

MINUTES OF THE BOARD OF ADJUSTMENT
June 19, 2013

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

ABSENT: Chair Harrison (recused) and Mr. Edwards

Chair Harrison was recused from the first application on the agenda, and indicated that he would attend the meeting if the other applications proceeded. 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. Burr, the **Minutes of the May 15, 2013** regular meeting were adopted as modified, Mr. Kenney and Mr. Reynolds abstaining.

On motion by Mr. Fleischer, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **Wail Abukwaik, 590 Valley Road**, was adopted, Mr. Kenney and Mr. Reynolds abstaining:

WHEREAS, Wail A. Abukwaik, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70d(1) to permit a commercial kitchen/bakery to prepare bagels to be sold at an off-site retail location at 590 Valley Road (hereinafter "the subject property") contrary to Montclair Code Section 347-90, said property being designated as Lot 32 in Block 1711 on the Township Tax Map and located in the N-C Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted an area map and floor plans consisting of Sheet A-1 prepared by Sionas Architecture, P. C. dated April 8, 2013; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on May 15, 2013 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 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.

2. 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.

3. 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.

4. The site is particularly suited for the proposed use given its proximity to the off-site retail location.

5. The testimony established that 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).

6. 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.

7. The proposed use at the subject property would be permitted if the associated retail was located at the same location. 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.

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 Wail A. Abukwaik for a variance to permit a commercial kitchen/bakery to prepare bagels to be sold at an off-site retail location is hereby 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.

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

On motion by Mr. Fleischer, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **Sprint Spectrum LP, 641 Bloomfield Avenue**, was adopted, Mr. Kenney and Mr. Reynolds abstaining:

WHEREAS, Sprint Spectrum, L.P. (hereinafter "Sprint"), did make application to the Board of Adjustment of the Township of Montclair (hereinafter "Board") to replace and modify wireless telecommunications antennas and equipment on the roof of the existing commercial building located at 641 Bloomfield Avenue (hereinafter "the subject property") designated as Lot 14 in Block 2209 on the Township Tax Map and located in the C-1 Central Business Zone; and

WHEREAS, the applicant requested variance relief pursuant to N.J.S.A. 40:55D-70d(3) to permit panel antennas proposed in the Beta and Gamma sectors as well as the proposed GPS antenna in the Alpha sector to exceed the parapet wall or penthouse to which they are attached, contrary to Montclair Code Section 347-17.1C(4); and

WHEREAS, the applicant submitted a site plan and details prepared by Ramaker & Associates, Inc., Sheets T1, Z1 through Z8 revised through December 4, 2012 amended by Sheet Z-3A revised through February 20, 2013; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on May 15, 2013 at which time it was established the notice was properly published and the 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 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.

2. By resolution adopted February 26, 1992, the Board approved the application of Nynex Mobile Communications Company for variance relief to install twelve antennas on the roof of the building on the subject property. By resolution adopted January 15, 1997, the Board approved the application of Sprint Spectrum for variance relief to locate nine PCS antennas and one GPS antenna on the rooftop of the subject property. By resolution adopted December 11, 2000, the Montclair Township Planning Board approved the conditional use application of Nextel of New York, Inc. d/b/a Nextel Communications to install twelve panel antennas on the rooftop of the building on the subject property. By resolutions adopted July 20, 2005 and January 18, 2006, the Board approved the application of Omnipoint Communications, Inc. for variance relief to install six panel antennas, three equipment cabinets and one battery cabinet on the roof of the building of the subject property. By resolution adopted November 19, 2008, the Board approved the application of New Cingular Wireless PCS, LLC for variance relief to install twelve antennas, eight equipment cabinets and one GPS antenna on the roof of the building of the subject property. By Judgment of the Superior Court of New Jersey entered on October 13, 2009, the application of Metro PCS New York, LLC for variance relief to install six panel antennas, one GPS antenna and five equipment cabinets on the roof of the building of the subject property was approved. By resolution adopted October 20, 2010, the Board approved the application of Sprint Nextel Corp., to install three panel antennas, one GPS antenna and one dish antenna on the roof of the building of the subject property.

3. The applicant proposes to replace and modify wireless telecommunications antennas and equipment as follows:

a. 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.

b. 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.

c. 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.

4. 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).

5. Based upon the testimony of the applicant's RF Compliance expert, the proposed antennas and related equipment shall comply with all applicable State and Federal regulations for radiation transmission levels.

6. 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 the conditions imposed by the ordinance consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

7. 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.

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.

9. Based upon the applicant's planning witness, 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 colocation 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).

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 Sprint for variance relief pursuant to N.J.S.A. 40:55D-70d(1) and (3) to permit replacement and modification of wireless telecommunications antennas and equipment as outlined herein is hereby 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 be 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.

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 was required to select a new meeting date for October 2013, since The Essex County Board of Chosen Freeholders would be using the Council Chamber the evening of October 16, 2013. There was a brief discussion. On motion by Vice Chair Whipple, seconded by Mr. Tsai, the Board selected Wednesday, October 9, 2013 to replace October 16, 2013 as a regular meeting date.

The application of **58 James Street, LLC, 58 James Street** was announced. Alan Trembulak, Esq., appeared as attorney for the applicant. He described the application and the use variance requested. Mr. Sullivan explained the process involved with the bifurcated application. David Genova, one of the principal owners of the subject property was sworn, and described the application in detail. He stated that subdivision concepts would require removal of the existing dwelling, which the applicant desires to

keep. The applicant also considered a new commercial use for the property. He described similar projects the applicant has constructed in Montclair and Glen Ridge. At the present time, the proposed units would be condominiums, and the applicant intends to provide 2 of the units for moderate income owners.

The Board questioned Mr. Genova. The proposed moderate income units would be designed as one level apartment style units, whereas the market rate units are 2 story townhouse style units. Vice Chair Whipple called for questions from the public. Brendan McCarty, 151 Chestnut Street, asked the applicant to clarify what commercial uses exist to the north of the property. Steve Trushell, 60 James Street, asked why the applicant is not considering a subdivision with 2 two family dwellings. Mimi Weaver, 109 Cooper Avenue, asked about the number of bedrooms in each unit. Ryan Smith, 145 Chestnut Street, asked if the trees near the rear property line would be removed for this project. John Lucci, 51 James Street, asked if the project could include lighting that would help to illuminate the front yard and sidewalk areas. Marilyn Trushell, 60 James Street, made several comments and did not ask a question. Mr. Trembulak questioned Mr. Genova again.

John Reimnitz, Architect was sworn and stated his qualifications. He described the plans in detail. The new buildings were designed to complement the existing dwelling. The dwelling units would have 2 bedrooms, except the 2 moderate income units, which would have 1 bedroom each. The larger parking area is located on the easterly side of the property since that side abuts a property that contains an existing construction storage yard.

Exhibits marked:

- A-1 Existing and Proposed Site Layout
- A-2 Site Plan with color added
- A-3 Elevation rendering
- A-4 Bird's eye rendering

The Board questioned Mr. Reimnitz. He stated that the applicant first looked into reusing the existing commercial buildings, but those buildings are extremely dilapidated and are not usable. The number of dwelling units proposed was largely decided upon based on the space required for providing sufficient on-site parking. Vice Chair Whipple called for questions from the public. Brendan McCarty, 151 Chestnut Street, asked what type of screening is proposed between the proposed buildings and existing rear yards of neighbors. Steve Trushell, 60 James Street, asked if there are any drawings that show the scale of the development compared to the existing neighborhood. Christina Joseph Robinson, 58 Central Avenue, asked why so many dwelling units are proposed. Marilyn Trushell, 60 James Street, asked if the number of parking spaces proposed would be sufficient. John Lucci, 51 James Street, asked if a project with lesser dwelling units is economically viable. Mimi Weaver, 109 Cooper Avenue, asked if the driveway proposed would be adequate for the number of vehicles accessing the parking area. Ryan Smith, 145 Chestnut Street, asked if less dwelling units would create larger setbacks.

Kathryn Gregory, Professional Planner, was sworn and stated her qualifications. She described the property and the application. She described the zoning ordinance, the Master Plan, and the draft Master Plan as it relates to the property and the application. The neighborhood contains a variety of uses including varied multiple unit residential properties and some commercial uses. The site is particularly suited for the proposed use given its size, shape, and its history of commercial use. The existing dwelling has a unique architectural character that the application would preserve. The commercial use and dilapidated buildings on the site will be removed and 2 affordable housing units will be provided. The application advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., in that it encourages appropriate use of land which promotes the general welfare (-2a), provides adequate light, air and open space (-2c); and provides sufficient space in an appropriate location for the proposed commercial use (-2g). The application poses no detriment to the public good. The residential density proposed is comparable to what exists in the neighborhood.

Exhibits marked:

- A-5 Photographs of property and neighborhood
- A-6 Tax map and aerial photograph
- A-7 Chart depicting residential density of properties within a 200 foot radius of the property
- A-8 Print of article published in The Gazette (Colorado Springs, Co) on 05-15-2013
- A-9 1986 resolution for the use variance granted for 51 James Street

The application paused momentarily at approximately 10:00 pm and Vice Chair Whipple stated that the last 2 applications on the agenda would not be reached. Calvin Trevenen, Esq. was present for **Mill Hill Development, LLC, 47 Gray Street** and David Owen, Esq. was present for **736 Valley Road LLC & Dr. Elizabeth Boyle, 736 Valley Road**. Both applications were carried to the July 17, 2013 meeting of the Board. No extensions of time were required. No further notice would be given.

The application resumed. The Board questioned Ms. Gregory. She reviewed the residential density calculations provided on Exhibit A-7 in more detail. She stated that the plan is deficient in parking and would require a variance. Mr. Fleischer left the meeting at this time as he had previously indicated. Vice Chair Whipple called for questions from the public. Brendan McCarty, 151 Chestnut Street, stated that his house was converted down to a one family dwelling and Exhibit A-7 indicates it to be a two family dwelling. He also asked if the existing dwelling was designated as a historic building. John Lucci, 51 James Street, asked several questions about the residential density of the neighborhood. Christina Joseph Robinson, 58 Central Avenue, asked if the number of parking spaces would be sufficient.

At approximately 10:30 pm, Board took a 10 minute recess. Upon returning, Vice Chair Whipple called for public comment. Katie Young, 51 James Street, was sworn and

supported the application. She stated that the condition of the property has a negative effect on the neighborhood, and the application would improve the property and the neighborhood. She provided photographs of the property.

Exhibits marked:

P-1 through P-8 Photographs of the subject property

Christina Joseph Robinson, 58 Central Avenue, was sworn and opposed the application. A multiple unit development of the scale proposed is too dense for the neighborhood and would negatively impact the neighborhood. Approving the application will lead to other overly dense developments in the area. John Lucci, 51 James Street, was sworn and stated his support for the application. The density proposed in the development is in keeping with what exist in the area. The proposed development would beautify the neighborhood and lead to further improvements in the area. Brendan McCarty, 151 Chestnut Street, was sworn and opposed the application. The lot should be developed, although building setback from the rear property line should be increased and buffering should be provided. Mimi Weaver, 109 Cooper Avenue, was sworn. Her son is under contract to buy a property across the street. She opposes the application due to the number of dwelling units. Ryan Smith, 145 Chestnut Street, was sworn and stated his opposition. The development is too dense. The site should be redeveloped with a lower density plan. Marilyn Trushell, 60 James Street, was sworn and stated her opposition. The development is too dense and the setbacks of the building negatively impact her property. Steve Trushell, 60 James Street, was sworn and stated his opposition. The development is too dense and the setbacks of the building negatively impact his property. John Lucci, 51 James Street, who was already sworn, made additional statements supporting the application.

Mr. Trembulak summarized the application and requested that the Board vote on the application with the 6 Board members that were present. The Board discussed the application. The Board recognized that the applicant's proposal would do away with vacant, dilapidated commercial structures and eliminate a preexisting nonconforming use. The Board, however, determined the applicant's proposal of eight dwelling units could not be adequately accommodated on this irregularly shaped .41 acre lot. The Board concluded the applicant's proposal constituted an overutilization of the property with an intensity that would cause substantial detriment to area properties. The Board determined that a use variance for a lower density would be appropriate, subject conditions.

Three motions were put forth by the Board on the application. A motion to approve a total of 6 dwellings units on the site, subject to conditions, was made by Mr. Reynolds, and seconded by Vice Chair Whipple, but did not pass, receiving only 3 affirmative votes. Ms. Checca, Mr. Tsai, and Mr. Kenney voted against the motion. Mr. Sullivan stated that the Board should address the application as submitted. A motion by Mr. Burr to deny the application for 8 dwelling units was seconded by Ms. Checca and passed, receiving 6 affirmative votes, Mr. Reynolds voted against the motion. A motion

to approve a total of 5 dwellings units on the site, subject to conditions, was made by Mr. Kenney, and seconded by Mr. Reynolds, and passed, receiving 5 affirmative votes. Mr. Tsai voted against the motion. The motion passed pursuant to the following conditions:

1. One of the dwelling units shall be deed restricted for a moderate income household. The form of the deed shall be subject to review and approval by the Township Attorney and Zoning Board Attorney.
2. The applicant shall obtain site plan approval.
3. The applicant shall be responsible for payment of all escrow fees incurred in connection with the review of this application.

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