

MINUTES OF THE BOARD OF ADJUSTMENT
November 19, 2014

PRESENT: Chair Harrison, Mr. Fleischer, Ms. Checca, Mr. Kenney, and Mr. Tsai; also Mr. Sullivan, Esq., Ms. Talley, Secretary.

ABSENT: Mr. Edwards, Mr. Susswein, Mr. Reynolds and Vice Chair Whipple

Ms. Talley 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. Kenney, the **Minutes of the October 15, 2014** meeting were adopted as modified by Mr. Sullivan.

On motion by Mr. Fleisher, seconded by Mr. Kenney, the meeting calendar for 2015 was adopted.

On motion by Mr. Fleischer, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Rose DeSomma, 46 Montclair Avenue** was adopted as modified:

WHEREAS, Rose DeSomma, 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 detached garage, on property designated as Lot 24 in Block 3307 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the property is a corner lot at the intersection of Montclair Avenue and Chestnut Street; and

WHEREAS, the applicant requested a variance from Montclair Code Section 347-52 for a setback of less than 28 feet from the Chestnut Street front property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 15, 2014, 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 a property survey dated 1962, and plans by Drafting Concepts dated June 24, 2014; and

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

1. The property is a corner lot at the intersection of Montclair Avenue and Chestnut Street and is located in the R-2 Two-Family Zone. The lot is irregular in shape, having a width that varies from a maximum of 73 feet along Montclair Avenue down to a minimum of 53.30 feet across the rear property line. The lot depth varies from 195.55 feet along the southerly side line to a maximum of 198.02 feet along the Chestnut Street property line.

2. The previously existing detached garage on the property was demolished, as the roof collapsed due to the snowfall from last winter. The testimony provided at the hearing indicated that the previously existing garage had a width facing Chestnut Street of 23 feet and a length of 20 feet 1 inch.

3. The previously existing garage was nonconforming due to its setback from Chestnut Street, noted as 4.62 feet and 4.73 feet from the Chestnut Street front property line on the survey, where a minimum of 28 feet is required.

4. The testimony provided at the hearing included a stipulation that the new garage would match the size and location of the previously existing detached garage, and that the rear yard setback from the westerly property and the maximum accessory building height would be complied with.

5. The Board determined that the requested variance for the setback from Chestnut Street could be approved, subject to conditions. The Board determined that the detriments of moving the new garage further away from Chestnut Street, which include the removal of trees and increasing the impervious surface coverage for a longer driveway, would outweigh the benefits provided by the larger setback.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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, subject to the following conditions:

1. The footprint of the new garage shall not exceed 23 feet in width facing Chestnut Street and 20 feet 1 inch in length.

2. The setback from the Chestnut Street front property line shall be no less than the setbacks of 4.62 feet and 4.73 feet depicted on the property survey.

3. The new garage shall comply with the 6 foot minimum rear yard setback from the westerly property line, and the maximum accessory building height of 15 feet.

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

On motion by Mr. Fleischer, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Bruce Jackson, 12 Orange Road** was adopted:

WHEREAS, Bruce Jackson, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to construct a front porch and a second floor addition onto the dwelling, on property designated as Lot 6 in Block 1405 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested variances from Montclair Code Section 347-51 for front yard and side yard setbacks of less than required, to exceed the maximum permitted building width, and to exceed the maximum permitted building lot coverage; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 15, 2014, 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 a property survey, dated August 7, 2014 and plans by Rod Nyennatee Lewis, AIA, dated July 2014; and

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

1. The property is located in the R-2 Two-Family Zone and contains a two-family dwelling being converted to a one family dwelling. There is no driveway or parking on the property. The lot measures 25 feet in width by 100 feet in depth.
2. A new roofed front porch is proposed to replace an existing roofed front entrance landing. Also, an addition to the second floor is proposed at the northwesterly rear corner of the dwelling. The addition is to be supported by columns and does not have an enclosed first floor below it. The addition would be aligned with the northerly side wall and rear wall of the dwelling.
3. The existing foundation of the house has a nonconforming front yard setback of 15.37 feet. The existing roofed front entrance landing, excluding the stairs, extends about 5 feet further into the front yard. The required front yard setback for the proposed porch is 25 feet, and a front yard setback of 9.3 feet is proposed requiring a variance.
4. The required side yard setbacks for the new front porch are 6 feet on one side and 10 feet on the other side. The existing dwelling has nonconforming side yard

setbacks of 2.17 feet on the north side, and 2.3 feet on the south side. Side yard setbacks of 3.1 feet and 4 feet are proposed for the north and south sides, respectively, of the new front porch, and a variance is requested.

5. The existing nonconforming northerly side yard setback of 2.17 feet would be continued for the addition to the second floor and a variance is requested.

6. The maximum permitted dwelling width is 16.25 feet, or 65 percent of the lot width of 25 feet. The existing dwelling width of 20.5 feet is nonconforming at 82 percent of the lot width. The 17.9 foot width of the porch requires a variance as it measures 71.6 percent of the lot width, and the expanded width of second floor at the rear requires a variance as it measures the same 20.5 feet as the remainder of the dwelling.

7. The existing building coverage on the property is nonconforming at 30 percent of the lot area where a maximum of 25 percent is permitted. By adding the larger front porch and the second floor addition, the building coverage increases to 35 percent of the lot area, and a variance is requested.

8. The Board determined that the variances requested could be approved. The variances are largely based on the existing conditions of the lot and the position of the dwelling on the lot. The proposed improvements help to modernize the dwelling and improve its appearance. The proposed improvements are in keeping with the size and character of the other dwellings in the neighborhood will not negatively impact a neighbor or the streetscape; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and 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 within application is hereby approved; and

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.

The application of **Jonathon & Rebecca Hirsh, 75 Heller Way** was announced. Jonathon and Rebecca Hirsh, 75 Heller Way, were sworn. The applicant is proposing a deck on the back of the house. The lot is oddly shaped, creating the need for a variance. Mr. Hirsh stated that their house is small and they want additional outdoor usable space. The deck was shaped to create a sitting area and dining area that looks out over the rear yard.

The Board questioned the Mr. DeSomma. The Board stated that this is a large deck and the size of the deck and its stairs seems excessive. They suggested reducing the size of the deck and the stairs that extend into the side yard to reduce its incursion on the rear yard and side yards. Mr. Hirsh stated that the property line closest to the deck contains a significant amount of vegetation that screens the deck. The neighbor's house is set well away from property line.

The Board discussed the application and determined that the requested variance could be approved, subject to the conditions below. The Board stated that the shape of the yard and the location of the garage on the right side of the house limit the location of the deck. This however, does not mean that the proposed deck can be excessively large. On motion by Mr. Fleischer, seconded by Mr. Kenney, the application was approved with Mr. Tsai abstaining, subject to the following conditions:

1. The deck shall not extend more than 15 feet, 10-1/2 inches from the rear façade of the house.
2. The left side of the deck shall not extend beyond the existing screened sitting room.

Mr. Fleischer was recused from the next application. Chair Harrison announced the continuation of the application of **New York SMSA Limited Partnership d/b/a Verizon Wireless, 10 Pine Street**. Richard Stanzione, Esq., appeared as attorney for the applicant. He stated that with only four eligible Board members present, the applicant would like to carry the conclusion to a subsequent meeting. Chair Harrison announced that the application would continue at the December 17, 2014 meeting. No further notice would be given. The Board was granted an extension of time.

Mr. Sullivan announced that the Board received a request from the applicant for **Application 2381, Willard Place Partners, 9 Willard Place** to carry the application to the December 17, 2014 meeting. The Board was granted an extension of time and no further notice will be given.

The next application was announced: **Application 2393 New York SMSA Limited Partnership d/b/a Verizon Wireless – 208 South Mountain Avenue**. This

property is located in the R-O Mountainside Zone. The applicant proposes to install three antennas onto the chimney on the private school located on the subject property. A conditional use variance is required because the proposed antennas are located on a building only 28 feet tall, at a height of 33.5 feet on the existing chimney, whereas the Township's telecommunications ordinance requires that antennas be located on building's at least 60 feet high.

Richard Stanzione, Esq., appeared on behalf of the applicant. He introduced Bill Masters, PP., as his professional planner. The Board accepted Mr. Masters as an expert planner and was sworn in by Mr. Sullivan. Mr. Masters stated that this a d(3) conditional use application in the R-O Mountainside Zone.

Mr. Masters pointed out that the maximum height in the R-O zone district is 35 feet, whereas the telecommunications ordinance requires a minimum building height of 60 feet. He noted that the property contains a school, which is a conditional use in the R-O zone and has different bulk requirements from single-family residential uses in the zone.

Mr. Masters described the subject property and presented his photo simulations of the proposed improvements. The following exhibits were marked into the record:

A-1: Two photographs and two photo simulations

A-2: Photo of site showing no visibility of the antennas

Mr. Stanzione introduced Adam Feehan, a Radio Frequency expert. Mr. Feehan presented his credentials and was accepted by the Board as an RF expert. He was sworn in by Mr. Sullivan.

The following exhibits were marked into the record:

A-3: Network layout for NY SMSA Ltd Partnership

A-4: Existing coverage map for Advanced Wireless Services (AWS) at 2100 MHz

A-5: Proposed coverage map for Advanced Wireless Services (AWS) at 2100 MHz

Mr., Feehan summarized the existing antennas in the area, as shown on A-3, and the service coverage provided by these facilities. He stated that the purpose of the proposed facility is to provide some additional coverage in the immediate vicinity where in-building coverage is insufficient. The proposed facility will also provide capacity relief to several of the surrounding sites. Mr. Feehan explained that the AWS service coverage is largely for data services on a 4G network.

The following exhibit was marked into the record:

A-6: Existing coverage map at 700 MHz LTE Best Servers and Proposed Dense Suburban Coverage

Mr. Feehan stated that A-6 shows existing coverage at the 700 MHz level, which is 3G service, which is fully covered in the service area. The map further depicts which

facility is providing service throughout the service area, which helps identify facilities that are having capacity issues. There is a problem with data capacity offload in this area, and the proposed facility is intended to address the data capacity offload issue.

The following exhibits were marked into the record:

A-7: LTE 700 Capacity Chart – Lower Montclair Beta

A-8: LTE 700 Capacity Chart – West Orange Gamma

A-9: LTE 700 Capacity Chart – Glen Ridge Gamma

Mr. Feehan stated that Exhibits A-7, A8 and A-9 illustrate the capacity offload issues in the area, which in effect reduces 4G service to 3G service. The intent of the new facility is to reduce capacity offload to other sites.

The Board questioned Mr. Feehan. Questions were raised as to whether Verizon FIOS is a viable alternative to Verizon Wireless in-home 4G service. Mr. Stanzone stated that these are two separate companies and NY SMSA Ltd Partnership is required to provide 4G service separate from Verizon under the terms of their federal license.

Several Board members asked if there NY SMSA Ltd Partnership has a long-term plan for the Township, including new technologies. Mr. Feehan stated that Verizon is reacting to issues and does not have a master plan. They stated that NY SMSA Ltd Partnership is focusing on small network nodes to address capacity issues. He also stated that NY SMSA Ltd Partnership is changing their existing antennas to Advance Wireless Services (AWS), a relatively new technology, to also address capacity issues. Mr. Feehan stated that NY SMSA Ltd Partnership cannot predict exactly where capacity issues will occur and approach the issue by identifying small network nodes to address capacity issues as they occur.

Mr. Fleisher asked if there will be 20 or more small network sites in the next six months. Mr. Feehan responded that he does not think there will be a need for that many sites in the future as the technology will start to make up the difference.

Mr. Kenny asked why the rationale for this site differs from the rationale for the small network site on Pine Street, which serves a much larger, denser neighborhood. Mr. Kenny asked why is this facility located in a residential area? Mr. Feehan stated that the topography creates capacity issues and that they are many sites with multi-node issues.

Mr. Harrison stated that the Board is trying to get a handle on how many sites they will be evaluating. The Board wants to look at other sites being considered and not look at this site in isolation.

Mr. Kenney asked about the MHz trend at 700 MHz and at 1900 MHz. Mr. Feehan explained the trend lines for both levels.

Mr. Harrison stated that the trend line is a uniform, straight line and asked why this line does not reflect AWS for the Lower Montclair beta and the West Orange gamma charts. He suggested that the trend line should start where the AWS is added. Mr. Feehan stated that he can provide this information.

Mr. Harrison stated that he was confused about the Glen Ridge chart which shows a 4,000 capacity threshold, but the line is at 5500. Mr. Feehan stated that this is an error and the correct capacity threshold is closer to 5300.

Mr. Harrison stated this appears to be more of a capacity issue than a coverage issue, as the additional areas covered by the proposed site contain approximately 20 homes. It appears that the capacity issues is created by the growth of 4G service and data usage increases. He asked if any other sites were considered.

Mr. Feehan stated that Eagle Rock Memorial was considered, but this site is too high and would create additional issues.

The Board took a ten-minute break.

The Board invited the public to question the witness.

Douglas Berman, 200 South Mountain Avenue, asked about other sites considered by the applicant and why were these alternative sites not selected. Mr. Handley stated that the site had to be in close proximity to the proposed location where the coverage gap is located. Mr. Berman asked that since the primary purpose of the site is capacity, not coverage, are alternative sites that meet the Township's zoning not appropriate? Mr. Feehan stated that there are multiple reasons for locating the facility at the proposed location. Mr. Berman asked if the firehouse at Nishuane Park was considered. Mr. Feehan stated that he did not look at that site, but can report back to the Board on its potential as a site.

Judith Wildman, 183 South Mountain Avenue stated that the benefit of the variance goes to a very small number of people. She asked if there really is a gap. She lives in the area and has NY SMSA Ltd Partnership and has had no coverage problems. Mr. Feehan stated that multiple problems are being solved, only one of which is coverage. He explained that there is adequate 3G service inside the homes in the area and that the coverage problem is for 4G in-home data service.

David Placek, 218 South Mountain Avenue asked about when the increased usage of 4G occurred, creating the capacity problem. Mr. Feehan stated that the problem occurred over time as more people purchased 4G phones and other 4G devices such as tablets. Mr. Placek asked if Verizon FIOS Wi-Fi can provide the same 4G in-house service as that proposed by the new facility. Mr. Feehan stated yes.

Karen Berman, 200 South Mountain Avenue asked if the applicant will be coming back to put additional antennas on the other chimneys. Mr. Feehan stated that there is no need for additional NY SMSA Ltd Partnership antennas on the other chimneys.

Ken Colen, 215 South Mountain Avenue asked if he had received any complaints about the level of service in the area. Mr. Feehan stated that he is not aware of any complaints, but that there are problems with capacity resulting in drops from 4G service to 3G service in the area as indicated in the charts in A-7, A-8 and A-9.

Alex Picou, 213 South Mountain Avenue asked if the antennas can be screened from view. Mr. Feehan stated that they can be screened.

Mr. Stanzione introduced Anthony Handley as an expert in electromagnetic safety. Mr. Handley's credentials were accepted by the Board and he was sworn in by Mr. Sullivan. Mr. Handley gave testimony that the electromagnetic effects of the proposed facility, indicating that it will operate at hundreds of times below what are defined as safe standards by the FCC.

The public was invited to question Mr. Handley.

Douglas Berman asked if homes that are in direct line of sight of the proposed antennas will be affected. Mr. Handley testified that there will be no detrimental impact to the residents of those homes.

David Placek asked why the report indicates that there will be no detrimental impact created by the Verizon antennas, rather than any antenna. Mr. Handley stated that his report specifically evaluated the antennas proposed by the applicant, not potential additional antennas.

Ken Colen asked if he knew why the ordinance included a requirement that antennas be placed on buildings at least 60 feet tall. Mr. Handley stated that he did not.

Karen Berman asked for clarification on when the busy hours of usage will be. Mr. Handley stated that this would be rush hour when there is a lot of traffic and a lot of people using their devices at the same time.

Mr. Harrison asked what would be the exposure to residents of the houses in close proximity, particularly to young children. Mr. Handley stated that it would be one percent of the exposure limit, which is well below the limits and complies with FCC regulations.

Mr. Placek asked about the impact of the antennas to babies and young children, particularly for those whose bedrooms are near the same plane as the antennas. Mr. Handley stated that there will be no impact as the antennas will be one percent of the exposure limit, which is well below the limits and in compliance with FCC regulations.

Ms. Checca asked if there will be any impact to the children in the school. Mr. Handley stated that there will be no impact.

Mr. Stanzione requested that the application continue at the December 17, 2014 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the meeting was adjourned at 10:50 pm.