

MINUTES OF THE BOARD OF ADJUSTMENT
December 15, 2004

PRESENT: Chair Harrison, Ms. English, Vice Chair Fleischer, Mr. Haizel, Ms. Rock-Bailey, and Mr. Susswein; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey, Mr. Flood, and Secretary Mellon

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

On motion by Mr. Susswein, seconded by Mr. Haizel, the **Minutes of the November 10, 2004** regular meeting were adopted, Mr. Fleischer and Ms. Rock-Bailey abstaining.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the **2005 Schedule of Regular Meetings** was adopted.

On motion by Mr. Susswein, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Richard Hershberger and Jennifer Mutter, 2 Franklin Avenue** was adopted, Mr. Fleischer and Ms. Rock-Bailey abstaining.

WHEREAS, Richard Hershberger and Jennifer Mutter, owners of property at **2 Franklin 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)** in connection with the construction of an addition to an existing single-family dwelling on property designated as Lot 3 in Block 1913 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by James P. Deady, dated March 12, 2004, and a site plan, floor plans and elevations, with no preparer indicated, dated September 20, 2004; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 10, 2004, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an interior lot which measures approximately 36 feet in width and contains a two-story single-family dwelling and a detached garage in the rear yard.

2. The existing dwelling has a nonconforming northerly side yard setback of approximately 2.99 feet as measured to the northerly rear corner of the existing dwelling.

3. The applicants' proposal is to construct a two-story addition on to the rear of the dwelling that conforms to the height, rear yard setback, and southerly side yard setback requirements, but does not meet the northerly side yard setback requirement of 6 feet.

4. The proposed addition would be aligned with the northerly and southerly side walls of the existing dwelling, would be set back approximately 2.99 feet from the northerly side property line, and would not encroach closer to either side property line than the existing dwelling.

5. Based upon the Board's particular knowledge of local conditions, the proposed addition is consistent 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 within variance application of Richard Hershberger and Jennifer Mutter is hereby approved, subject to the following condition:

1. The portion of the existing fence along the northerly property line that is located forward of the northerly rear corner of the proposed addition shall either be removed or altered to be lower in height and conform to the zoning ordinance.

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. Susswein, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Kevin Fried, 19 Dodd Street** was adopted, Mr. Fleischer and Ms. Rock-Bailey abstaining:

WHEREAS, Kevin Fried, owner of property at **19 Dodd 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(1)** in connection with the construction of a second floor addition on property designated as Lot 9 in Block 4404 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 August 6, 1999, and a site plan, floor plans, and elevations, prepared by Wright & Robinson Architects, revised to October 12, 2004, 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 10, 2004 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an interior lot measuring 50 feet in width and 7,500 square feet in area and contains a 1½-story single-family dwelling with a detached garage in the rear yard.

2. The required front yard setback for the subject property is 25 feet and the average front yard setback of the 4 nearest principal structures on Dodd Street, 2 on either side of the subject property, is approximately 22.44 feet. The existing dwelling on the property has a nonconforming front yard setback of approximately 24.5 feet.

3. The applicant's proposal is to construct a second floor addition that would be aligned with the existing front wall of the dwelling and also have a front yard setback of approximately 24.5 feet. The proposed second floor addition would not encroach closer to any property line than the existing dwelling and meets all other height and setback requirements.

4. The proposed encroachment into the required front yard setback represents a minimal deviation and the front yard setback of the existing dwelling is already greater than or equal to the front yard setbacks of the existing dwellings on Dodd Street.

5. Based upon the Board's particular knowledge of local conditions, the proposed addition is consistent 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 Kevin Fried 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. Susswein, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Theo Breitenstein, 58 Stonebridge Road** was adopted, Mr. Fleischer and Ms. Rock-Bailey abstaining:

WHEREAS, **Theo Breitenstein**, owner of property at **58 Stonebridge 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 front yard setback less than that required pursuant to **Montclair Code Section 347-33B(1)** in connection with the construction of a roofed front entry porch on property designated as Lot 27 in Block 1102 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated November 12, 2001 and a site plan, floor plans, and elevations, prepared by Francis Klein and Associates, Architects, dated October 1, 2004, 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 10, 2004 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an interior lot measuring approximately 27,820 square feet in area and contains a 1½-story single-family dwelling with an attached garage. The existing dwelling does not have a roofed front entry porch.

2. The applicant proposes to construct a roofed front entry porch onto the dwelling. The proposed roofed front entry porch measures 49 feet 3 inches in width, and projects 5 feet from the front wall of the dwelling, with an additional projection of 1 foot 10 inches where the roof of the porch extends over a small set of stairs for the porch.

3. The required front yard setback for the subject property is 51.23 feet, based on the average front yard setback of the 4 nearest principal structures on Stonebridge Road, 2 on either side of the subject property. The existing dwelling on the property has a nonconforming front yard setback of approximately 49.68 feet and a front yard setback of 44.68 feet is proposed for the roofed front entry porch.

4. The Board determined that a roofed front entry porch would provide weather protection at the main entrance of the dwelling and enhance the appearance of the dwelling, however, the Board concluded that the proposed roofed front entry porch should be redesigned in order to minimize its size and impact on the deficient front yard setback.

5. Based upon the Board's particular knowledge of local conditions, the proposed roofed front entry porch, with certain modifications, is consistent 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 Theo Breitenstein is hereby approved, subject to the following condition:

1. The proposed roofed front entry porch shall not exceed 24 feet in width, shall be centered over the existing front doorway, and shall project no more than 5 feet from the existing front wall of the dwelling.

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

On motion by Mr. Susswein, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **48 Plymouth, LLC, 48 Plymouth Street** was adopted as modified, Mr. Fleischer and Ms. Rock-Bailey abstaining:

WHEREAS, 48 Plymouth, LLC, owner of property located at **48 Plymouth Street**, did make application to the Board of Adjustment of the Township of Montclair to convert an existing medical research facility into a single-family dwelling and construct several additions onto the existing structure. The property is designated as Lot 1 in Block 2201 on the Township Tax Map and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicants requested variances as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit a front yard setback less than the 26 feet required on the Plymouth Street frontage pursuant to **Montclair Code Section 347-45B(2)**; and
2. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit a front yard setback less than the 39.5 feet required on the Orange Road frontage pursuant to **Montclair Code Section 347-45B(2)**; and
3. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit a rear yard setback less than the 25 feet required pursuant to **Montclair Code Section 347-45D**; and

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Dassa Haines, Architects, dated September 21, 2004, and a property survey prepared by Louis R. Puopolo III, dated August 26, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 10, 2004 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is a corner lot at the intersection of Plymouth Street and Orange Road, which measures approximately 6,926 square feet in area and contains a two-story medical research facility, with no driveway or any off-street parking.

2. The existing two-story structure on the subject property was constructed in 1927 for use as a dental office. A variance was granted on May 16, 1961 to utilize the subject property as a medical research facility. The subject property has never contained a residential use. The application contemplates the conversion of the existing structure into a single-family dwelling, which will include a two-car attached garage. Several building additions are proposed as part of the conversion, which require the aforementioned variances.

3. The applicant testified at the hearing that all fences on the subject property would conform to the requirements of the zoning ordinance, thereby eliminating the variance required from **Montclair Code Section 347-27E** for a fence height taller than permitted at the northeasterly corner of the lot, at the intersection of Plymouth Street and Orange Road.

4. Approval of this application will eliminate the nonresidential use of the property and result in a use that is harmonious with the character of the existing neighborhood and bring the property into conformance with the use requirements of the zoning ordinance.

5. The requested variances for front yard and rear yard setbacks are justified due to the unique physical constraints of the property and the location of the existing structure on the lot.

6. The Board determined that the application provides sufficient space at an appropriate location for residential use and promotes a desirable visual environment consistent with the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2g,i*.

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 requested variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and 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 application of **48 Plymouth, LLC** is hereby approved subject to the following conditions:

1. The metal fire escape on the existing structure shall be removed.
2. All fences on the subject property shall conform to the requirements of the zoning ordinance.
3. A row of evergreen plantings shall be planted between the proposed driveway and attached garage and the easterly property line. The aforementioned plantings shall be no less than 3 feet in height at the time of planting, shall be planted at 4-foot centers, and shall reach an ultimate height of at least 5 feet at maturity.

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. Susswein, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Janet and Patrick Hines, 19 Argyle Road** was adopted, Mr. Fleischer and Ms. Rock-Bailey abstaining:

WHEREAS, **Janet and Patrick Hines**, owners of property at **19 Argyle Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for front yard setbacks less than required pursuant to **Montclair Code Section 347-45B(1)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-45D** in connection with the construction of several additions to the dwelling on property designated as Lot 94 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a site plan, floor plans, and elevations prepared by Lineworks Architecture and Design, LLC, dated October 13, 2004, and a property survey prepared by Richard J. Hingos, Inc., dated September 23, 1994, 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 10, 2004 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property is an interior lot located in the R-1 One-Family Residential Zone, and contains a 2½-story, single-family dwelling with an attached one-car garage. The property is irregular in shape, located at the end of a cul-de-sac, has 27.91 feet of curved frontage and measures 8,366 square feet in area.
2. The applicant proposes to construct a 2½-story addition at the southerly side of the dwelling, a 1½-story addition at the northerly side of the dwelling, a 1-story addition at the rear of the dwelling, a second floor addition over the existing enclosed

porch located on the first floor at the northeasterly rear corner of the dwelling, and a 1-story vestibule at the front entrance.

3. The minimum front yard setback required for the subject property is 28.72 feet, due to the average front yard setback of the 4 nearest principal structures on Argyle Road, 2 on either side of the subject property. The existing dwelling on the property has a conforming front yard setback of 36.62 feet and a nonconforming front yard setback of 25.3 feet is proposed for a the 2½-story addition at the southerly side of the dwelling.

4. The minimum rear yard setback required for the subject property is 25 feet. The existing dwelling on the property has a non-conforming rear yard setback of 14.8 feet, as measured to an enclosed porch at the rear of the dwelling. The main rear wall of the dwelling also has a nonconforming rear yard setback of approximately 23 feet. Nonconforming rear yard setbacks of 13.89 feet, 17.52 feet and 23.39 feet are proposed for the additions at the rear of the dwelling.

5. All of the proposed additions meet the side yard setback and height requirements.

6. The requested variances for front yard and rear yard setbacks are justified due to the unique physical constraints and characteristics of the property and the location of the existing structure on the lot.

7. The Board determined that additional massing of the dwelling in the northerly side yard would have a greater negative impact on adjoining property owners and the streetscape. The Board also finds that the application as presented promotes a desirable visual environment consistent with the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2i*.

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 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 Janet and Patrick Hines is hereby approved subject to the following condition:

1. The front entrance and portico shall conform to the requirements of the ordinance.

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.

Ms. English joined the meeting.

Chair Harrison called the site plan and variance application of **John and Rose Kardashian, 750 Valley Road**. Paul De Massi, was sworn and stated his qualifications as Licensed Architect and Licensed Planner in the State of New Jersey. Mr. De Massi stated that the subject property is located in the R-2 Two-Family Zone and that the property contains a lawfully existing nonconforming three-family dwelling. He also stated that although a variance is required for the proposed construction of a detached garage and new parking area, the use of the existing three-family dwelling would not be expanded. He stated that the proposed detached garage should be considered a conforming use.

Mr. Sullivan stated that the addition of the accessory building constitutes an expansion of the nonconforming use, consistent with Razberry's Inc. v. Kingwood Tp. Case and the Montclair Zoning Ordinance and that a use variance is required.

Mr. De Massi accepted Mr. Sullivan's determination. He proceeded to describe certain revisions that would be made to the site plan. He stated that an evergreen buffer would be provided between parking space number 12 and the northerly side property line. He also stated that parking spaces number 4 through 6 would be reconfigured to be perpendicular to the southerly side property line and would be screened with evergreens.

Marked into evidence was:

A-1 Revised Site Plan, revisions dated December 15, 2004 by Paul De Massi, Architect and Planner

Mr. De Massi stated that the existing site does not contain a garage and that the proposed garage would provide some covered parking on the site. He also stated that a storage area is proposed within the proposed garage and that an outdoor covered patio would be attached to the garage. He continued by stating that the proposed garage has been designed to be in keeping with the appearance of a typical detached garage in a residential area.

The Board questioned Mr. De Massi. Mr. De Massi stated that the property survey does not show the existing fence near the northwesterly corner of the site.

Rose Kardashian, owner, was sworn, and stated the fence located near the northwesterly corner of the property is the neighbor's fence and is presently encroaching on her property. She stated that her neighbor is aware of this and that the fence would be moved in order not to interfere with the proposed plan.

Mr. De Massi stated that hemlocks are proposed for the evergreen screening. He also stated that the existing mature Wisteria near the rear wall of the dwelling would not be affected by the proposed paving. Mr. De Massi stated that the site presently drains towards the street and requested that no drainage structures be required on the site. Following further Board questioning regarding the comments of the Board Engineer and drainage of the site, Mr. De Massi agreed to abide by the Board Engineer's recommendations. Mr. De Massi stated that no new lighting is proposed and that the existing twin spotlight at the rear of the dwelling would sufficiently light the rear of the driveway and the parking area. He also stated that the dwelling contains a 3-bedroom apartment, a 2-bedroom apartment, and a 1-bedroom apartment.

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

Mr. De Massi requested that the discussion and vote on the application be postponed until a seventh member of the Board has listened to a recording of the testimony and is eligible to vote. Chair Harrison announced that the application would be continued at the January 19, 2005 regular meeting of the Board, at which time the Board would discuss and vote on the application, and that no further notice would be given. Mr. De Massi granted an extension of time for the Board to act on the application through the January 19, 2005 hearing date.

Chair Harrison called the application of **Cornerstone Industries, LLC, 272 Valley Way**. Cal Trevenen, Esq., appeared as attorney for the applicant. Mr. Trevenen stated that he is also representing Christian Wulf and Benjamin J. Osten, who became owners of the subject property on December 9, 2005 and submitted a letter from the attorney for the new owners authorizing him to appear on their behalf as well.

Marked into evidence was:

A-1 Letter from Robert C. Matule, Esq., authorizing Calvin O. Trevenen to represent Mr. Wulf and Mr. Osten before the Zoning Board of Adjustment

Mr. Trevenen summarized the previous applications involving the subject property and stated that the home on the subject property has been completed. He stated that the applicant is seeking to amend certain conditions of the previous approval that required a 16-foot wide gravel driveway on the westerly side of the lot connecting to Murray Street in West Orange. He stated that at the time of the previous application, the Montclair Fire Department had required the construction of the 16-foot wide gravel driveway to be used exclusively for emergency vehicle access. He further stated that recent findings by the Fire Department regarding the subject property indicate the construction of the gravel driveway can not be completed. Mr. Trevenen described the

memorandum dated September 13, 2004 from Lt. Kevin Allen of the Fire Department, who is now the Acting Fire Chief, to Mr. Sullivan, which is included in the Planning Department's memorandum to the Board. He stated that the memorandum from the Fire Department indicates that fire apparatus could access the property from Valley Way and that a fire hydrant must be constructed on Valley Way by the applicant, which has already been completed and inspected. Mr. Trevenen stated that the Fire Department's memorandum indicates that the approach to the subject property from Murray Street in West Orange is too steep and unsafe and that unforeseen right-of-way issues had arisen that would have prevented the applicant from lawfully constructing the required gravel driveway. Mr. Trevenen continued by stating that all other conditions of the previous approval have been met and that the applicant requires the amendment of the conditions of the approval involving the requirement for the 16-foot gravel drive.

Mr. Trevenen called Steven Lauda, member of Cornerstone Industries, LLC, who was sworn. Mr. Lauda stated that the area where the gravel driveway was to be constructed would be graded according to the revised site plan submitted. He also stated that some gravel was already added to the area on the property in anticipation of the gravel driveway construction and that it would be covered with soil and mulch. He further stated that the new owners of the property intend to add landscaping in that area of the site. He continued by stating that the engineer that designed the revised site plan consulted with the Board Engineer on the proposed revisions.

The Board questioned the applicant.

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

The Board discussed the application. Chair Harrison stated that it would only be necessary to amend Condition 4 of the December 12, 2001, and that it would not be necessary amend Conditions 10 and 11 of that resolution. Mr. Sullivan agreed.

On motion by Ms. Rock-Bailey, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. The applicant shall comply with all of the requirements of the Fire Department, as specified in the memorandum from Lt. Kevin Allen (now Acting Fire Chief) to the Board Attorney, dated September 13, 2004.
2. All conditions imposed by the December 12, 2001 and June 16, 2004 resolutions not inconsistent with the within modifications shall remain in full force and effect.

Chair Harrison called the continuation of the variance application of **David and Laura Janay, 210 Highland Avenue**. Calvin O. Trevenen, Esq., appeared as attorney for the applicant. Mr. Trevenen inquired about any limitations concerning the testimony to be provided by his witnesses and the testimony provided by the public.

Chair Harrison stated that all testimony should be limited to the topics that were determined to be carried from the previous hearing. Mr. Sullivan agreed.

Mr. Trevenen called Eric Maran, Architect, who was still under oath. Mr. Maran stated that the plans have been revised and that further testimony would be provided to address the Board's concerns. He stated that although the paved turnaround area at the front of the proposed dwelling requires a variance for front yard parking, it is not intended for use as a parking space. He also stated that at the previous hearing on the application, the Board considered modifying the layout of the paved turnaround area at the front of the proposed dwelling. He further stated that the revised plan depicts slight geometric changes to the driveway and that the paved turnaround area is necessary for safety and maneuverability on the driveway. Mr. Trevenen added that the Board considered modifications to the driveway and paved turnaround area within the proposed conditions of approval at the previous hearing. Mr. Maran continued and stated that the height of the retaining walls in the front yard have been reduced to a height of 4.5 feet, however, due to the steep grade of the site the retaining walls have an error margin of plus or minus 1 foot in height, and therefore still require a variance.

Marked into evidence was:

A-6 Engineering Plans, on 4 sheets, prepared by PPE Corp., bearing a revision date of September 6, 2004.

Mr. Maran stated that Exhibit A-6 depicts the double-retaining wall configuration used to lower the retaining wall heights in the front yard. He also stated that Exhibit A-6 depicts slight changes to the turning radiuses on the driveway that were required due to the lower wall heights.

The Board questioned Mr. Maran. Mr. Maran stated that the Board considered limiting the retaining wall height in the front yard to 6 feet and that that has been accomplished in the revised plan depicted on Exhibit A-6.

Chair Harrison called for questions from the public.

Ken Brower, 214 Highland Avenue, asked if the main entrance of the dwelling was placed on the front wall of the proposed dwelling, would it be necessary to have the paved turnaround area at the front of the home. He also asked if the design of the proposed dwelling considered whether other homes on Highland Avenue had a paved turnaround area at the front of the dwelling.

Thomas Ercolano, 202 Highland Ave, asked if the applicant had considered reversing the direction of the driveway so that it would exit near the southerly side of the subject property. Mr. Maran stated that the proposed driveway layout provides the most optimum turning radius from the street if travelling in either direction. Mr. Ercolano also inquired if the applicant had sought out a contractor for blasting on the site. Mr. Trevenen objected to the question regarding blasting. Chair Harrison stated that the issue of blasting has been covered and is no longer open to discussion.

Mr. Trevenen called Peter Meyer, Professional Engineer, who was still under oath. Mr. Meyer stated that he designed the most recent plans submitted to the Board. Mr. Meyer stated that at the previous hearing on the application, the Board indicated that no retaining walls in the front yard exceed 6 feet, which has been accomplished with the plan depicted on Exhibit A-6. He also stated that Exhibit A-6 depicts a different retaining wall layout than the plan distributed to the Board, although both versions comply with the Board's requirement that no retaining wall in the front yard exceed 6 feet in height. He further stated that the site disturbance proposed with the originally submitted plan was 16,000 square feet and that the revised plan proposes 19,000 square feet of site disturbance, due to terraced wall configuration used to lower the retaining wall height. He continued by stating that the revised driveway layout depicted on Exhibit A-6 represents the safest design to date.

The Board questioned Mr. Meyer. Mr. Meyer described the locations in the front and side yards where retaining walls exceed 4.5 feet and require a variance. He stated that the driveway gradient depicted on Exhibit A-6 is the same as depicted on the previous submitted plans and is conforming. He continued by stating the layout depicted on Exhibit A-6 shows the final coordination between the project Architect and project Engineer.

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

Ken Brower, 214 Highland Avenue, inquired about the material to be used for the retaining walls. He also asked if the driveway gradient of the other properties on Highland Avenue was used as a basis for the proposed driveway and if the proposed driveway gradient requires a variance.

Mr. Meyer stated that driveway gradient of other properties was not examined closely, although his observations were that they were similar to what is proposed. He also stated that the proposed driveway gradient conforms to the ordinance.

Assistant Secretary Charreun stated that the driveway gradient as proposed requires a variance from **Montclair Code Section 347-102C**. Some discussion ensued regarding the Planning Department's interpretation of that section of the ordinance and Mr. Trevenen stated that the applicant would request the variance if it is required. Mr. Meyer stated that he had already provided testimony regarding the design and gradient of the driveway, the safety aspects provided by the driveway as designed, and the site constraints relating to the design and gradient of the driveway. He also stated that from what he has observed the gradient of the proposed driveway within 20 feet of the front property line is consistent with that of the nearby properties.

Thomas Ercolano, 202 Highland Ave, asked if it was necessary to utilize blasting. Chair Harrison stated that the issue of blasting has been covered and is no longer open to discussion. Chair Harrison explained that the application was essentially completed at the last hearing until issues arose regarding the required changes to the retaining walls, the front yard parking area, and the driveway and the applicant elected to return

with revised plans and this hearing is limited to those issues. Mr. Ercolano continued and inquired about the material to be used for the retaining walls.

The Board questioned Mr. Meyer. Mr. Meyer reiterated the differences between the revised plan distributed to the Board and Exhibit A-6 submitted at this meeting. He also stated that the proposed driveway is limited to a maximum gradient of 10 percent measured for the first 20 feet of the length as measured along the centerline of the driveway.

Mr. Maran, who was still under oath, was recalled by Mr. Trevenen to respond to a question of the Board. Mr. Maran stated that the paved turnaround area in the front yard depicted on Exhibit A-6 has not been significantly altered. Assistant Secretary Charreun stated that at the previous hearing on the application the Board considered a revision to the paved turnaround area, which stated that the paved turnaround area be no more than 10 feet from the edge of the driveway radius. Mr. Maran addressed that consideration of the Board and stated that a 10 foot depth for the turnaround area would not be safe as it would not allow sufficient room for either a K-turn on the driveway or for a temporary parking space for visitors to the property.

Mr. Meyer, who was still under oath, was recalled to respond to a question of the Board. He stated that the portions of the retaining walls at the rear of the property that extend forward beyond the rear corners of the dwelling into the side yard scale down in height to meet the grade and conform to the ordinance.

Chair Harrison called for public comment.

Ken Brower, 214 Highland Avenue, who was still under oath, stated that at the last hearing on the application, the Board considered a requirement regarding certain trees on the neighboring property located at 206 Highland Avenue, and that any of those trees which do not survive within a year after the Certificate of Occupancy is issued for the proposed dwelling would have to be replaced by a like kind tree by the applicants. He stated that he should have been included within that consideration. He stated that he has a 70-foot tall tulip tree near his southerly side property line that may die as a result of the proposed construction and that his trees should be protected as well.

Marked into evidence was:

O-5 Two (2) photos of the existing 70-foot tall tulip tree on the southerly side property line of 214 Highland Avenue.

Mr. Brower continued and asked if the applicant would be required to do a pre-blast survey of the adjoining properties prior to any blasting and that if so, that the neighbors be provided with a copy. Mr. Trevenen objected and stated the Board had already considered the issue of potential blasting and required that notice be sent 7 days in advance of any grading or blasting. Chair Harrison agreed and stated that the issue of blasting has already been covered. Mr. Brower continued and gave his closing

comments. He stated that there has not been enough direct communication between the applicants and the neighbors. He cited facts from a conversation he had with an individual involved with code compliance and explosives. Mr. Trevenen objected. Mr. Sullivan stated that hearsay cannot be accepted as testimony. Mr. Brower continued and stated that blasting may damage the large water main near the subject property as well as the property of nearby homeowners. Mr. Trevenen objected. Mr. Sullivan informed Mr. Brower to move forward with no further comments on blasting. Mr. Brower stated that the driveway as designed represents a hazard to the applicants and the public and that the direction of the driveway should be reversed.

Tom Ercolano, 202 Highland Avenue, who was still under oath, stated that the paved turnaround area should definitely be considered a front yard parking area requiring a variance and that the direction of the driveway should be reversed.

Jerry Czin, 206 Highland Avenue, who was still under oath, stated that he has a driveway with a similar orientation as the proposed driveway and that his vehicle has slid down onto Highland Avenue when the driveway is iced over. He also requested that copies of any pre-blast survey be provided to the neighbors.

Tom Ercolano, 202 Highland Avenue, who was still under oath, stated that the material for the retaining walls should be indicated at this time. He also stated that blasting should be avoided.

Mr. Trevenen gave his closing arguments.

The Board discussed the application. The Board determined that although the variance for front yard parking would be denied, the paved turnaround area could be constructed as depicted on Exhibit A-6 with its use limited to a turnaround area with no parking of any kind.

On motion by Mr. Fleischer, seconded by Mr. Haizel, the variance requested for front yard parking was denied and the variances requested for deficient lot size, retaining wall height, and driveway gradient were approved, subject to the following conditions:

1. A formal parking space shall not be established in the front yard.
2. The applicants shall comply with comments 1, 2, 4, 5, 6, 7, and 8 in the Board Engineer's report dated September 20, 2004, and the plans shall be revised according to those comments and submitted to the Board Engineer for approval. The plans shall also be revised to incorporate the most recent revisions to the plan, depicted on Exhibit A-6, and submitted to the Board Engineer for approval.
3. The applicant shall, 7 days in advance of any grading or blasting, notify the Montclair Water Bureau and all property owners within 200 feet. The applicant shall also, 7 days in advance of any tree removal or construction of the dwelling, notify the Montclair Water Bureau, the immediately adjoining property owners located at 206 and

214 Highland Avenue, as well as the property owner directly across the street located at 209 Highland Avenue.

4. Any trees that are not removed on the subject property, as well as trees on the neighboring properties located at 206 Highland Avenue and 214 Highland Avenue, within 25 feet of the property line which are of a diameter of 6 inches or greater that do not survive within a year after the Certificate of Occupancy is issued for the proposed dwelling, shall be replaced by a like kind tree, which will not have to be the same size as the tree being replaced.

5. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

6. Any central air-conditioning units placed on the property shall conform to the requirements of the zoning ordinance.

7. The limit of disturbance shall remain as shown on the revised engineering drawings dated October 20, 2004, and the changes to the plan depicted on Exhibit A-6 shall be incorporated into the plan for the limit of disturbance.

8. No retaining walls in the front or side yards shall exceed 4.5 feet in height, except where the preservation of the existing grade requires a taller retaining wall height, in which case the maximum retaining wall height shall be limited to 5.5 feet in height in the front or side yards.

9. The first 20 linear feet of driveway, as measured along the centerline of the driveway, shall be limited to a maximum gradient of 10 percent.

Chair Harrison called for a short recess.

Chair Harrison called the variance application of **Cellular Telephone Company d/b/a AT&T Wireless, 36 Hawthorne Place**. Judith Babinski, Esq., appeared as attorney for the applicant and described the application. She stated that the applicant has made an effort to locate certain equipment in the basement of the building rather than on the roof as depicted on the plans, however, that the applicant was unable to gain permission to do so from the owner of the subject property. She also stated that she has a letter from the owner that indicates this fact.

Ms. Babinski called A.J. Sawant, who was sworn and stated his qualifications as a Radio Frequency Engineer.

Marked into evidence was:

A-1 Topographic Map of a portion of Montclair with 2 overlays depicting existing and proposed coverage, prepared by A.J. Sawant

Mr. Sawant described the first overlay of exhibit A-1 and stated that it depicts the subject location and the coverage provided by the neighboring antenna locations utilized by the applicant. He also described the second overlay of A-1 and stated that the proposed installation would fill a gap of AT&T Wireless service in the area of the installation site. Mr. Sawant stated that Exhibit A-1 also depicts another AT&T Wireless coverage gap located in northern Montclair that cannot be addressed with this application and that a future application would be required to fill in that coverage gap.

The Board questioned Mr. Sawant. Mr. Sawant stated that GPS antennas provide 911 emergency service and that the FCC mandates every wireless service to provide this service. He stated that the coverage gap located to the north of the proposed location is north of the intersection of Valley Road and Walnut Street. He stated that the proposed equipment would need a much taller overall height in order to fill in the service gap to the north of the proposed installation.

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

Joseph Reynolds, 102 South Fullerton Avenue, asked why the subject property was chosen for the proposed installation and whether there were any alternative sites that would also provide for the service needed. Ms. Babinski stated that her next witness could address that question.

Ms. Babinski called John Cipollone, who was sworn and stated that he is a Site Acquisition Manager with French & Parrello, Consulting Engineers. Mr. Cipollone stated that his firm has been working on acquiring a site to fill in the indicated service gap for AT&T Wireless since 2003. He stated that the area requiring coverage is mainly a residential area and that 3 other potential sites were considered. He stated that Nishuane Park was considered but could not be leased from the Montclair Parks Department. He also stated that a warehouse located to the northeast of the subject property was determined to be outside the area of concern and that a defunct hospital facility was turned down because of its uncertain future.

The Board questioned Mr. Cipollone.

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

Joseph Reynolds, 102 South Fullerton Avenue, asked how far a site would have to be from the area of need to be considered. Mr. Cipollone stated that Mr. Sawant should answer the question. Mr. Sawant stated that the search area was limited to approximately a one-half mile radius from the center of the coverage gap.

Ms. Babinski called Alice Fahy-Elwood, who was sworn and stated her qualifications as a Health Physicist. Ms. Fahy-Elwood described the FCC standards regarding radio frequency emissions. She stated that she had completed an analysis of the radio frequency emissions from the proposed installation. She described the results of the analysis and stated that the radio frequency emissions from the site would be less than 3.5 percent of what is allowable by the FCC guidelines and that the site would be

in strict compliance with FCC regulations. She also stated that the NJDEP guidelines are less stringent than FCC guidelines and therefore, the site is in compliance with NJDEP regulations as well.

The Board questioned Ms. Fahy-Elwood.

Chair Harrison called for questions from the public for Ms. Fahy-Elwood. None were offered.

Ms. Babinski called Glen Scherer, who was sworn and stated his qualifications as a Licensed Professional Engineer in the State of New Jersey. Mr. Scherer described the building on the subject property and the proposed antennae installation. He referred to Sheet A01, the partial roof plan, and described the location of the 6 proposed steel cabinets on the roof. He stated that the cabinets would range from 4 to 6 feet in height, plus an additional 3 feet in height including the platform they rest on. He also stated that the cabinets would be set back 20 feet from the front edge of the roof and 144 feet from Hawthorne Place. Mr. Scherer stated that a total of 12 panel antennas would be flush-mounted onto the walls of the existing elevator bulkhead on the roof of the building and that the closest antenna would be set back 91 feet from Hawthorne Place. He referred to sheet A03, elevations and stated that the panel antennas would be painted to match the brick of the bulkhead.

The Board questioned Mr. Scherer. Mr. Scherer stated that no screening is proposed for the steel cabinets because the view of the cabinets is obscure from street level. Ms. Babinski stated that her next witness would address this issue further. Mr. Scherer stated that the proposed GPS device is small in size, would not be visually intrusive, and would be mounted onto a handrail on the steel cabinet platform. He stated that the GPS device requires clearance from every angle because it works with satellite signals and cannot be flush mounted on a wall because it would lose its effectiveness. He also stated there are no other antennas located on the roof of the building.

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

Joseph Reynolds, 102 South Fullerton Avenue, asked about the size of the panel antennas. Mr. Scherer stated that the largest panel antenna would measure 52 inches in height by 11 inches wide by 5 inches deep and that the other panel antennas are slightly smaller in size.

Ms. Babinski called Peter Tolischus, who was sworn and stated his qualifications as a Licensed Professional Planner in the State of New Jersey.

Marked into evidence were:

A-2 Aerial photograph of the area including the subject property on a board, prepared by Peter Tolischus, P.P., dated September 2004

A-3 Twelve (12) photo-simulations of the subject property depicting the proposed antennas, on a board, prepared by Peter Tolischus, P.P., dated September 2004

Mr. Tolischus described Exhibits A-2 and A-3. He described the photo-simulations and stated that the view of the rooftop from both near and far is obscured by existing trees. He further stated that the height of the building, as well as the setback from the edge of the roof also obscures the view of the antennas and cabinets from most directions. He stated that the antennas are only slightly visible in photo-simulations 1 and 4. He continued by describing the conditional use standards for wireless telecommunications equipment in Montclair and which exceptions from the ordinance the applicant requires. He stated that the existing building measures 58 feet in height, whereas 60 feet in height is required. He stated that this deviation is minimal and does not render the site unsuitable and that the site is suitable due to the lack of existing tall structures in the area. He stated that the GPS device projects above the parapet of the roof, however, due to its small size, there is no negative visual impact. He continued by stating that the panel antennas would be painted to match the structure and that no screening is needed for the cabinets due to their location on the roof and obscured view from the surrounding area.

The Board questioned Mr. Tolischus.

Ms. Babinski stated that the applicant would screen the cabinets if necessary and recalled Mr. Scherer to describe what kind of screening could be installed. Mr. Scherer stated that a screen of a uniform height could be installed around the cabinets that would not exceed the height of the tallest cabinet and would match the brick façade if required. Mr. Tolischus stated that the photographs used in the photo-simulations were taken in September.

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

Chair Harrison called for public comment.

Andrzej Kuhl, 106 South Fullerton Avenue, was sworn and stated his support for the application.

Joseph Reynolds, 102 South Fullerton Avenue, was sworn and stated the rooftop of the building is visible through his second and third floor windows and that screening should be provided.

Ms. Babinski gave her closing statement.

The Board discussed the application.

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

1. The proposed antennae shall be painted to match the structure to which they are attached.

2. A uniform screened area shall be installed around the proposed equipment cabinets in order to comply with Section 347-17.1C(5)(h).

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