

MINUTES OF THE BOARD OF ADJUSTMENT
September 17, 2014

PRESENT: Chair Harrison, Mr. Fleischer, Mr. Edwards, Mr. Reynolds, Mr. Susswein, Mr. Tsai, and Vice Chair Whipple; also Mr. Sullivan, Esq., Ms. Talley, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Burr, Ms. Checca, and Mr. Kenney

Mr. 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. Fleischer, seconded by Mr. Susswein, the **Minutes of the August 20, 2014** meeting were adopted as modified, Mr. Edwards and Mr. Whipple abstaining. On motion by Mr. Fleischer, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Sprint Corporation, L.P., 630 Valley Road** was adopted as modified, Mr. Edwards and Mr. Whipple abstaining:

WHEREAS, Sprint Corporation (hereinafter "Sprint"), did make application to the Board of Adjustment of the Township of Montclair to install three wireless telecommunications antennas, six RRH units and a GPS antenna and remove four Nextel and six Sprint wireless telecommunication antennas on the roof of the multi-story commercial building located at 630 Valley Road (hereinafter "the subject property") designated as Lot 1 in Block 2601 on the Township Tax Map and located in the NC Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted plans and details prepared by Lulay & Illescas Associates, Inc. , Sheets T01, Z02 through Z06 dated January 30, 2013 revised through August 13, 2014; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on May 21 and August 20, 2014, 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 located at the westerly side of Valley Road contains 5,730 square feet in size and is improved with a multi-story commercial building.
2. The applicant proposes to install three wireless telecommunication antennas, six RRH units and one GPS antenna and remove four Nextel and six Sprint wireless

telecommunications antennas. The new Sprint antennas will replace existing antennas at the same height and location. The application also includes replacement of three equipment cabinets.

3. The application complies with all of the conditional use standards except for Montclair Code Section 347-17.1C(4)(c) which requires the height of the antenna shall not exceed the top of the parapet wall, penthouse or chimney to which it is attached. The new wireless telecommunications antenna and two RRH units in the alpha sector as well as the GPS antenna located at the northerly end of the building all exceed either the height of the parapet wall or penthouse to which they are attached.

4. Based upon the size and location of the existing building, the proposed roof top location of the site is particularly suited for wireless communication antennas and continues to be an appropriate site for the conditional use notwithstanding the deviations from the conditions imposed by the ordinance consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

5. The Board found approval of the requested variances advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., since the proposed replacement and modification of antennas encourages appropriate use of land which promotes the general welfare (-2a) and the overall reduction in the number of antennas provides adequate light, air and open space (-2c).

6. Based upon the testimony of the applicant's RF Compliance expert and a report titled "Antenna Site FCC RF Compliance Assessment and Report" prepared by Pinnacle Telecom Group dated August 13, 2014, the Board determined the proposed antennas and associated equipment shall comply with all applicable State and Federal regulations for radiation transmission levels.

7. The overall reduction in wireless telecommunication antennas will result in a dramatic improvement in appearance of the building representing a public benefit.

8. The application does not involve any noise, vibrations, smoke, dust, odors, heat or glare and thus will not cause substantial detriment to the public good and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board, based on the forgoing 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 Sprint Corporation to replace and

modify telecommunications equipment as set forth herein is hereby approved subject to the following conditions:

1. The applicant shall have the revised plans reviewed by the Historic Preservation Commission.
2. The existing four Nextel and six Sprint wireless telecommunications antennas shall be removed as designated on the plan as well as any extraneous poles above the structure to which they are attached.
3. The new antennas shall not exceed the height of the antennas they are replacing.
4. The new antennas shall be painted to match the structure to which they are attached.
5. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as 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.

The Board briefly discussed the request by the applicant to postpone the site plan application of **Wallwood Gardens, Inc., 400 Orange Road** to the December 17, 2014 meeting of the Board. Pursuant to the New Jersey Permit Extension Act, the variance approval is set to expire on June 30, 2015, which will be a consideration for any future postponement requested beyond December 17, 2014. The request was unanimously granted on a motion by Mr. Whipple, seconded by Mr. Fleischer. The Board was granted an extension of time and the applicant would be required to complete a full public notice for the pending December date.

Mr. Reynolds joined the Board. The application of **David & Naomi Kirkman, 722 Valley Road** was announced. David Kirkman and Jonathan Perlstein, Architect, were sworn. Mr. Perlstein described the application. Variances are requested to construct a deck and install a hot tub at the rear of the dwelling. The southerly side yard setback of the existing dwelling is nonconforming, being setback 0.23 feet from the southerly side property line. The proposed deck is roughly aligned with the southerly side of the dwelling and a setback of 6¼ inches is proposed from the southerly property line. The deck setback from the northerly side property line would exceed the 10 foot minimum. The minimum permitted rear yard setback for the proposed deck is 29.88 feet. A rear yard setback of 27 feet 6¾ inches is proposed and a variance is requested. The maximum permitted principal building coverage, which includes the dwelling and any porches, decks, stairs, etc., is 25% of the lot area. The lot area is 5,975 s.f., which

permits a maximum building coverage of 1,493.75 s.f. The existing coverage is 1,484 s.f., which is 24.8% of the lot area. The proposed coverage is 1,839 s.f., which is 30.78% of the lot area, and a variance is requested. The proposed hot tub is built into the proposed deck and would be positioned approximately 1.5 feet from the southerly side property line. Cedar fencing is proposed on the deck to screen the hot tub, which can be seen on the elevations. The top of the fence would be 9 feet 11.5 inches from the ground. The minimum side yard setback allowed for the hot tub is 15 feet, which can be reduced to 10 feet if a hedge or dense shrub planting at least four feet high is maintained between the pool and the side line. The 1.5 foot setback of the proposed hot tub requires a variance.

The Board questioned the applicant and Mr. Perlstein. Mr. Perlstein described the intent of the design as per his client wishes. He also stated that some of the variances are caused by the position of the home and the size of the rear yard. Mr. Kirkman also described his reasoning with the positioning of the hot tub and stated the part of the yard is not useful otherwise. Karen Evans Farkas, 720 Valley Road, was sworn. She is the owner of the dwelling on the adjoining lot to the south, which is abutting the location of hot tub. She stated that her concern is the height of the proposed fence on top of the deck, which she thought would negatively impact her property. She asked that the fence be reduced in height if the variances are granted. The Board briefly questioned Ms. Evans Farkas.

Mr. Perlstein stated that the applicant is willing to modify the plan based on some of the concerns being voiced. The Board discussed the application and determined that the plan should be modified to eliminate the side yard setback variances from the southerly lot line for the deck and the hot tub, while also granting slightly greater relief on the rear yard setback and building coverage to allow the applicant to construct a usable deck that includes the built in hot tub. After some discussion, the Board stated that the rear yard setback can be permitted to be 25 feet, and the maximum building coverage allowed would be increased to 31.5% of the lot area. A motion stating the above was made by Mr. Whipple, was seconded by Mr. Fleischer, and the application as amended was unanimously approved, subject to the following conditions:

1. The rear yard setback of the deck shall not be less than 25 feet.
2. The principal structure coverage shall not exceed 31.5 percent of the lot area.

Chair Harrison was recused from the next application and left the meeting room. Vice Chair Whipple announced the continuation of the application of **Montclair Town Center, LLC, 37 North Mountain Avenue and 323 Claremont Avenue** was announced. Alan Trembulak, Esq. appeared as attorney for the applicant. Mr. Sullivan advised that there is a pending use variance yet to be voted on and that there are 6 eligible Board members present. Paul Sionas, Architect, was recalled and described the latest revised plans. The parking lot has been redesigned and the landscaped areas

have been improved. The Georgian Inn lot has 34 parking spaces and the lot to contain the carriage house and multifamily dwelling will have 27 parking spaces. The setbacks of the parking areas from the front property lines have been increased with additional landscaping provided. He described other landscape improvements near the carriage house, the redesigned loading area and trash enclosure, the proposed chiller, and the 8 foot fence that would screen the chiller. He also described the removal of the proposed brick wall that would screen the new parking area near the intersection, and stated that a planted berm that would be created instead as requested by the Board.

Exhibit marked:

A-12 Sheet SP2 in color by Sionas Architecture revised 09-09-14

The Board briefly questioned Mr. Sionas. Questions from the public were offered. Ronald Istivan 315 Claremont Avenue, asked about the various driveways on the plan. Vice Chair Whipple called for public comment. Ronald Istivan, 315 Claremont Avenue, was sworn and stated that the applicant has not shown that there is a need for a hotel use considering the large hotel currently being constructed nearby. He also expressed concern about the traffic that will be generated by the property as proposed. Mr. Trembulak provided his closing statements and asked the Board to approve the remaining use variance, bulk variances, subdivision, waivers, and site plan approval. The Board discussed the application. Based upon the testimony adduced at the hearings, the Board determined that the application is consistent with the intent and purpose of the Master Plan and Zoning Ordinance which seeks to preserve historic structures and sites and will contribute to the vitality of the area by providing a variety of appropriate uses. Based upon the Board's particular knowledge of local conditions, the Board determined approval of the application will not cause substantial detriment to area properties. On motion by Mr. Fleischer, seconded by Mr. Susswein, the application was unanimously approved, subject to the following conditions:

1. The applicant shall satisfy and comply with paragraphs 1 through 6 contained in the September 16, 2014 report of W. Thomas Watkinson, Montclair Zoning Board Engineer.
2. The applicant shall return to the Montclair Historic Preservation Commission for final details of materials, signs, lights, landscape treatments and design to be used on buildings and grounds.
3. The applicant shall submit a revised minor subdivision plan consistent with the approved plan.
4. The minor subdivision approval shall expire 190 days from the date of adoption of this resolution unless within such period a plat in conformity with such approval and the provisions of the "Map Filing Law" or a Deed clearly describing the approved minor subdivision is filed with the County Recording Officer, the Municipal

Engineer and the Municipal Tax Assessor in accordance with N.J.S.A. 40:55D-47d, unless further extended by the Board.

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

6. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

The Board took a short recess. Upon reconvening, Chair Harrison rejoined the Board. The application of **New York SMSA Limited Partnership d/b/a Verizon Wireless, 10 Pine Street** was announced. Chair Harrison stated that after a discussion with the Board Attorney, the applicant will be seeking a use variance from the Eastern Gateway Redevelopment Plan as opposed to the conditional use variance indicated in the notice. It was determined that public notice was sufficient to proceed. Richard Stanzione, Esq., appeared as attorney for the applicant. James Murawski, Professional Engineer, was sworn and stated his qualifications. He described the application. The applicant is seeking to construct a small network node consisting of 2 equipment cabinets on a 8 feet by 5 feet platform within an 8 feet by 8 feet lease area on the roof of the building; one ballast mounted antenna at a height of 50.17 feet and one GPS antenna at a height of 47.42 feet on the rooftop of the existing building. The peak height of the parapet near the proposed antenna measures 46.92 feet from grade. He also provided details on the proposed equipment position on the rooftop. The Board briefly questioned the witness. No questions were offered from the public.

Adam Feehan, Professional Engineer, was sworn and stated his qualifications. Mr. Feehan described the proposed small network node installation and stated that its purpose improve capacity deficiencies involving data transmission, generally in downtown areas. Mr. Feehan described the 2 exhibits provided in detail and described how the proposed small network node would improve the capacity in the targeted area.

- A-1 2 page exhibit depicting coverage being provided by nearby Verizon facilities
- A-2 2 page exhibit depicting capacity limit for Beta and Gamma sectors from Verizon Glen Ridge facility in the target area to be served by proposed small network node

The Board questioned the witness. Mr. Feehan answered questions relating to the potential for the proposed antenna to be mounted flush on parapets of the roof as opposed to the proposed antenna that projects above the roofline. He stated that they would need to go back to model the effects of a flush mounted installation. After further questions, Mr. Stanzione requested that the application be carried to a subsequent meeting so that the applicant can research the issues being presented by the Board. Chair Harrison announced that the application would continue at the October 15, 2014

meeting. The applicant agreed to complete a new public notice to reflect the correct relief required. The Board was granted an extension of time. On motion by Mr. Fleischer, seconded by Mr. Susswein, the meeting was adjourned.