

MINUTES OF THE BOARD OF ADJUSTMENT
January 28, 2009

PRESENT: Chair Harrison, Vice Chair Fleischer, Mr. Kenney, Ms. Holloway, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey, Ms. English, and Mr. Franco, Secretary

Assistant Secretary Charreun called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison called the continuation of the application of **Michael & Ariane Duarte, 33 Walnut Street**. Catherine Donadio, Esq. appeared as attorney for the applicants and described her recent correspondence to the Board requesting that the vote on the application be postponed and that the hearing be re-opened to address an issue of concern. The applicants wish to address the previous testimony which indicated that, if the application was approved, they would accept a limitation in their hours of operation to remain the same as their current hours of operation. Mr. Sullivan stated that if the application is to be carried to the February 18, 2009 regular meeting, public notice for that hearing date would have to be completed and that the testimony would be limited to the issue identified by Ms. Donadio. The Board discussed the applicants' request. On motion by Mr. Whipple, seconded by Mr. Susswein, the request was granted, subject to the completion of public notice. The Board was granted an extension of time.

Chair Harrison called the variance application of **Ms. Lee Heh Margolies, 3 Erwin Park**. The applicant and George Held, Architect, were sworn. Mr. Held described the proposed addition. The property is a corner lot located on curved section of Erwin Park which forms a corner lot. Erwin Park is a private street with a 25-foot wide right-of-way. The property is in the R-1 One Family Zone, measures 29,729 square feet of area, and contains a single-family dwelling with a detached garage. A second floor addition is proposed at the rear of the dwelling. The addition would be aligned with the walls of the existing 1-story section below it. The second floor addition will contain a bedroom with a walk-in closet, laundry room, and computer room. The existing 1-story section of the dwelling, which received a front setback variance in 1988, is located 42.81 feet at its closest point from the right-of-way edge of Erwin Park. The minimum required front yard setback for the subject property is approximately 51 feet, which is the front yard setback of the existing dwelling located on the adjoining property to the north. A variance is requested in that a minimum setback of 51 feet is required from the right-of-way edge of Erwin Park a lesser setback of 42.81 feet is proposed. The proposed addition complies with all other zoning requirements.

Marked into evidence were:

- A-1 Existing North Elevation Photograph
- A-2 Existing East Elevation Photograph

- A-3 Existing Floor Plan, May 2, 2008, by prepared by George Held
- A-4 Existing Elevation, May 2, 2008, by prepared by George Held

The Board did not have questions for the applicant or Mr. Held. No questions or comments were offered by the public. The Board discussed the application and determined that the variance requested could be approved. The proposed addition would be aligned with the walls of the existing 1-story section below it. There is also significant space between the addition and the dwelling on the adjoining lot and there is no negative impact on nearby properties. On motion by Mr. Fleischer, seconded by Mr. Whipple the application was approved.

Chair Harrison called the variance application of **Scott Hermo, 62 Gates Avenue**. The applicant and Derek Cox, Architect, were sworn. Mr. Cox indicated that he had prepared a revised set of plans, dated January 26, 2009, that reduced the height of the proposed addition into conformance, but still required variances for the number of stories and for exceeding the principal building coverage. Mr. Sullivan explained to the applicant that the notice completed for the application is defective because it did not include a variance request to exceed the principal building coverage, and that a new notice would be required to include that variance for a subsequent hearing. Mr. Cox indicated that the applicant would prefer to revise the plan further to conform to the principal building coverage limitation rather than postpone the application. He proceeded to describe the proposed addition, the variance requested to exceed the number of stories, and the changes that could be made to the plan to comply with the principal building coverage limitation.

Marked into evidence was:

- A-1 Architectural plan, prepared by Derek W. Cox, A.I.A./C.L.A., revised to January 26, 2009

The property is an interior lot located in the R-1 Single Family Zone and contains a single-family dwelling. The subject property measures 50 feet in width and contains 7,525 square feet in lot area. The lot slopes down from the front to the rear. There is no garage parking on the site, and the existing driveway extends below an elevated deck at the rear of the dwelling where parking is located. The applicant proposes to remove the large existing deck at the rear of the dwelling and construct an addition and deck. The addition is 3 stories at its largest section, and the ground floor level of the addition will contain garage parking. The revised plan submitted as Exhibit A-1 requires the requested variance for exceeding 2½ stories; however the slope of the roof on the tallest section of the addition has been modified to reduce the height of the addition to a maximum of 34 feet 2½ inches, measured as per the ordinance requirements, which complies with the height limit of 35 feet and does not require a variance. The revised plan submitted as Exhibit A-1 also depicts that the proposed addition would be reduced in size from 44 feet in length to 38 feet, and in width from 26 feet 3 inches to 23 feet 4¾ inches. This reduction produces a principal building coverage of 25.8 percent, which still requires a variance in that maximum of 25 percent is permitted. The plan would be

further revised to conform to the 25 percent principal building coverage by eliminating 64 square feet from the deck and stair depicted on Exhibit A-1.

The Board questioned the applicant and Mr. Cox. No questions or comments were offered by the public. The Board discussed the application and determined that the variance requested for exceeding 2½ stories could be approved. The design of the addition is stepped down from the taller existing dwelling and the 3 story condition of the addition is caused by the sloping topography of the lot. The proposed addition would not have negative impact on nearby properties. On motion by Mr. Fleischer, seconded by Mr. Kenney the application was approved, subject to the following conditions:

1. Any new central air-conditioning units shall comply with the zoning requirements.
2. The dwelling shall conform to 25 percent maximum principal building coverage requirements.
3. The height of the addition shall not exceed the 35-foot maximum height.

Chair Harrison called the application of **Anthony C. Sapp & Denise Powell, 29 Cedar Avenue**. Calvin Trevenen, Esq. appeared as attorney for the applicants and described the application. Anthony Sapp was sworn and described the application to demolish an existing detached 2-story garage/barn in the rear yard of the property and construct a larger detached accessory structure. He described the existing property and stated that as a carpenter, he does not conduct any type of business activity from his home in Montclair and he does not intend to with the proposed structure. He has strong interests in photography and other art forms, and proposes to utilize a significant portion of the proposed accessory structure as an artist studio. The proposed accessory structure does not contain parking. While the existing accessory structure on the property contains garage parking, he does not currently park within that garage since it is 140 feet from the dwelling. They currently park their vehicles on the driveway much closer to the dwelling. He also described the interior layout of the existing dwelling, and the various improvements they have made to the dwelling and the grounds. He discussed the need for the proposed height from his perspective.

Marked into evidence were:

- A-1 Photograph of the front of the dwelling
- A-2 Photograph of the rear of the dwelling
- A-3 Photograph of the existing garage/barn
- A-4 Photograph of the existing garage/barn
- A-5 Photograph of the rear yard
- A-6 Photograph of the rear yard
- A-7 Photograph of the rear yard
- A-8 Photograph of the rear yard
- A-9 Photograph of the rear yard
- A-10 Photograph of the rear yard

The Board questioned the Mr. Sapp extensively. He indicated that the floor plans are not correct in the way they depict the layout and contemplated uses. He clarified where the artist studio, wood workshop, home office, home gym, and storage areas would be located. No questions or comments were offered by the public.

Paul Sionas, Architect and Professional Planner, was sworn and described the application. The property is an interior lot located in the R-1 One-Family Zone, measuring 175.50 feet in frontage width and approximately 92,495 square feet in area. The property contains a single-family dwelling and a detached 2-story garage/barn in the rear yard, which measures 22'-9" in height. The applicant proposes to demolish the existing 2-story garage/barn and replace it with a 2-story accessory structure at the rear of the lot. The proposed accessory structure does not contain parking. The height of the proposed accessory structure measures 30'-3¼" to the highest ridgeline. A variance is required in that a maximum height of 15 feet is permitted and a greater height is proposed. The proposed structure will have a basement, a first floor, and a second floor. The interior will contain space for an artist studio, wood workshop, home office, home gym, storage areas, and a half-bathroom. The structure would not contain the living accommodations or sleeping quarters, and would be set back 22 feet from the western side property line, 108 feet from the eastern side property line and 268 feet 3½ inches from the rear property line.

The property is very large and the proposed setbacks are large enough to minimize the impact of the proposed height. A conforming height of 15 feet would not provide the type of interior usage required by the property owner, unless a much larger building footprint is used or multiple structures are proposed. The proposal also eliminates the need to construct an addition to the dwelling for some of the proposed uses. The requested variance can be granted under N.J.S.A. 40:55D-70c(2) since the benefits of the deviation would substantially outweigh any detriment and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance. The application promotes specific purposes of zoning, in that there is sufficient space in an appropriate location for the proposed structure, and the smaller footprint maximizes open space on the property and promotes a desirable visual environment by reducing the impervious coverage and maximizing green space.

Marked into evidence were:

- A-11 Photographs of the subject property on a board
- A-12 Colorized Plot Plan, dated June 16, 2008
- A-13 Colorized Elevations, dated June 16, 2008

The Board questioned Mr. Sionas extensively. He stated that the applicant has discussed with him the possibility of being limited to the existing height. He has not discussed with the applicant the potential of utilizing a higher basement with windows. Although the proposed accessory structure is large in size and square footage, it can still be considered subordinate to the dwelling due to its placement on the property. No

questions were offered by the public. Chair Harrison called for public comment. William Scott, 23 Cedar Avenue, was sworn and stated his support for the application. Amos Campbell, 79 High Street, was sworn and stated that while he supports the height variance request he wasn't certain whether he could support locating the structure closer to his property line. Mr. Trevenen briefly questioned Mr. Campbell. Mr. Trevenen summarized the application and stated that the applicant would be willing to limit the height and westerly side yard setback of the proposed accessory structure to that of the existing accessory structure. The Board discussed the application and determined that the height variance requested could be approved subject to a number of conditions. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. The proposed structure shall be located no closer than 41 feet to the westerly side property line.
2. The height of the proposed structure shall not exceed the 22 feet 9 inches.
3. The footprint of the proposed structure shall not exceed 1528 square feet.
4. There shall be no future subdivision of the property.
5. There shall be no additions constructed onto the existing dwelling on the property.
6. The proposed structure shall remain accessory to the dwelling on the subject property pursuant to the zoning ordinance.

Chair Harrison called the application of **Omnipoint Communications, Inc., 36 Hawthorne Place**. James Pryor, Esq. appeared as attorney for the applicant and described the application to install nine panel antennas and one GPS antenna, as well as three equipment cabinets and one PPC cabinet within screening on the roof of the residential apartment building. He stated that they have prepared a revised plan that has taken into consideration the Board's previous concerns with proposed antenna and equipment installations on the rooftop of the subject property. Dave Collins was sworn and stated his qualifications and experience specializing in FCC and New Jersey regulatory compliance regarding cellular sites. The proposed antennas and related equipment are in compliance with all applicable State and Federal regulations for radiation transmission levels. His study took into account the existing carriers, the approved MetroPCS installation, and the proposed installation. The Board questioned the witness. The site also meets any applicable State standard for radiation transmission levels. Chair Harrison called for questions from the public. Jennifer Vorih, 56 Gates Avenue, asked for a more specific level of radiation transmission from the site besides the testimony that it is 90 times below the FCC limit.

Joshua Cottrell, PE was sworn and stated his qualifications as a Professional Engineer. The original plan called for stealth chimney enclosures for the proposed antennas near the edge of the rooftop. He described the revised plan, which was

marked as Exhibit A-1. The plan depicts nine panel antennas flush mounted on a screened enclosure measuring 21 feet 7 inches by 8 feet 10 inches in area surrounding the equipment cabinets. The top of the proposed antennas and equipment screening would be 73 feet 6 inches above ground level.

Marked into evidence was:

A-1 Revised plan prepared by French and Parrello, dated January 23, 2009

The Board questioned the witness extensively. In response to concerns raised by the Board, the applicant agreed to revise the proposal to provide a stealth enclosure with the antennas inside which would require expanding the stealth enclosure not more than five feet horizontally. This would result in a reduction in height of the enclosure of up to one foot. No questions were offered from the public.

Bob Leavell, PE, was sworn and stated his qualifications in radio frequency Engineering. Omnipoint is licensed by the Federal Communications Commission to provide wireless communication services. Installation of the antennas will provide improved coverage to Omnipoint subscribers as per its FCC license. He described the proposed installation, the existing coverage, proposed coverage, and other more specific information relating to the antennas and the network. He explained why the antennas in the revised plan were located at a higher level compared to the original plan that had the antennas near the edge of the roof. He stated that in order to properly function, the antenna height increases by 1 foot for every 5 feet they are moved away from the edge of the roof.

Marked into evidence was:

A-2 Base Map with two overlays, one depicting the existing coverage and the gap in coverage, and one depicting the proposed coverage

The Board questioned the witness extensively. Chair Harrison called for questions from the public. Jennifer Vorih, 56 Gates Avenue questioned the need for the installation due to information provided to the public from Omnipoint's website which indicates that the area shown to be a gap is actually covered. She produced a printout of the information which was marked as an Exhibit. Mr. Leavell responded and stated that the information on the website is only a prediction used for marketing and is only for outdoor usage of a cellular phone. He also explained that there is an existing 8-story building that blocks the signal from 36 Hawthorne Place in the northeasterly direction, and that none of the prediction maps, including his proposed coverage map, takes signal blockage caused by existing buildings into account.

Marked into evidence were:

O-1 Printout of coverage strength in Montclair from Omnipoint website
A-3 Aerial Photograph of the area

The Board questioned the witness again. He stated that the software that models proposed coverage takes the existing topography and the existing trees into account, although the height of the trees is not recognized. He also stated that there is drive test data that is consistent with his testimony that the taller building on Union Street causes some signal blockage. No other questions were offered from the public.

Marked into evidence was:

A-4 Map illustrating Drive Test Data

Christopher Neville, PP was sworn and stated his qualifications as a Professional Planner. He described the subject property. The subject property is 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. 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.

The application complies with all of the conditional use standards contained in the Montclair Township Zoning Ordinance except that the apartment building 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 the nine proposed antennas exceed the height of the top of the building roof line contrary to Montclair Code Section 347-17.1C (5) (d). 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). 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.

Marked into evidence were:

- A-5 Northwesterly view – existing photograph and photo-simulation
- A-6 Southwesterly view – existing photograph and photo-simulation
- A-7 Easterly view – existing photograph and photo-simulation

The Board questioned Mr. Neville. Chair Harrison called for questions from the public. Jennifer Vorih, 56 Gates Avenue, inquired about the appearance of the rooftop after the proposed installation. Chair Harrison called for public comment. Jennifer Vorih, 56 Gates Avenue was sworn and stated that the Board should consider the fact that the building already has many antennas on it. She stated that it appears to her that the proposed installation would not significantly affect the applicant's coverage in a positive way, but would negatively affect properties in the area. The Board briefly questioned Ms. Vorih. She stated that the modification proposed by the Board that would have the antennas mounted within a stealth enclosure that is slightly shorter but at most 5 feet wider than what is depicted on the Exhibits is a better option than having the antennas themselves visible on the outside of the enclosure.

Mr. Pryor summarized the application and requested that the 6 eligible Board members who are present vote on the application. The Board discussed the application. The Board 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. On motion by Mr. Susswein, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. As stipulated by the applicant, the plans shall be revised to utilize a stealth enclosure with the panel antennas affixed inside, expanding the enclosure not more than five feet horizontally and resulting in a corresponding reduction in height of up to one foot.
2. The stealth enclosure shall be painted an off-white color to match the building to be approved by the Planning Department.
3. 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.

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