

MINUTES OF THE BOARD OF ADJUSTMENT
May 15, 2013

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

ABSENT: Mr. Edwards, Mr. Kenney, and Mr. Reynolds

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 Chair Harrison, the **Minutes of the April 17, 2013** regular meeting were adopted, Mr. Burr, Ms. Checca, Mr. Tsai, and Mr. Whipple abstaining.

On motion by Mr. Fleischer, seconded by Chair Harrison, the following resolution memorializing the Board's decision on the application of **Lonna & Martin Schwartz, 83 South Fullerton Avenue**, was adopted, Mr. Burr, Ms. Checca, Mr. Tsai, and Mr. Whipple abstaining:

WHEREAS, Lonna & Martin Schwartz, 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 for the proposed location of a chicken coop, on property designated as Lot 12 in Block 2111 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the property is a corner lot at the intersection of South Fullerton Avenue and Hawthorne Place, and a variance is requested from Montclair Code Section 347-46C to locate the chicken coop in the Hawthorne Place front yard; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on April 17, 2013, 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 packet of information including written information, a property survey map dated December 2006 with the location of the coop depicted, maps of the area, and a photograph and details of the coop; 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 South Fullerton Avenue and Hawthorne Place, located in the R-1 One-Family Zone.

2. The property is irregular in shape and measures approximately 28,288 square feet in lot area. The lot contains a single family dwelling and a detached garage accessed by a driveway from South Fullerton Avenue.

3. The chicken coop is an accessory structure, and is proposed to be located between the dwelling and the Hawthorne Place front property line, which is a front yard and requires a variance.

4. The coop measures 4 feet by 11 feet, and is 7 feet tall. The coop is proposed to be approximately 10 feet away from the Hawthorne Place front property line. The survey and other maps provided indicate the distance of the coop to the nearest dwellings.

5. The zoning ordinance permits the coop in the rear yard of the property with a minimum setback of 6 feet to side and rear lines. Chapter 82 of the Township ordinance is managed by the Health Department and has parameters for the location of structures such as coops under Montclair Code Section 82-28B(1), which includes minimum setbacks of 10 feet to property lines, and 50 feet from doors and windows of neighboring dwellings. The applicant's proposal would comply with the Health Department rules, which do not prohibit a front yard location.

6. The Board determined that the requested variance could not be approved. The property has sufficient space in the rear yard that would comply with zoning and Health Department codes. While the applicant's proposal to position the coop further away from the neighbors' dwellings and rear yards is commendable, the proposed location of the coop would have a negatively impact the front yard on Hawthorne Place, and the applicant's own testimony indicates that there are no negative impacts relating to noise and odors emanating from the coop; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant did not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and did not prove that the benefits of the deviation would substantially outweigh any detriment and did not prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and 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 denied; 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.

It was announced that at the request of the applicant, the application of **Mill Hill Development, LLC, 47 Gray Street** was postponed to the June 19, 2013 regular meeting of the Board. The applicant would complete public notice for the June date.

The application of **Wail Abukwaik, 590 Valley Road**, was announced. Calvin Trevenen, Esq., appeared as attorney for the applicant. He noted that there were 6 Board members in attendance and decided to proceed. He described the application and called Gerardo Donatiello, Vice President of Operations at Manhattan Bagel, who was sworn. The applicant proposes to utilize the commercial unit consisting of 575 square feet at the rear of the subject property for use as a commercial kitchen/bakery to prepare bagels to be sold at a pending retail/restaurant location for Manhattan Bagel at 250 Bellevue Avenue. Deliveries to the subject property would be by a 32 foot refrigerated truck one time a week. Hours of operation at the subject property would be 3:00 a.m. to 10:00 a.m., seven days a week. Three deliveries a day between the hours of 6:00 a.m. and 9:00 a.m. would be made to 250 Bellevue Avenue.

The Board questioned Mr. Donatiello. He provided more details on the delivery of products to 590 Valley Road and the process of delivery between 590 Valley Road and 250 Bellevue Avenue. He stated that he saw no conflict between the delivery truck and the permit parking spaces, which he observed being empty during the time of delivery. No signage would be used. He stated that during very bad weather, they would just walk the bagels across the lot instead of using a dolly or cart. Chair Harrison called for questions from the public. Marilyn Trushell, 60 James Street, asked about the noise from the proposed vent or fan.

Paul Sionas, Architect was sworn and described the plans. The subject property contains a one and one-half story multi-tenant commercial building which occupies the entire lot consisting of 7,224 square feet of lot area. The grade level drops from the front of the property to the rear, so the first floor of the building is five steps above grade level at the rear which abuts a municipal parking lot. The space proposed to be used by the applicant is at the rear of the building and has no storefront on a street. The Board briefly questioned Mr. Sionas. No questions were offered by the public.

Exhibits marked:

- A-1 Sheet A-1 of the plans submitted, with color added
- A-2 Planning Department letter dated August 16, 2011 regarding 250 Bellevue Avenue

Sergio De La Pava, Property Manager for 590 Valley Road, was sworn and described the difficulties they've had in finding a suitable long term tenant for the space

proposed to be occupied by the kitchen/bakery for the applicant. The space has been mostly vacant in the last 10 years. No questions were offered by the Board or the public.

J. Michael Petry, Professional Planner, was sworn and described the application. He described the zoning ordinance and the Master Plan as it relates to the application. The proposed use at the subject property would be permitted if the associated retail was located at the same location. The site is particularly suited for the proposed use given its proximity to the off-site retail location. Approval of the application is not inconsistent with the intent and purpose of the Master Plan or Zoning Ordinance which seeks to promote utilization of existing buildings with appropriate uses in order to maintain the economic viability of commercial districts. 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 general welfare (-2a) and provides sufficient space in an appropriate location for the proposed commercial use (-2g). No questions were offered from the Board or the public. No comments were offered from the public.

The Board discussed the application and determined that the variance could be approved subject to the conditions below. The Board recognized compatible land uses in the surrounding area and found approval of this application would have little or no impact on area properties. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. This approval shall not include any signs on the subject property.
2. All carts utilized to transport items off site shall be stored inside.
3. Garbage and recycling shall be brought to 250 Bellevue Avenue for appropriate disposal.
4. Deliveries to the subject property shall be limited to midnight to 6:00 a.m.
5. This approval is limited to baked goods only.
6. The applicant shall obtain Board of Health approval.
7. This use is limited to being utilized in conjunction with an associated off-site retail or restaurant use whereby the baked goods are delivered by hand versus motorized vehicle, and wherein the off-site use is limited to parcels within Block 1711 on the Montclair Tax Map bounded by Bellevue Avenue to the north; Lot 28 to the south; Valley Road to the east; and the New Jersey Transit Railway tracks to the west.

The application of **Sprint Spectrum LP, 641 Bloomfield Avenue**, was called. Kevin Jones, Esq., appeared as attorney for the applicant. He noted there were 6 Board members in attendance and decided to proceed. Mr. Jones described the application.

Frank Pazden, P.E. was sworn and stated his qualifications. He described the application. The applicant proposes to replace and modify wireless telecommunications antennas and equipment. The plan submitted has been revised for the Alpha Sector in accordance with recommendations from the Historic Preservation Commission. In the Alpha sector at the northerly/northwesterly corner of the roof, two existing Sprint panel antennas on the northerly side of the wall of a penthouse are to be removed, and one Sprint antenna with two RRH units is proposed. This antenna with RRH units does not exceed the height of the penthouse to which it is attached. A new GPS antenna is proposed in this sector to replace an existing GPS antenna. The GPS antenna rises above the penthouse, as did the prior GPS antenna approved in 2010. In the Beta sector, located at the southeasterly side of the roof, two existing Sprint panel antennas on the southeasterly side of the building wall are to be removed, and one Sprint antenna with two RRH units is proposed. This antenna with RRH units exceeds the parapet height just as the antennas it is replacing had. In the Gamma sector, located along the southwesterly side of the roof, two existing Sprint panel antennas on the southwesterly side of the building wall are to be removed, and one Sprint antenna with two RRH units is proposed. The Sprint antenna rises above the roof parapet to which it is attached. The 2010 Sprint resolution had a condition that required a panel antenna in the gamma sector that was not flush-mounted to be flush-mounted and also relocated a dish antenna to the rear of the building and limited the maximum height of the GPS antenna and the dish antenna.

Exhibits marked:

A-1 Sheet Z-3A, Alternative Alpha Sector Mount Option, by Ramaker & Associates, dated 2/20/13

The Board questioned Mr. Pazden. No questions were offered from the public.

Bossener Charles, P.E., was sworn and stated his qualifications. He described the application and the type of radio frequency coverage provided by the proposed installation that is currently totally lacking. No questions were offered by the Board or the public.

Dave Collins, P.E. was sworn and stated his qualifications. He described the application. He reviewed the Radio Frequency Electromagnetic Energy Compliance Report, prepared by EBI Consulting, dated April 15, 2013, submitted with the application. He stated that he agrees with the findings in the report that the proposed antennas and related equipment would comply with all applicable State and Federal regulations for radiation transmission levels. The Board questioned Mr. Collins. He described in detail the findings in the report and the examination that his office conducted of the data that lead to his agreement with the findings in the report. No questions were offered from the public.

Kathryn Gregory, Professional Planner, was sworn and stated her qualifications. She described the application. The subject property located on the northerly side of

Bloomfield Avenue between Midland Avenue and Valley Road contains 11,620 square feet in size upon which is situated a six story commercial building. The lot is split zoned, the southerly portion containing the building is located in the C-1 Central Business Zone and the northerly portion consisting primarily of a parking area is located in the R-2 Two Family Zone. The application complies with all the conditional use standards contained in the Montclair Township Zoning Ordinance except the panel antennas proposed in the Beta and Gamma sectors and the proposed GPS antenna in the Alpha sector exceed the top of the parapet wall or penthouse to which they are attached, contrary to Montclair Code Section 347-17.1C(4)(c). Based upon the size and location of the existing apartment 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 one of the conditions imposed by the ordinance. The applicant's proposal calls for a reduction in the number of antennas and the visual intrusion caused by the height of the proposed antennas is minimal and will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the Zone Plan and Zoning Ordinance. 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. 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 collocation 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) and the variances could alternatively be approved pursuant to N.J.S.A. 40:55D-70d(1).

Exhibits marked:

A-2 Photo-simulations

No questions were offered from the Board or the public. No comments were offered from the public. The Board discussed the application and determined that the application could be approved subject to the following conditions:

1. All structural attachment mounts and anchor bolts shall be drilled into the brick mortar joints and not into actual bricks as recommended by the Montclair Historic Preservation Commission memorandum dated March 28, 2013.
2. The applicant shall remove all existing Sprint antennas (except GPS) including all support structures other than brackets.
3. The plans shall be revised to indicate the four existing IDEN panel antennas in each sector shall be removed and the northeast elevation on Sheet Z-3 and the Alpha sector detail on Sheet Z-8 shall be deleted.
4. The antennas shall be painted to match the structure to which they are affixed.

5. Sprint is not entitled to install any additional antennas or equipment unless approved by the appropriate land use board.

6. The two side walls of the building shall be repainted by the property owner on or before October 31, 2013.

7. 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.

The Board took a brief recess at approximately 10 pm. Mr. Fleischer left the meeting at this time for personal reasons as he previously indicated to the Board. Upon reconvening, Chair Harrison was recused from the last application and also left the meeting, and Vice Chair Whipple announced the application of **58 James Street, LLC, 58 James Street**. Alan Trembulak, Esq., appeared on behalf of the application and due to the late hour and having only 4 eligible Board members present, requested a postponement of the application to the June 19, 2013 meeting. On motion by Mr. Tsai, seconded by Mr. Burr, the application was carried. No further notice would be required.

On motion by Mr. Tsai, seconded by Mr. Burr, the meeting was adjourned.