



Janice E. Talley, PP/AICP
Director of Planning and Community Development
jtalley@montclairnjusa.org

**MINUTES OF THE BOARD OF ADJUSTMENT
MARCH 4, 2015**

ORDER: The meeting was called to order at 7:40 p.m. by Linda Wanat. Ms. Wanat 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: Ms. Wanat called the roll. Present were Chair Harrison, Vice Chair Fleischer, Mr. Kenney, Ms. Baggs, Mr. Reynolds, Ms. Checca, Mr. Susswein, Mr. Moore, Ms. Brinkman, Mr. Sullivan, and Ms. Wanat. Ms. Talley arrived at 8:00.

MINUTES: The minutes of the February 4, 2015 were offered for any suggested changes. Mr. Harrison provided minor edits. Ms. Baggs also provided a change. A motion to approve the minutes was offered by Mr. Susswein, seconded by Mr. Kenney and approved unanimously with Mr. Fleischer abstaining.

OLD BUSINESS:

Resolution App. 2395: Boris Neymark, 30 Mission Street. *Variance for addition to dwelling unit.* Mr. Harrison offered a few minor edits to the resolution. A motion was made to approve the resolution by Mr. Susswein, seconded by Ms. Baggs and approved unanimously with Mr. Fleischer abstaining.

**RESOLUTION
BOARD OF ADJUSTMENT
TOWNSHIP OF MONTCLAIR**

**Boris Neymark
30 Mission Street**

**March 4, 2015
File #2395**

WHEREAS, Boris Neymark did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to construct an addition on property designated as Lot 21 in Block 4107 on the Township Tax Map and located in the R-2 Two -Family Zone; and

WHEREAS, the applicant requested a variance from Montclair Code §347-45B(1) for a front yard setback of less than required, a variance from Montclair Code §347-45C(3) for a side yard setback of less than required, a variance from Montclair Code §347-45C(4) to permit a structure that exceeds 65 percent of the lot width, and a variance from Montclair Code §347-45E to permit a structure that exceeds the maximum building coverage ; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 4, 2015, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted plans prepared by Christopher Juchnick, R.A. dated November 5, 2014; and

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

1. The property involves an existing house on a small lot located on the east side of Mission Street in the R-2 Two-Family Zone. The proposed addition involves enclosing an existing front porch which is located is setback 9.81 feet from the front property line.
2. A variance is required because the front porch exceeds the minimum required front yard setback of 25 feet and the minimum side yard setback of 6 feet on one side and 10 feet on the other side.
3. The proposed enclosed porch will not encroach any closer to the street or side yard than the existing porch and the enclosure and setbacks are consistent with the setbacks of other properties on the street.
4. The applicant proposes to improve a building that is sorely in need of rehabilitation and this improvement will be a significant benefit to the neighborhood.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship created by the location of the existing house on the existing lot 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 the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved 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 application 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.

Resolution App. 2401: Dane & Barbara Holmes. 155 Wildwood Avenue. *Variance to permit a fence that exceeds the maximum height.* Chair Harrison offered a few minor edits to the resolution. A motion was made to approve the resolution by Mr. Susswein, seconded by Ms. Baggs and approved unanimously with Mr. Fleischer abstaining.

**RESOLUTION
BOARD OF ADJUSTMENT
TOWNSHIP OF MONTCLAIR**

**Dane and Barbara Holmes
55 Wildwood Avenue**

**March 4, 2015
File #2401**

WHEREAS, Dane and Barbara Holmes did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to construct a fence on property designated as Lot 12 in Block 2607 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested variance from Montclair Code §347-27 A(1) to permit a fence in the front yard that exceeds the maximum height; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 4, 2015, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted plans prepared by Meipop Design and Walpole Outdoors, dated December 12, 2014; and

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

5. The property involves "The Anchorage," a historic house located at the corner of Wildwood Avenue and Park Street in the R-1 One-Family Zone. The proposed fence includes a double gate extending across the driveway with two columns, each measuring 6 feet 4 inches in height, with an arched wooden gate that extends to a height of 5 feet 8 inches. The fence height will measure 4 feet, 5-3/4 inches from the ground, but the fence posts will be 4 feet, 10-1/2 inches tall. A one-foot high curb wall will be constructed at the base of the fence between the existing wall and the gate post, increasing the total height of the fence at this location to 5 feet, 10-1/2 inches.

6. The proposed fence will be painted a dark green color and will be screened by landscaping planted between the fence and the street. The fence will be located adjacent to an existing historic wall, which contains an arched element that is matched by the proposed gate design.
7. There is limited privacy for the residents of the property because of the location of the lot and house at the corner of the two streets.
8. The application has been reviewed by the Historic Preservation Commission, who recommended approval of the proposed fence with the condition that the fence not be attached to the historic wall.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship created by the location of the existing house on the existing lot 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 the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved 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 application 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.

App. 2393: New York SMSA Limited Partnership d/b/a Verizon Wireless, 208 South Mountain Avenue. *Installation of wireless telecommunications equipment on chimney and rooftop.*

Mr. Harrison announced the continuation of the application.

Richard Schkolnick, Esq. represented the applicant. He asked for confirmation of the board members who would be eligible to vote. Mr. Sullivan noted that all members, except Ms. Brinkman and Mr. Reynolds would be eligible to vote.

He summarized the application and recalled Glen Pierson, an expert in RF Engineering. The following exhibits were marked into the record:

A-16: Exhibit F. Verizon Wireless Comprehensive Plan

A-17: Exhibit G. Verizon Wireless – Existing and Future Coverage map.

Mr. Susswein asked about the demand for data and bandwidth increasing faster than the ability to build infrastructure.

Mr. Pierson responded that there is no clear knowledge about when the increase in demand for data and bandwidth will end.

Mr. Schkolnick noted that society and technology continue to evolve.

Mr. Fleischer asked if other technologies or alternatives existed instead of antennas.

Mr. Pierson answered that there is a need for both a transmitter and a receiver. Antennas can be mounted on street poles. Utility poles in back yards, as well. Even for houses there would still have some visual impact and visible backups. However, no battery backup would be available. There is a never ending demand for cell antennas.

Mr. Schkolnick added that the goal of this governing body is comprehensive planning. He noted that the issue at hand is the placement of the antenna on a structure with minimum height of 60' per the ordinance.

Mr. Harrison asked how other antennas from other providers on the site would be handled.

Mr. Pierson responded that there was no room on this chimney.

Mr. Reynolds referred to exhibits A-13 and A-14 and asked how this proposed cell site moves the red line of capacity. Would there be a 13% traffic reduction in lower Montclair beta site?

Mr. Moore asked if new technology changes would result in smaller antennas.

Mr. Pierson replied that right now there are four frequency bands and that antennae are wider due to the number of bands. As a result of additional bands, antennae are not getting smaller.

Next questions from the members of the public were received.

Doug Berman, 200 South Mountain Avenue, asked to review coverage gaps.

Mr. Pierson went over the coverage.

Mr. Berman also discussed signal levels and thresholds and the need to expand coverage at higher frequency bands.

Judith Wildman, 185 South Mountain Avenue asked if alternate sites had been considered, such as the Montclair Art Museum.

Mr. Pierson answered that placement along Bloomfield Avenue would be too far away and that there is already an existing site on Bloomfield Avenue. He noted that exhibit A-4 illustrates the location of the coverage gaps.

Ms. Wildman asked how the coverage gaps were identified.

Mr. Pierson responded that a road test was conducted to identify the coverage gaps. He referred to exhibit A-16 the comprehensive plan.

Ken Bannerman, 183 South Mountain Avenue and Rashid Malik asked if antennae up on the mountain top could be a sufficient alternative. They also asked if they could be attached to a cliff. They wanted to know if this site was the best site.

Mr. Pierson responded that this was the best site.

Dave Placek, 218 South Mountain Avenue, asked if this was the only site considered. Mr. Pierson responded yes. Mr. Placek asked if the hospital could be a site for the antenna. Mr. Pierson answered that yes the hospital could have possibly worked. Mr. Placek asked if the firehouse could be a site for the antenna. Mr. Pierson answered that the firehouse would not work due to its limited height and distance from the gaps in coverage.

Mr. Placek asked what the coverage range was for a small cellular site. Mr. Pierson answered that it is 2,500' and referred to exhibit A-17. Mr. Placek asked if there was any size in between a small cell site and a macro cell site. Mr. Pierson responded no. Mr. Placek noted that if data is the issue, isn't the majority of data used when in the home? He noted that this cellular site may be trying to resolve a perceived need and that the need could be reduced because of Wi-Fi availability.

Karen Berman, 200 South Mountain Avenue questioned the need for the additional antennas.

Mr. Schkolnick then called David Karlebach, Professional Planner to provide testimony.

Mr. Karlebach reviewed the requested variance and noted that a d(3) variance was required of the applicant. He indicated that the selected site was a large lot in a residential area with grade differentials. There are no 6-story buildings available in the area for antenna placement.

Mr. Karlebach noted that the antenna is a conditional use in the R-O Mountainside Residential zone, and that the application is compliant in all conditions except the 60' maximum height. The parapet will have a height of 28'.

Mr. Karlebach explained the d(3) variance request. He indicated that it is essentially a compatible use in the zone and that the focus is on the site and context, and whether it is particularly suited for the use.

Mr. Karlebach stated that the effective height of the proposed site on top of a 28' building height on a 35' grade above South Mountain Avenue effectively exceeds the 60' minimum height of the structure requirement.

Mr. Karlebach also explained that the antenna would not really be visible from Undercliff Road due to the wooded buffer.

Mr. Karlebach noted that the ordinance was written in anticipation of large, macro-scale antenna sites which are significantly larger than what is proposed here. The governing body has not addressed the issue of smaller, micro sites.

Mr. Karlebach indicated that the proposal meets the objective of the ordinance. The antenna will be flush-mounted and camouflaged. He also stated that this proposal does not present a substantial detriment. The proposal represents the least obtrusive

method. There are no alterations that meet requirements. He also noted that the R-O Mountainside Residential zone does not permit structures above 35'.

Mr. Karlebach also noted that the 2006 Master Plan does not contain any discussion of telecommunications uses nor the proposed site. He indicated that all of the requirements are met.

Mr. Harrison asked if the balancing test has been met.

Mr. Karlebach replied that the balancing test is met. The antenna proposal 1) serves the public good by provide 4G LTE service, 2) is not detrimental to the community, 3) provides conditions to mitigate impacts and so the benefits outweigh the detriments.

Questions from Board members of Mr. Karlebach were then requested.

Mr. Kenny asked about the 60' antenna height requirement.

Ms. Baggs followed up to ask if the cabinets for the antenna would be visible from neighboring properties. She continued, asking if the pipe railing is in keeping with the character of the community.

Mr. Karlebach replied that it is inconspicuous due to the distance from neighbors and because of the vegetation. He added that they will be screened from view of adjacent properties.

Questions from the public were then permitted.

Mr. David Placek asked about setback requirements, particularly if there is a non-conforming setback to the south side building upon which the antenna would be place, to which Mr. Karlebach replied that there appears not to be a non-conforming setback.

Mr. Placek asked if the school building was a permitted conditional use.

Mr. Placek asked if a topographic survey was completed of the site. Mr. Karlebach responded that he did not, but that perhaps the radio frequency engineer had completed such work.

Mr. Placek asked about the effective height of the site to the north and south of the proposed site. Mr. Karlebach replied that the effective height is 60' and stated that he had no opinion on the variation.

Ms. Karen Berman asked about the research and background into the 60' height minimum and if the Master Plan was reviewed. Mr. Karlebach replied that the 2006 Master Plan was reviewed and he stated that he had no insight into the origin of the height minimum.

Mr. Berman asked about the adverse impacts of the facility and the potential impacts of property values.

Ken Colon, 215 South Mountain Avenue, asked for clarification on the non-existent impacts, if there would be any noise from the antenna. Mr. Karlebach replied that the RF engineer could better respond, but that it should be equivalent to a laptop computer. Mr. Colon asked about periodic maintenance, to which Mr. Karlebach replied that diagnostic tests would be needed every 2-4 weeks.

A break was then held.

Upon resumption, Mr. Berman noted that the neighbors have retained experts to present at the next meeting.

Mr. Skolnick indicated that he had concluded his presentation and time will not be extended to March 13.

Mr. Harrison indicated that due to the applicant's desire not to extend the deadline by which the board must act, the application should be concluded this evening. Due to the continued discussion of this application, the evening's new business, App. 2399 would be moved to April 1. Mr. David Owen, representing App. 2399 indicated that an extension would be acceptable.

Ms. Judith Wildman, 183 South Mountain Avenue, an attorney representing the neighbors of the proposed site called Andre Bertsche to provide testimony.

Ms. Bertsche, 147 South Mountain Avenue, is a realtor with the Stanton Company and handles 20-25 transactions per year, with about 20% in Montclair. Ms. Bertsche conducts 15-25 property valuations per year. She has testified as a real estate professional previously.

Ms. Bertsche testified as a fact witness, questioned by Ms. Wildman.

Ms. Wildman asked what elements or factors contribute to a property's value in a particular neighborhood. Ms. Bertsche indicated that location, comparable sales, condition of the property, environmental conditions and neighboring development are considered in valuation. Schools, such as middle or high schools, as well as commercial development in addition to other adjacent land uses can have an impact on the property value.

Ms. Bertsche indicated that she would be obligated to disclose to a potential buyer any pending developments, including a cell phone antenna. The seller would be under obligation to notify a buyer about an existing cell phone antenna, even when camouflaged.

Mr. Reynolds asked if there were any changes in property valuation in the area of Cooper Avenue and Lorraine Avenue, where antennas have been placed. Ms. Bertsche replied that there has been no change.

Mr. Reynolds asked if there were any changes in property valuation in the area of Chestnut and Forest, where antennas have been placed. Ms. Bertsche replied that there has been no change.

Mr. Reynolds asked if there were any changes in property valuation in the area of Portland Place and Valley Road, where antennas have been placed. Ms. Bertsche replied that there have not been any sales to provide any insight.

Mr. Kenny asked about the YCS school facility and if Ms. Bertsche discloses the use of the property to potential buyers and if there is any impact of the school on property values. Ms. Bertsche indicated that she does not think the school has any impact on property values.

Mr. David Placek then questioned Ms. Bertsche, asking if in the estate area of Montclair potential buyers have a higher level of scrutiny with respect to environmental concerns.

Ms. Bertsche responded that yes, buyers in this area do have a heightened concern for environmental issues.

Testimony and statement opportunities were then opened to members of the general public.

Mr. Placek presented evidence 02-06, five photographs of the chimney on top of the proposed site where the antennas are to be placed. He noted that the antennas will be highly visible from his property and will greatly impact quality of life. He purchased his home next to the school. He does not want to live in a commercial area, and this proposal sets a precedent for multiple wireless antennas to be added to this site in the future.

Mr. Rashid Malik, 195 South Mountain Avenue, testified that he is opposed to the antennas because of a severe impact to his property values.

Ms. Judith Wildman, 183 South Mountain Avenue, said that based upon the testimony there were no apparent complaints about a lack of service in the area. She asked if the value of the impacts were weighed.

Mr. Alex Picou, 203 South Mountain Avenue, concerned about electro-magnetic fields and its impact on students and residents. Mr. Picou also questioned the need and lack of complaints about service quality in the area and the impact on taxes.

Mr. Ken Colon, 215 South Mountain Avenue, stated that there has been no clear establishment of need for this proposed cell site. Mr. Colon stated that there is a clear impact to the neighborhood.

Ms. Mali Abebin, 195 South Mountain Avenue, stated that she has been a resident of South Mountain Avenue for 27 years and that the antenna will be detrimental to the community. She objected to the antenna project and suggested the school should pursue other fundraising efforts instead of the antenna project.

Ms. Karen Berman, 200 South Mountain Avenue, submitted photos as evidence items numbered 07-021 to illustrate the residential context of the site. She stated that the community already is home to the school which is out of context for the residential area and has a number of impacts including, noise, light and vagrancy. She indicated that approval would set a precedent for more antennas at this site.

Mr. Doug Berman, 200 South Mountain Avenue, stated that the legislative intent must balance the need of the site with the preservation of the residential areas.

Mr. Schkolnick followed the public testimony to reiterate the intent of the project, impacts and mitigation steps that are part of the proposed plan.

The Board then held discussion.

Mr. Susswein stated that there appears to be no substantial detriment criteria met. He noted that window air conditioning units can be more offensive. He also noted that in his opinion the proposal met the burden. He indicated that he would support the variance.

Mr. Kenney added that there appears to be no substantial detriment criteria met in this case, with respect to the d(3) variance. He believes that the application has established

a small coverage gap. Important issue in the future will be to address data and technology with respect to smaller coverage gaps. In general, he noted that he is supportive of the application.

Mr. Fleischer noted that the installation of a small network node is brand new. The existing ordinance did not anticipate small network nodes. The height issue is not applicable to the small network nodes. He added that citizens are demanding technologies which in turn demand these types of sites. With regard to the statute, the impact is limited. He added that this issue must be reviewed because building height in residential zones is typically less than 60' height minimum. With respect to the existing regulations, he is supportive of the application.

Ms. Checca stated that the project does serve the common public good. However, the coverage gap is quite small. The applicant made a good effort to accommodate negative effects on site. However, she felt conflicted because zoning is intended to protect homeowners, who have a right to private enjoyment. She stated that the neighborhood is in deep distress because of the application and that is a negative impact. She felt that the deep distress of the home owners was compelling her to find the application not favorable.

Mr. Reynolds stated that he was in favor of the applicant.

Mr. Moore stated that more data and technology is needed and at the same time impacts to residents need to be considered. Because of the passion and concerns presented, he stated that he would not be in favor of the application.

Ms. Brinkman reported that she sees understands both sides of the issue. She noted that the antenna will be inconspicuous and colored to match the chimney. She mentioned the need to prevent staining or corrosion of the chimney by the antenna by using stainless steel and attaching at the mortar joints. She stated that she was in favor of the application.

Mr. Sullivan clarified to the board members that the antennae serve the common good and that the test here before the board must remain on whether the site is appropriate for the conditional use despite the failure to conform to all the ordinance conditions. The sole deviation, he stated, is in the building height.

Mr. Harrison further clarified that the board must weigh substantial detriment in the context of the height variance and not the use as a cellular antenna.

Ms. Baggs stated that the applicant must prove the need for the variance. She added that screening of the cabinet should be provided and is very important because this is a steep site and the rooftop is more visible.

Mr. Harrison stated that the board is severely constrained by the Court decisions, federal regulations and the local ordinance. He stated that alternatives have been looked at to great length. The existing ordinance allows the antenna in this zone and there is a limited scope of evaluation. He noted that the 60' minimum height provision in the R-O zone is peculiar. He noted concern about the aesthetics and the need to screen the equipment and cabinets. Mr. Harrison also noted that plans for the future should be considered and that he is concerned about setting a precedent. Other

providers will have to fill their coverage gaps and will have to meet the requirements of the ordinance.

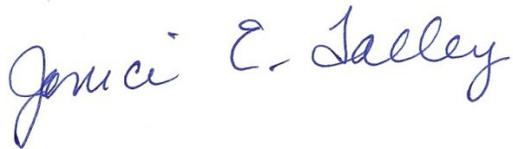
Mr. Harrison indicated that he would be in favor on the condition that the antennas must match the color of the chimney, and screening of the cabinets should be completed. He added that the cable should be colored to match the surface, and that stainless steel anchors should be inserted into the mortar joints. Finally, he noted that the style of railing should be comparable to the adjacent railings of the building.

A motion by Mr. Kenney was made to approve the application, seconded by Mr. Fleischer. A roll call was conducted. The application was approved unanimously.

ADJOURNMENT

The meeting was adjourned at 12:30 pm.

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