

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**February 27, 2008**

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

ABSENT: Chair Harrison (recused), Mr. Haizel, 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 was not present as he recused himself from the application. Vice Chair Fleischer called the continuation of the application of **Omnipoint Communications, Inc, 153 Park Street**. James Pryor, Esq., appeared as attorney for the applicant. At the last meeting, Omnipoint rested its case subject to potential rebuttal, if necessary, after the objectors present their case. He submitted information relating to any notices with respect to the State Historic Preservation Office application that was filed by a historic consultant on behalf of Omnipoint Communications. He also supplied the photographs that Mr. Kronk had taken with his original balloon test.

Marked into evidence were:

- A-16 Visual Analysis for Omnipoint Communications, Balloon Test Photos of Original Tower Location, 153 Park Street
- A-17 2/22/08 Letter from Mr. Pryor

Terry Thornton, Esq., objector and resident of 160 Park Street gave her appearance. She has been working with the neighborhood, although not as their legal attorney, but just as the neighborhood coordinator. She stated that her witnesses include a Planner and Richard Comi, a consultant to municipalities and occasionally to community groups with expertise on the cell phone industry. She called Peter Steck, PP, who was sworn and stated his qualifications.

Marked into evidence were:

- O-2 Curriculum Vitae of Mr. Steck
- O-3 Resolution of Township Council
- O-4 Mr. Steck's Summary Outline with
- O-5 Excerpt from Website

Mr. Steck stated that he had examined the application folder and the exhibits on file in the municipal building, and reviewed the transcripts of the testimony of the prior hearings. He had also examined the site on several occasions and the surrounding area and looked at the current zoning ordinance, the master plan, and the last two reexamination reports. It does not appear that an adequate search, certainly given the recent development where the governing body has emphasized the availability of a

Township property that is clearly within the search area, and one that does not have homes near it, one that has industrial-type uses, that is along a railroad line that has overhead catenaries, that clearly, on its face, is a much more suitable site. This property is not particularly suited to this type of use and to this type of structure. There is a certain type of architecture that is expected associated with churches. A tall monopole that's even taller than the steeple is something uncharacteristic to most people. It is clearly a substantial departure from public policy as expressed in the ordinance. This proposal substantially impairs the zone plan and zoning ordinance. It goes against the public policy of encouraging the diminishment of nonconforming uses. What this essentially does is provide an income stream unrelated to church use to the church. So, it essentially encourages continuation of the nonconforming use. This facility will encourage other facilities to locate in residential zones. Any other carrier wanting to mount on this pole is going to have to extend the pole up higher or put something on the exterior of the pole. The Public Works garage is clearly a superior site.

If approved as proposed, this application would be substantially detrimental to the zone plan and zoning ordinance, would substantially impair the intent and purpose of the zone plan and zoning ordinance and would be detrimental to the public good. The site is not peculiarly suited to the use, and the applicant has not met the enhanced burden of proof. Local policy encourages installation on existing structures, not new structures. The area is residential in character, it is zoned residentially. Some of the homes are historic in character. The suitability of other properties in the area has not been thoroughly examined. Even if there is a need for service in the area, the applicant still cannot satisfy the negative criteria under the enhanced burden of proof. It is too far a departure from public policy, common architectural expectations. And because of that, it is substantially detrimental to the zone plan and zoning ordinance and to the public good.

Ms. Thornton questioned Mr. Steck on direct-examination. Mr. Pryor had numerous questions for Mr. Steck on cross-examination. The Board took a short recess. The Board questioned Mr. Steck. Ms. Thornton questioned Mr. Steck on redirect-examination. Mr. Pryor questioned Mr. Steck on recross-examination.

Vice Chair Fleischer announced that the meeting would be continued at special meetings scheduled for March 26, 2008 and May 14, 2008 and that no further notice would be given. On motion by Mr. Susswein, seconded by Ms. English, the meeting was adjourned.