

MINUTES OF THE BOARD OF ADJUSTMENT
September 18, 2013

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

ABSENT: Mr. Burr 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 Mr. Burr, the **Minutes of the August 21, 2013** regular meeting were adopted, Mr. Kenney and Mr. Edwards abstaining.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Eli Aronoff, 706 Valley Road**, was adopted, Chair Harrison, Mr. Kenney, and Mr. Edwards, abstaining:

WHEREAS, Eli Aronoff, 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 to the top floor at the rear of the dwelling, on property designated as Lot 51 in Block 1801 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-51 for side yard setbacks of less than 10 feet and 6 feet, respectively, from the northerly and southerly side property lines; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 21, 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 property survey, dated May 20, 2013, architectural plans by Francis C. Klein and Associates Architects, dated July 31, 2013, and photographs of the dwelling; 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. The driveway on the property leads to a detached garage in the rear yard. The driveway is shared with the neighbor to the north but is mostly located on the subject property.

2. The third floor at the rear of the dwelling is located under a roof that slopes towards the rear yard. An addition is proposed to the third floor at the rear of the dwelling to increase the usable floor area of the third floor. The floor plans depict a master bedroom in the area of the expanded third floor.

3. The dwelling has existing nonconforming side yard setbacks. Minimum side yard setbacks of 10 feet and 6 feet are permitted, and the existing side yard setbacks are 9.93 feet and 2.75 feet, respectively at the northerly and southerly rear corners of the dwelling. The proposed addition would be aligned with the existing nonconforming side yard setbacks and a variance is requested.

4. The Board determined that the requested variance could be approved for the plans as submitted. The setbacks of the proposed addition are based on the existing conditions of the dwelling, and the design and scale of the addition are in keeping with that of the dwellings in the neighborhood; 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 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 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.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Sprint Spectrum, L.P., 36 Hawthorne Place**, was adopted, Mr. Kenney and Mr. Edwards, 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 three wireless telecommunications antennas and add one equipment cabinet on the roof of the six story residential apartment building located at 36

Hawthorne Place (hereinafter "the subject property") designated as Lot 2 in Block 2110 on the Township Tax Map and located in the R-4 Zone; and

WHEREAS, the applicant requested variance relief from N.J.S.A. 40:55D-70d(3) for failure to comply with all of the conditional use standards contained in Montclair Township Code Section 347-17.1C(5); and

WHEREAS, the applicant submitted plans and details prepared by Lulay & Illescas Associates, Inc. revised through March 18, 2013; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 21, 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 located at the intersection of Hawthorne Place and Gates Avenue measures 142,441 square feet in size and contains a six story residential apartment building.

2. By resolution adopted January 19, 2005, the Board approved the application of Cellular Telephone Company, d/b/a AT&T Wireless for variance relief to install twelve flush mounted panel antennas, one GPS antenna and six equipment cabinets on the rooftop of the subject property. By resolution adopted January 18, 2006 the Board approved the application of Sprint Spectrum, LP for variance relief to install thirteen panel antennas, one GPS antenna and four equipment cabinets on the roof of the subject property. By Resolution adopted October 15, 2008, the Board approved the application of MetroPCS New York, LLC for variance relief to install seven panel antennas, one GPS antenna and four equipment cabinets on the roof of the subject property. By resolution adopted February 18, 2009, the Board approved the application of Omnipoint Communications, Inc. for variance relief to install nine panel antennas, one GPS antenna, three equipment cabinets and one PPC cabinet on the roof of the subject property. By resolution adopted August 18, 2010, the Board approved the application of Sprint Nextel Corp. to install three panel antennas, one GPS antenna, two dish antennas and one equipment cabinet on the roof of the subject property.

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

a. The Alpha sector is located at the southeasterly side of the roof, where an existing Sprint antenna under stealth screening would be removed. The plan depicts a new antenna with a new cylindrical stealth screen would be installed a few feet away.

b. The Beta sector is located at the southwesterly side of the existing Sprint screened equipment enclosure. The plan shows three existing antennas mounted on the outside of the screen wall and a GPS antenna. One of the three existing antennas would be removed, and another would be replaced by a new antenna mounted on the outside of the screen wall. The existing GPS antenna would be replaced with a new GPS antenna. New equipment (RRH units) would be mounted on the inside face of the screen wall.

c. The Gamma sector is located at the northwesterly side of the screened equipment enclosure. With the exception of the GPS antenna, its existing and proposed condition is identical to the Beta sector.

d. A fourth equipment cabinet is proposed within the existing screened enclosure. Existing dish antennas are depicted on the easterly corner of the screen enclosure.

4. The application complies with all the conditional use standards contained in the Montclair Township Zoning Ordinance except that height of the apartment building at the subject property is 58 feet 8 inches in height where a minimum of 60 feet is required pursuant to Montclair Code Section 347-17.1C(5)(a) and height of the relocated antenna in the Alpha sector and the GPS antenna exceed the height of the top of the building roofline contrary to Montclair Code Section 347-17.1C(5)(d).

5. 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).

6. 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).

7. 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 19, 2013, the Board determined the proposed antennas and related equipment shall comply with all applicable State and Federal regulations for radiation transmission levels.

8. 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.

9. 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; and

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 Spectrum, L.P. for variance relief pursuant to N.J.S.A. 40:55D-70d(3) to replace and modify telecommunications equipment as set forth herein is hereby approved subject to the following conditions:

1. The application shall comply with all conditions contained in the Board's August 18, 2010 resolution not inconsistent herewith.

2. 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.

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

It was announced that at the request of the applicant, the continuation of the application of **Bank of America, 560 Valley Road** was postponed until the October 9, 2013 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

The application of **Barbara Schiavone, 30 Greenview Way** is also requesting a postponement to October 9, 2013. The applicant was not present. The applicant completed the publication of the notice for September 18, 2013, but did not complete the mailing of the notice for this meeting. Correspondence from the applicant's attorney, Calvin Trevenen, Esq., requests to carry the newspaper notice for the October 9, 2013 meeting date, and the applicant would complete the mailing of the notice for that date as well. On motion by Mr. Whipple, seconded by Mr. Fleischer, the applicant's request was granted.

The application of **Cullen McVoy, 20 Prospect Terrace** was announced. Mr. McVoy was sworn, and described the application. A rear yard setback variance is requested to construct a deck at the rear of the dwelling. The deck would have maximum dimensions of 18 feet by 18 feet. The rear corners of the deck would be cut at angles. He clarified the error in the building coverage calculation, which results in the

building coverage variance no longer being required. With the revised measurements, the proposed building lot coverage is a conforming 24.2%. The permitted rear yard setback for the deck is approximately 36.25 feet. The dwelling has a conforming rear yard setback of 41.9 feet at its closest point. The proposed rear yard setback for the deck is 24 feet to the closest part of the deck, and a variance is requested. He described the various photographs that were submitted with the application. He described how the proposed deck compares with the decks on the adjoining properties. He also described why the dimensions and placemat of the deck on the property were selected and the features of the property that affected his decisions. The application was referred to the Historic Preservation Commission for comment because the property is located within a historic district included in the State Register of Historic Places. Mr. McVoy also addressed the topic of how his plan affects the historic architecture of the dwelling..

Exhibit marked:

- A-1 Site Plan detail, revised principal structure lot coverage calculations, and photographs, prepared by the applicant

The Board questioned the applicant. Mr. McVoy provided additional details and information regarding the proposed deck, his property, and the impact on adjoining properties. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved for the plan as submitted, subject to the condition below. A deck of the size proposed is a typical backyard feature for properties in the neighborhood. The placement of the deck where it is proposed would limit the impact on the historic architecture of the dwelling. The sloping topography of the lot and existing retaining walls are a factor in locating and sizing decking on the property. The deep placement of the dwelling on the lot and the angled rear property line are factors in considering the granting of the variance. The screening provided by the existing trees and landscaping, and the layout of existing open spaces in the rear and side yards that would remain unencumbered in the applicant's plan provide sufficient buffering from adjoining properties. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved, subject to the following condition:

1. No further building or impervious coverage shall occur on the northerly side of the proposed deck.

Chair Harrison was recused. Vice Chair Whipple announced the application of **Prudential New Jersey Properties, 695 Bloomfield Avenue**. Alan Trembulak, Esq., appeared as attorney for the applicant. Mr. Trembulak stated that the applicant is seeking a use variance and that with only 5 eligible Board members present, the applicant would request that the application be carried to the next meeting of the Board on October 9, 2013. On motion by Mr. Fleischer, seconded by Mr. Kenney, the postponement request was granted. The Board was granted an extension of time and no further notice would be given.

The Board discussed the **Draft 2012 Annual Report**. The only section of the report still requiring information is the inclusion of any recommended changes to the zoning ordinance. There was some discussion regarding the zoning ordinances that relate to the limit on the number of stories, and applications involving steeply sloped grade, as well as the applications involving upper level construction, such as dormers. The Board concluded that the ordinance would not require any revision at this time. On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution adopting the 2012 Annual Report was memorialized:

WHEREAS, the Municipal Land Use Law (the "MLUL"), specifically, N.J.S.A. 40:55D-70.1, requires the Board to review its decisions on applications and appeals for variances and to prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revisions, if any;

WHEREAS, the MLUL requires that the Board send copies of its Annual Report and resolution of adoption to the Governing Body and the Planning Board;

WHEREAS, the Board has reviewed its decisions on cases heard during 2012 and has prepared the annexed report thereon.

NOW, THEREFORE, BE IT RESOLVED by the Township of Montclair's Board of Adjustment, as follows:

1. The Board's 2012 Annual Report, a copy of which is annexed hereto, is hereby formally adopted.
2. The Secretary of the Board is hereby authorized and directed to transmit a copy of the said Annual Report as well as a copy of the within resolution, to the Governing Body and the Planning Board of the Township of Montclair.

The Board continued with a brief discussion on the ongoing Master Plan review by the Planning Board. Chair Harrison requested that the Board of Adjustment have an opportunity to review the plan to provide additional insight prior to its adoption. Ms. Talley stated that she could forward any thoughts from the Board of Adjustment to the Planning Board during this process.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the meeting was adjourned.