40:55D-70c(2); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Philip C. Haws for a variance pursuant to N.J.S.A. 40:55D-70c to construct a parking area located less than 6 feet from a principal building is hereby denied; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Philip C. Haws for a variance pursuant to N.J.S.A. 40:55D-70c to construct a driveway deficient in width and partially located on the adjoining property located at 46 Saint Lukes Place, and a parking area for 3 vehicles in the rear yard of 44 Saint Lukes Place is hereby approved subject to the following conditions:

1. The cross-easement between the applicant and the owner of 46 Saint Lukes Place shall be approved by the Board Attorney and recorded in the Essex County Register's Office.

2. The 3 proposed parking spaces shall be positioned perpendicular to the side property lines, as indicated on the original plan and set back a minimum distance of 6 feet from the principal dwelling on the applicant's property.
3. The westernmost parking space shall be reduced from 15 feet to 12 feet in width.
4. Any future application by the adjoining property at 46 Saint Lukes Place for a parking area shall include a composite site plan that includes the parking area of 44 Saint Lukes Place.

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

On motion by Mr. Chapman, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **James and Jean Griffin, 530 Grove Street** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, James and Joan Griffin, owners of property at **530 Grove 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 front yard setback less than that required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of an second-story addition on property designated as Lot 16 in Block 3606 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Capasso and Hingos, Inc., dated March 30, 1990 and a site plan and floor plans prepared by Edmundo Lopez, Architect, dated May 2002, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 13, 2002 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is a corner lot at the intersection of Grove Street and Haddon Place and contains a 2½-story single-family dwelling with a one-story section located at the northerly side of the dwelling.
2. The existing structure on the property has a non-conforming front yard setback of approximately 27 feet from Haddon Place.

3. The applicants' proposal is to construct a second-story addition over the existing one-story section of the dwelling in order to accommodate a new master bedroom and wardrobe.

4. The walls of the proposed second-story addition would be aligned with the exterior walls of the existing one-story section of the dwelling. In addition, a roof overhang or apron, located between the existing first level and proposed second level, will extend approximately two feet from the wall of the addition.

5. The proposed addition meets the height, side yard and rear yard setback requirements.

6. Based upon the Board's particular knowledge of local conditions, the proposed 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 James and Joan Griffin is hereby approved, subject to the following condition:

1. The Haddon Place front yard setback of the wall of the second-story addition shall not be less than 27 feet, and the Haddon Place front yard setback of the overhang or roof apron shall not be less than 25 feet.

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

Chair Harrison called the variance application of **Efthymios & Athanasia Daniskas, 49 Erwin Park Road**. Athanasia Daniskas was sworn and described the proposed addition and the front yard setback variance requested. She stated that the proposed addition would contain an expanded kitchen and a new half bath on the first

level and a new master bath and a sitting room attached to the master bedroom on the second level. She continued by describing the existing dwelling and stated that her family has outgrown the home and that the proposed addition would provide the additional living space needed. She stated that the front yard setback of the addition from Holland Terrace is approximately 16.5 feet, and that many of the existing dwellings in the vicinity of the intersection of Erwin Park Road and Holland Terrace are set back less than the front yard setback of the proposed addition. She also stated that the design of the addition is in keeping with the architectural and historic details of the existing dwelling.

The Board questioned Ms. Daniskas.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

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

Chair Harrison called the variance application of **Mr. & Mrs. Umberto Vecchiarelli, 5 Garfield Place**. Mr. and Mrs. Vecchiarelli, owners and applicants, and John Way, Architect, were sworn. Mr. Way stated that the applicants had prepared the drawings initially submitted with the application and that he has prepared a supplemental set of plans to those previously submitted.

Marked into evidence was:

A-1 Architectural drawings, on 6 sheets, prepared by Way & Associates, Architects, dated December 10, 2002.

Mr. Vecchiarelli stated that the existing dwelling contains approximately 1,400 total square feet and that their family will soon outgrow the existing home as their children grow. He stated that the proposed addition would provide the additional living space that they will need.

Marked into evidence was:

A-2(a-f) Six (6) photographs of the subject property

Mr. Way described the property and the side yard setback variance requested. He stated that the existing dwelling is set back approximately 3.88 feet from the westerly side property line and that the proposed 2-story addition would set in an additional 6 inches from the westerly side property line. Mr. Way also stated that the proposed addition would be located approximately 12 feet away from the existing

garage on the applicants' property as well as the garage on neighboring property to the west.

The Board questioned the applicants and Mr. Way.

Mr. Way stated that the roof overhang depicted at both the first and second levels of the proposed addition would not project further into the westerly side yard than the existing roof overhang of the dwelling.

Mr. Vechiarelli stated that 1 existing Maple tree in the rear yard would have to be removed to accommodate that proposed addition.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Chapman, it was resolved to approve the application.

Chair Harrison called the variance application of **Martin Healy & Jane Wallace, 213 Inwood Avenue**. Jane Wallace, owner and applicant, and Dan Masterson, builder for the project, were sworn. Ms. Wallace described the proposed roofed front porch. She stated that the previously existing wrap-around roofed front porch on the dwelling had to be demolished due to soil settlement problems and that a smaller porch was constructed in its place. She stated the proposed roofed front porch has been designed to match more closely what previously existed on the dwelling and would match the architectural and historic details of the dwelling.

Mr. Masterson stated that the proposed front porch would not extend closer to Inwood Avenue than the existing porch and that the porch would be extended an additional 9 feet closer to the easterly side property line than the existing porch. He also stated that the proposed porch would not wrap around the southeasterly corner of the dwelling.

The Board questioned the applicant and Mr. Masterson.

Mr. Masterson stated that the footings of the existing porch would be utilized for the proposed porch.

Ms. Wallace stated that the front porch vestibule depicted on the plans would be similar to an existing front porch vestibule on nearby property on Inwood Avenue.

Marked into evidence were:

- A-1 Photograph of the front of the dwelling located at 202 Inwood Avenue depicting the front porch vestibule
- A-2 Photograph of the front of the applicant's dwelling located at 213 Inwood Avenue

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, it was resolved to approve the variance request, subject to the following condition:

1. The extension to the existing roofed porch shall not be constructed closer to Inwood Avenue than the existing porch.

Chair Harrison called the site plan and variance application of **Michael and Tina Gulich, 4 Rockledge Road**. Grant Gille, Esq., appeared as attorney for the applicants. Mr. Gille described the application and the variances requested.

Mr. Gille called Michael Gulich, applicant and Architect, who was sworn. Mr. Gulich stated his qualifications as a Licensed Architect and stated that he prepared the drawings for the application with the exception of the fire escape plans, which were prepared by an Engineer.

Marked into evidence were:

- A-1 Revised set of architectural plans, on 2 sheets, prepared by Michael John Gulich, Architect, revised to December 9, 2002
- A-2 Fire Escape plans, on a single sheet, prepared by Roy Dedic & Associates, Inc., dated July 8, 2002
- A-3 Five (5) photographs of the subject property, on a board
- A-4 Property survey of the subject lot, prepared by A. Byrd Company, dated April 14, 1999

Mr. Gulich described the existing conditions on the property and the revised plans. He stated that the existing parking arrangement would be utilized for the proposed conversion to 3 dwelling units. He also described the existing landscaping on the site. He stated that addition of the open fire escape and trash enclosure were the only physical changes being made to the site as part of the proposed conversion. He continued by describing the floor plans. He stated that the first floor dwelling unit

contains 2 bedrooms and 1 bathroom and that no changes are proposed for the first floor unit. He also stated that the second floor dwelling unit contains 3 bedrooms and 2 bathrooms and that the only change would be the replacement of the window leading to the proposed fire escape with double doors. He further stated that the existing third floor contains 2 bedrooms and 1 bathroom and that a kitchen would be added where a storage area presently exists and that an egress window leading to the proposed fire escape would replace an existing bay window.

Mr. Gulich described the proposed fire escape location. He stated that the easterly side of the dwelling provides the best egress from the dwelling units. He also stated that the easterly side of the dwelling has a recessed area that could accommodate the fire escape so that the fire escape would not project closer to the easterly property line than the existing building, that the fire escape would be set back approximately 1 foot from the easterly property line, and that the fire escape would be hardly visible from Rockledge Avenue. He further stated that the easterly side of the dwelling is bordered by a 30-unit apartment complex that has a similar metal fire escape set back approximately 12 feet from his property line.

Mr. Gulich stated that the front of the dwelling was not considered to be a suitable location for the fire escape for aesthetic reasons. He further stated that the existing porch on westerly side of the dwelling does not allow for a fire escape to be installed and that the westerly side of the property also borders an R-1 Zone. He continued by stating that the rear of the dwelling is not a feasible location for the fire escape due to the orientation of the roofline at the rear of the dwelling, which would not provide the proper egress to the fire escape.

Mr. Gulich stated that the property has had a record of housing and zoning violations prior to his ownership and that he has rectified very violation, with the exception of the fire escape required for third floor emergency egress. He also stated that a single person presently occupies the existing third floor boarder unit and that the boarder unit does not contain kitchen or cooking facilities. He further stated that after the conversion, he and his family would occupy the first floor unit and that the second and third floor units would be rented.

The Board questioned Mr. Gulich.

Marked into evidence was:

A-5 Eight (8) photographs and the Site Plan, on a board

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

Mr. Gille conducted a re-direct of Mr. Gulich.

Mr. Gille called Roger DeNiscia, Professional Planner, who was sworn. Mr. DeNiscia stated that he has reviewed the submitted plans including the revisions and described the proposal and the variances and waivers requested. He described the existing conditions on the site and stated that minimal changes are proposed for the site. He stated that the applicants' proposal meets the intent of the R-4 Zone and provides land use planning benefits by rectifying an existing housing violation, as well as providing the smaller housing units needed in Montclair as set forth in the Township's latest Master Plan Re-examination Report and the State legislature.

Mr. DeNiscia stated that the subject property is located in the R-4 Three-Story Apartment Zone, which permits multi-family usage and the conversions of dwellings to a higher density as conditional uses. He stated that the proposed density is permitted, all of the required parking is existing, and that the site is particularly well suited for the proposed use. He also stated that the proposed fire escape is located in the best possible location on the property and would have a minimal impact on adjoining properties. He further stated that all of the requested variances and waivers could be granted without substantial detriment to the Zone Plan, the Master Plan, and the community and that the benefits of the application outweigh any detriments. He continued by stating that the applicants' proposal achieves the purposes of planning set forth in § 40:55D-2a, c, e, g, and h of the Municipal Land Use Law.

The Board questioned Mr. DeNiscia.

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

Chair Harrison called for public comment. None was offered.

Mr. Gulich stated that all of the lighting on the plan is existing and shielded from adjacent properties. He also stated that the existing lighting is on timers, motion sensors, and dimmers. He further stated that there is not enough space in the easterly side yard to enclose the proposed fire escape.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Mr. Fleischer, it was resolved to approve the site plan and variance application, subject to the following conditions:

1. The exterior fire escape shall be enclosed with a rust free, perforated metal screen not more than 50 % solid on the northerly face, the color of which shall be coordinated with the color of the building.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the **2003 Schedule of Regular Meetings** was adopted as modified.

On motion by Mr. Chapman, seconded by Mr. Gallardo, the following Resolution

memorializing the approval of the variance application of **Thomas F. McLoughlin, 47 College Avenue** was adopted, Ms. Rock-Bailey abstaining:

WHEREAS, Thomas F. McLoughlin, owner of property at **47 College 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 northerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)**, and a rear yard setback less than that required pursuant to **Montclair Code Section 347-45D** in connection with the construction of an addition on property designated as Lot 16 in Block 1005 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Capasso and Hingos, Inc., dated June 10, 1992 and a site plan/floor plans and rendering of the proposed addition prepared by Edmundo Lopez, Architect, dated August 12, 2002 and August 19, 2002, respectively, that depicts the new construction; and

WHEREAS, this matter came to be heard at a meeting of the Board of Adjustment held on November 13, 2002 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 57.99 feet, measures approximately 5,372 square feet in area, and contains a 1½-story, single-family dwelling with an attached garage.
2. The applicant's proposal is to construct a one-story addition at the rear of the dwelling which conforms to the height requirements but does not meet the side yard setback and rear yard setback requirements.
3. The proposed addition contains approximately 327 square feet and is not aligned with the existing walls of the dwelling. A northerly side yard setback of 8.5 feet is proposed, as measured to northerly corner of the addition excluding the landing and stairs, and a rear yard setback of approximately 13.5 feet is proposed.
4. The applicant demonstrated that the existing location of the dwelling places undue hardship in meeting the required rear yard setback.
5. Although the applicant did demonstrate that due to the narrow width of the lot and placement to the dwelling on the lot, a side yard setback variance is justified, the applicant did not demonstrate the necessary burden of proof to allow the proposed encroachment into the northerly side yard setback, and the Board determined that providing a more narrow doorway entrance to the proposed addition would significantly

reduce the encroachment of the addition into the northerly side yard and allow the proposed addition to be closer to conformity with the required side yard setback.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Thomas F. McLoughlin for side yard and rear yard setback variances is hereby approved subject to the following condition:

1. The proposed addition, excluding the exterior stairway and landing, shall not be built closer than 9 feet 6 inches from the northerly side property line.

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. Chapman, the following Resolution memorializing the approval of the site plan and variance application of **Dr. & Mrs. Frank Hoffman, 160 Walnut Street** was adopted, as modified:

WHEREAS, Dr. & Mrs. Frank Hoffman, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct additions to the existing mixed-use building and related site improvements on property designated as Lot 18 in Block 2312 and located in the R-3 Garden Group Zone; and

WHEREAS, the applicants sought site plan approval and relief as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d* to allow expansion of a nonconforming medical office use on the first floor contrary to Montclair Code Section 347-112;

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit 9 parking spaces where a minimum of 13 parking spaces are required pursuant to Montclair Code Section 347-101;

3. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit less than the required 4 foot parking area setback contrary to Montclair Code Section 347-104;

4. An exception to permit a 22 foot aisle width where a minimum of 24 foot aisle width is required for parking stalls at a 90 degree angle pursuant to Montclair Code Section 281-9D(1);

5. An exception to permit a 10 foot wide two-way driveway where a minimum of 18 feet is required pursuant to Montclair Code Section 281-91;

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by The Mylan Architectural Group revised through July 23, 2002; as well as a property survey prepared by Richard J. Hingos, Inc. dated July 12, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 20, 2002 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 existing building contains a preexisting nonconforming office use on the first floor as well as a studio apartment which occupies a portion of the second floor and a two-bedroom apartment which occupies the remainder of the second floor and the third floor pursuant to approvals granted by the Planning Board in 1986 and 1986.

2. The application contemplates construction of a one-story addition to the rear of the building, creating a new barrier-free entrance and ramp at the rear of the building and enclosing a portion of the existing open front porch as well as redesigning the existing parking area. The proposed improvements constitute appropriate municipal action which will advance the general welfare consistent with *N.J.S.A. 40:55D-2a*.

3. The slight expansion of the physical structure of the nonconforming medical office use will not result in any perceptible intensification of use.

4. The applicant proved "special reasons" as the application provides sufficient space in an appropriate location for medical office use and based upon existing improvements, the site is particularly suited for such use.

5. The testimony established a total of 9 parking spaces on site will adequately meet the needs of the medical office/residential use.

6. Based upon the Board's particular knowledge of local conditions, the application is not inconsistent with the character of the neighborhood 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 the applicants proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan and zoning ordinance; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Dr. & Mrs. Frank Hoffman, for site plan approval, variances and exceptions is hereby approved subject to the following conditions:

1. The applicants shall relocate the 3 air conditioning condensers along the easterly side of the property to provide the required minimum 3 foot setback.

2. The parking area in the rear shall be extended not more than 10 feet to the north to shift parking space 1 further to the rear and to accommodate an additional parking space to be located between parking spaces 1 and 2. The width of the additional parking area shall be the minimum width required to accommodate the relocation of parking space 1 and the new parking space.

3. Parking space 8 shall be eliminated and the pavement surrounding the tree within the parking space shall be removed. The area shall be paved and the parking space restored in the event the tree dies.

4. All proposed parking spaces in the parking area shall be striped.

5. No more than one doctor shall practice at any one time at the premises.

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

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Mr. & Mrs. Strahan, 99 Lloyd Road** was adopted, as modified:

WHEREAS, Mr. and Mrs. Michael Strahan, as owners, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for more off-street parking on their property than permitted pursuant to **Montclair Code Section 347-31B** and **Montclair Code Section 347-101** in connection with the construction of an attached 8-car garage, and to allow for a side yard setback less than that is required pursuant to **Montclair Code Section 347-34A(2)(a)** and a rear yard setback less than that is required pursuant to **Montclair Code Section 347-34A(3)** in connection with the construction of a pergola on property designated as Lot 1 in Block 303 on the Township tax map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicants submitted a site plan, floor plans and elevations, prepared by Sionas Architecture, P.C., dated November 6, 2002, and grading and drainage plans, soil erosion and sediment control plans and construction details, prepared by RCC Design, Inc., dated November 8, 2002 that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 20, 2002 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 applicants withdrew their request for the side and rear yard setback variances pursuant to **Montclair Code Section 347-34A(2)(a)** and **Montclair Code Section 347-34A(3)**, respectively, for the proposed pergola.

2. The subject property measures approximately 100,160 square feet in area and contains a 2½ story principal dwelling and a carriage house at the rear of the property which contains 2 parking stalls on the first floor. The lot size is relatively large for the neighborhood and the Township. Testimony given indicates that the property could be subdivided to accommodate 4 buildable lots.

3. The applicants are restoring the dwelling which was in a relative state of disrepair.

4. The applicants' proposal includes the construction of an attached garage containing 8 parking stalls to accommodate the owners' collection of automobiles. The automobiles are not used in conjunction with the operation of a business nor would automobile repairs take place on the property.

5. The proposed garage meets all height and setback requirements.

The proposed 8-vehicle garage would be constructed partially into the hillside, significantly reducing any visual impact that the new garage may have on adjacent properties. Furthermore, the applicants' automobile collection would be housed in the garage and not visible from the street or adjacent properties.

The applicants have taken every effort to preserve the existing trees on the site in order to maintain the natural appearance of the property.

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 Mr. and Mrs. Michael Strahan is hereby approved subject to the following conditions:

1. Any trees along the northerly property line which die due to construction or within one year of the completion of construction shall be replaced with a similar species and within the same location.

2. No more than 10 vehicles shall be stored on the property and those vehicles shall be for personal use only.

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. Gallardo, seconded by Mr. Chapman, the following Resolution

memorializing the approval of the variance application of **Mark Vespole and Mary Linda Fisher, 92 Montclair Avenue** was adopted:

WHEREAS, Mark Vespole and Mary Linda Fisher, owners of property at **92 Montclair Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a side yard setbacks less than that required pursuant to **Montclair Code Section 347-45C(1)** and to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(1)** in connection with the construction of additions on property designated as Lot 33 in Block 4401 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by Sionas Architecture, P.C., dated July 26, 2002 that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 20, 2002 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 10,238 square feet in size and contains a 2 ½ story single-family dwelling.
2. The applicants' proposal is to construct several additions onto the dwelling including: a new roofed porch onto the front of the dwelling, a 2 ½ story addition at the rear of the dwelling, a 1 story addition at the southerly side of the dwelling and a wood deck at the rear of the dwelling.
3. The existing side walls of the dwelling have side yard setbacks of approximately 4.2 and 9.6 feet.
4. The proposed rear yard and side yard additions would be aligned with the existing exterior walls of the dwelling and step back further from the side property lines as the additions extend towards the rear of the lot.
5. The applicants propose to enlarge an existing front entranceway by constructing a new roofed porch which will provide protection from the elements.

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 variances could be granted without substantial

detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the 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 Mark Vespole and Mary Linda Fisher is hereby approved.

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

Chair Harrison stated that the Minutes of the November 13, 2002 special meeting and the resolution memorializing the approval of the minor subdivision and variance application of Homes of Montclair Ecumenical Corp., 16 Miller Street would be adopted at the January 15, 2003 regular meeting of the Board.

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