



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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## **MINUTES OF THE BOARD OF ADJUSTMENT**

### **February 18, 2015**

**ORDER:** The meeting was called to order at 7:40 p.m. by Ms. Talley. Ms. Talley read the notice of compliance with the New Jersey Open Public Meetings Act and indicated that appropriate notice was forwarded to the officially designated newspaper of Montclair and posted in the Municipal Building. The schedule of meetings is also posted on the Town website.

**ROLL CALL:** Mr. Reynolds, Ms. Baggs, Ms. Checca, Mr. Susswein, Ms. Brinkman, Mr. Sullivan and Ms. Talley were in attendance. Chair Harrison, Vice Chair Fleischer, Mr. Kenney, and Mr. Moore were excused.

Mr. Sullivan stated that since the Chair and Vice Chair were absent, a temporary Chair would have to be elected for the meeting. Mr. Reynolds nominated Mr. Susswein as temporary Chair. Ms. Checca seconded the nomination and it was approved unanimously.

Mr. Susswein stated that Application 2367 for 58 James Street will be postponed until the March 18 meeting with no additional notice required. The time for the Board to act was extended to April 1, 2015. Mr. Susswein noted that Application 2393 for 208 South Mountain Avenue has been carried to the March 4 meeting.

**MINUTES:** Ms. Talley stated that she has received changes to the minutes of the January 21, 2015 meeting from Ms. Baggs. She stated that a redlined version of the revised minutes have been distributed to the Board. Mr. Susswein asked if anyone had additional comments to the minutes. A motion to approve was made by Ms. Baggs, seconded by Ms. Checca and approved unanimously with Mr. Reynolds abstaining.

### **OLD BUSINESS**

**Resolution for App. 2380: New York SMSA Limited Partnership d/b/a Verizon Wireless, 10 Pine Street.** *Installation of rooftop wireless telecommunications equipment.* Mr. Sullivan stated that this is a resolution for denial of the application and the only members eligible vote are Mr. Susswein and Ms. Baggs. Mr. Susswein asked if there were any comments or changes. He pointed out that there is a typographic error on page 6. He also noted that the language on the top paragraph of page 4 should be changed to eliminate the word more. Ms. Baggs agreed with eliminate the word more. A motion to approve the resolution of denial was made by Mr. Susswein, seconded by Ms. Baggs and approved by both.

RESOLUTION  
BOARD OF ADJUSTMENT  
TOWNSHIP OF MONTCLAIR

New York SMSA Limited Partnership d/b/a Verizon Wireless  
10 Pine Street

**WHEREAS**, New York SMSA Limited Partnership d/b/a Verizon Wireless (hereinafter “Applicant”), did make application to the Board of Adjustment of the Township of Montclair (hereinafter “Board”) to construct a small network node consisting of a ballast-mounted antenna, GPS antenna and two equipment cabinets on the roof of the building located at 10 Pine Street (hereinafter “the subject property”) designated as Lot 2.01 in Block 4202 on the Township Tax Map and located in the Eastern Gateway Redevelopment Area; and

**WHEREAS**, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70d(1) as the proposed wireless telecommunications antennas and equipment are not a permitted use; and

**WHEREAS**, the applicant submitted a site plan prepared by E 2 Project Management LLC, Sheets T-1, T-2, SP-1 and SP-2, C-1 and C-2 dated May 20, 2014 revised through October 2, 2014; and

**WHEREAS**, this matter came on to be heard at meetings of the Board held on September 17, October 15, 2014 and January 21, 2015, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is located on Pine Street and Bloomfield Avenue and consists of 1.33 acres. The property is improved with a four story, 41.2 feet high building containing 51 apartments known as The Montclairian which fronts on Pine Street.

2. The applicant proposes to construct a small network node consisting of a ballast-mounted antenna at a height of 50.17 feet, a GPS antenna at a height of 47.42 feet and two equipment cabinets.

3. The applicant's radio frequency expert testified that the purpose of the small network node installation is to address a data capacity issue. He explained that as a result of heavy use of surrounding cell sites, LTE and 4G services has slowed down. This installation will offload adjacent sites in the Glen Ridge data and gamma areas as depicted on Exhibit A-1 titled "700 MegaHertz LTE "Best Servers" prepared September 16, 2014. The system is currently designed for data but the technology is developing to carry voice transmissions.

4. The subject property, along with adjacent Lots 1 and 3 in Block 4202 were designated as an area in need of rehabilitation by the Montclair Township Council by resolution adopted on November 27, 2012. The Montclair Planning Board reviewed the aforementioned resolution and agreed with the determination on December 10, 2012. The subject property, along with Lots 1 and 3 in Block 4202 are located in the Eastern Gateway Redevelopment Area (Redevelopment Plan adopted July 9, 2013 by the Montclair Township Council). The subject property was previously located in the Urban Renewal Zone.

5. The Zoning Ordinance of the Township of Montclair regulates the location of wireless telecommunications antennas and equipment in Section 347-17.1 et seq. The preferred locations for siting such equipment are listed in order of preference in Section 347-17.1C(1) as follows: (a) municipal structures; (b) buildings in the C-1, C-2 and N-C Zones, and (c) bell towers,

institutional facilities and structures which exceed 60 feet in all residential and office/residential zones. The installation of wireless telecommunications antennas and equipment are permitted conditional uses in the C-1, C-2 and N-C Zones pursuant to Section 347-17.1C(4) and in the R-0, R-1, R-2, R-3, R-4, OR-3 and OR-4 Zones pursuant to Section 347-17.1C.

Wireless telecommunications antennas and equipment were not a permitted use when the property was located in the Urban Renewal Zone. In 2013, the Montclair Township Council placed the subject property in the Eastern Gateway Redevelopment Area, which again does not permit wireless telecommunications antennas and equipment. By taking such recent action, the Montclair Township Council reinforced its clear legislative intent that wireless communications antennas and equipment are not appropriate at this location.

6. As previously noted, wireless telecommunications antennas and equipment are permitted conditional uses in the C-1, C-2, N-C, R-0, R-1, R-2, R-3, R-4, OR-3 and OR-4 Zones. A specific conditional use standard applicable to all of the aforementioned zones requires: “[t]he height of the antenna shall not exceed the top of the parapet wall, penthouse or chimney to which it is attached.” in accordance with Sections 347-17.1C(4)(c) and (5)(d). The purpose of the Ordinance is clear and seeks to prohibit antennas extending above the structure to which they are affixed so as to avoid adverse visual impact and the “porcupine effect”.

7. During the first public hearing, the applicant was questioned as to the feasibility of utilizing multiple flush mounted antennas on the building in lieu of the single cylindrical antenna which protrudes above the parapet wall. At the second public hearing, Adam Feehan, the applicant’s radio frequency expert, testified that three flush mounted antennas could be installed and would meet the applicant’s technical requirements. At the second public hearing, the applicant called Richard Polton, the property owner, to address this issue. Mr. Polton advised

that following the first hearing, he was approached by the applicant to consider installation of flush mounted antennas rather than the proposed cylindrical antenna. Mr. Polton stated he preferred the single cylindrical antenna as opposed to multiple flush mounted antennas. In his opinion, it would be less visible and result in less penetration of the exterior of the building which could pose leaks or maintenance issues. For the reasons expressed herein, the Board emphatically disagrees with Mr. Polton's opinion as to the more appropriate visual alternative. In addition, the Board rejected Mr. Polton's unsubstantiated contention that flush mounted antennas pose maintenance issues and note such installations are commonplace throughout New Jersey, including several buildings in Montclair. The Board concluded that the applicant failed to adequately pursue the alternative of three flush mounted antennas which is consistent with the intent and purpose of the Zoning Ordinance.

8. The applicant's Planning witness, William Masters, stated that it is the applicant's burden to prove the positive criteria which requires a finding by the Board that the site is particularly suited for the proposed wireless telecommunications antenna and equipment. Mr. Masters offered: (1) the applicant holds various FCC licenses which serve the general welfare; (2) the site satisfies the radio frequency objectives for the area; (3) the existing building provides an ideal support structure and (4) construction of the facility obviates the need for a freestanding support structure such as a new monopole or tower. During the course of the public hearings, however, a number of sites were identified by Board Members as potentially more appropriate. The Board specifically pointed to the elevator tower associated with the Bay Street parking deck, a municipal structure, located across Pine Street. The elevator tower is appreciably higher than the parking deck and appears to have fewer obstructions in close proximity. The Board also noted the Montclair Fire Department headquarters, a municipal structure, has a tower which also

appears to be unobstructed. Finally, the Board also inquired as to the feasibility of the recently approved new building proposed on the subject property which will be a story higher. The Board determined that the applicant did not adequately investigate alternate sites, where such an installation is a permitted conditional use and/or potentially providing better service. The Board concluded the applicant did not prove the positive criteria or that the site was particularly suited for the proposed use.

9. A small network node installation, such as is proposed here, is designed to cover a limited area. Such facilities are targeted for downtown, densely populated areas such as are found in Montclair. The Board is currently hearing an application filed by the applicant for a small network node at 208 South Mountain Avenue. The applicant also noted that its competitors will be seeking approval for small network nodes in the future. It is apparent to the Board that such future applications are inevitable. In this regard, the Board determined it is essential, whenever possible, to require such antennas not exceed the height of the structures to which they are affixed consistent with the Zoning Ordinance. To approve this application where the applicant can meet its technical requirements by installation of flush mounted antennas would open the door to a proliferation of such applications and substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

10. The Board reviewed the application in the context of the four-part balancing test outlined in *Sica v. Board of Adjustment of Tp. of Wall*, 127 N.J. 152 (1992). First, the Board recognized the important public interest served by wireless telecommunications. Secondly, as previously discussed herein, the Board identified detrimental effects that will ensue from the grant of the variance relief. Third, the Board may look to reduce the detrimental effect by imposing reasonable conditions, however, in this instance the applicant conceded flush mounted

antennas were feasible, but the Board cannot impose such a condition in the absence of a more definitive plan which could be the subject of a future application. Finally, in weighing the positive and negative criteria, the Board determined, for the reasons discussed herein, that approval of this application would cause substantial detriment to the public good and would substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant failed to prove the requisite special reasons for granting this application and failed to prove by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of New York SMSA Limited Partnership d/b/a Verizon Wireless for variance relief pursuant to N.J.S.A. 40:55D-70d(1) to construct a small network node consisting of a ballast-mounted antenna, GPS antenna and two equipment cabinets on the roof of the building located at 10 Pine Street is hereby denied.

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

**Resolution for App. 2391: Bellclair, LLC., 691 Bloomfield Avenue.** *Use variance for wellness center.* Mr. Sullivan stated that this resolution includes changes on page 2 clarifying that the parking associated with residential tenants should be made available to commercial uses. All Board members are eligible to vote on this resolution. A motion to approve this resolution was made by Mr. Reynolds, seconded by Ms. Checca and approved unanimously.

RESOLUTION  
BOARD OF ADJUSTMENT  
TOWNSHIP OF MONTCLAIR

Bellclaire, LLC  
691 Bloomfield Ave  
Block 1403, Lot 15  
Application No. 2391

**WHEREAS**, Bellclaire, LLC, did make application to the Board of Adjustment of the Township of Montclair to permit a wellness center on the first floor of property designated as Lot 15 in Block 1403 on the Montclair Township Tax Map, and located in the C-1 Central Business Zone-Center Area; and

**WHEREAS**, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70d(1) as the proposed use is not permitted pursuant to Montclair Code Section 347-80B; and

**WHEREAS**, the applicant submitted a site plan prepared by Omland Engineering Associates, Inc, Sheet 2 dated January 4, 2000 revised through September 22, 2000 and Sheet 3 dated January 4, 2000 revised through June 20, 2003 as well as an undated first floor plan-Building #2 prepared by Thomas J. Brennan Architects; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on February 4, 2015 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 and exhibits presented at the public hearing and based thereon established the following findings of fact and conclusions of law:

1. The subject property located at the corner of Bloomfield Avenue and Bell Street consists of a mixed use building (Building #2) approved by the Planning Board by resolution adopted on May 8, 2000.

2. The applicant proposes to operate a wellness center in Unit 3 of Building #2 measuring approximately 2,043 square feet in area which is current vacant and formerly contained a frame shop. The remaining uses on the first floor include a dry cleaner, a fitness workout premises for residents only and a small leasing office. Eight residential apartments occupy the second and third floors.

3. The proposed wellness center services include personal training, physical therapy, acupuncture, nutrition and diet counseling, retail sale of supplements, vitamins, nutraceuticals and athletic clothes/gear and a juice bar. Three full-time employees will be on site including a licensed physical therapist, licensed physical therapist assistant and receptionist. There will be two part-time employees consisting of a licensed acupuncturist and office manager. The unit will contain five exam tables, five freestanding weight machines, retail display area, juice bar and reception area. Typical appointments for the licensed physical therapist, licensed physical therapist assistant and licensed acupuncturist will run 25 to 30 minutes.

4. The 2000 Planning Board resolution granted a parking variance to permit a deficiency of five spaces. The resolution of approval states that "the applicant's parking plan also provides adequate parking for the retail uses on the easterly lot, especially since the peak hours for retail parking differ from the peak demand for residential parking". Subsequent to the approval, the applicant has leased spaces exclusively for residential tenant use, eliminating such spaces for shared use. Seven spaces are available for retail parking immediately adjacent to Building #2. Three visitor parking spaces are available to the east of Building #2. In addition, ten partially

metered parking spaces are available on both sides of the street in front of Building #2 on Bloomfield Avenue.

5. The Board determined the proposed wellness center constitutes a medical office use which results in an increased parking demand of three spaces under the Ordinance. Although increased parking demand is associated with the use under the Ordinance, a variance is not required pursuant to Section 347-101. The applicant agreed to address the increased parking demand by obtaining three parking permits in municipal lots for the full-time employees or in lieu thereof, making three residential tenant parking spaces available for retail use between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, which the Board concluded satisfactorily addressed the parking issue.

6. Section 347-79B provides: "In the center area of the C-1 Central Business Zone, pedestrian-oriented, regional, specialized shopping opportunities in a downtown setting shall be encouraged. Uses which are automobile-oriented or which have low customer turnover on the ground floor or which create gaps in retail store frontage shall be discouraged except that appropriate retail, office and residential uses in all areas of the zone shall be encouraged above the ground floor." The Board determined that while the proposed wellness center falls within the definition of medical office in the ordinance, is not a typical medical office use. It has a higher patient turnover and offers a specialized retail sales area in approximately 50 percent of the space. The open store front windows and varied nature of activities combined with the higher patient turnover constitutes an appropriate use consistent with the intent and purpose of the C-1 Central Business Zone-Center Area.

7. Approval of this application advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which

promotes the public health, safety, morals and general welfare (-2a) and provides sufficient space in an appropriate location for the proposed use (-2g).

8. The proposed site is particularly suited for the proposed use with a bus stop in front of the building on Bloomfield Avenue and in close proximity to the Whole Foods grocery store to the west which provides a harmonious and complementary use.

9. The Board finds the proposed wellness center is consistent with the intent and purpose of the 2006 Master Plan Reexamination Report particularly the general land use goal which seeks to: “[e]nsure that new development is harmonious with existing development in scale and style and does not harm the quality of life of surrounding neighborhoods, particularly at a time when development pressures are high”.

10. The proposed wellness center will eliminate an empty store front and provide a use substantially similar to uses permitted on the first floor in the C-1 Central Business Zone-Center Area and thus will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

11. The proposed wellness center is harmonious with area uses and, subject to compliance with the conditions below, will not cause any adverse impacts and thus, will not cause substantial detriment to the public good.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair, that the within application of Bellclaire, LLC for a variance pursuant to N.J.S.A. 40:55D-70d(1) to permit a wellness center in Unit 3 of Building #2 is hereby approved subject to the following conditions:

1. At least 20 percent of the floor area shall be devoted to retail or juice bar use. Said area shall be located adjacent to the store front window..

2. Hours of operation shall be limited to 9:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturday.

3. The sign(s) associated with the three visitor parking spaces in the block of seven parking spaces located to the east of Building #2 shall be revised to permit retail parking between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.

4. Prior to issuance of a Certificate of Occupancy, the applicant shall obtain three parking permits in municipal lots for employee parking or in lieu thereof designate up to three parking spaces among the nine spaces adjacent to Building #1 or the four spaces to the east of Building #2 which are currently tenant spaces as available for retail parking between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday and revise the signs accordingly. If the applicant chooses to obtain parking permits, proof of such permits shall be provided to the Planning Board at the time of issuance and any renewals.

5. The applicant shall be bound by all representations made on its behalf by its attorney, witnesses and professionals during the course of the public hearing.

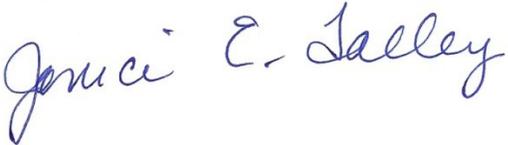
6. The applicant shall be responsible for all escrow fees incurred in connection with the review of this matter.

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

**ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Susswein, seconded by Mr. Reynolds and approved unanimously. The meeting was adjourned at 8:00.

Respectfully submitted,

A handwritten signature in blue ink that reads "Janice E. Talley". The signature is written in a cursive, flowing style.

Janice Talley, P.P., AICP  
Zoning Board of Adjustment Secretary