

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**April 11, 2007**

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

ABSENT: 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 welcomed Mr. Rubenstein to the Board.

Chair Harrison called the continuation of the application of **Wallwood Gardens, Inc., 400 Orange Road**. Robert Taylor, Esq., gave his appearance as attorney for the applicant. Chair Harrison stated that the public hearing was closed at the March 28, 2007 special meeting. Ms. Cockey arrived and was eligible to vote. The Board discussed the application. A motion by Ms. English, seconded by Mr. Whipple, to deny preliminary site plan approval, to deny the bulk variances requested for the Orange Road front setback and front yard parking, and to approve the use variance for 8 dwelling units and several bulk variances was unanimously approved, subject to the following conditions:

1. This approval is subject to site plan review and approval.
2. The Board evidenced a strong preference that the buildings bordering Orange Road front on Orange Road.
3. The rear yard setback variance is limited to a 25 foot minimum setback except that a small corner of one of the buildings may encroach not more than 21 feet into the rear yard setback.
4. A minimum separation of 16 feet shall be provided between buildings and projections.
5. Shrubs shall be added along the westerly side of the entire length of the Ward Place driveway.
6. Compliance with the comments contained in a memorandum dated December 13, 2006 from Chris Baptista, Junior Engineer.
7. The applicant shall comply with the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1 et seq.
8. The applicant shall obtain approval from the Essex County Planning Board.

9. The applicant shall obtain approval from the Hudson, Essex and Passaic Soil Conservation District.

10. The applicant shall be responsible for payment of all outstanding escrow fees.

11. The applicant shall pay development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq. and shall comply with the Inclusionary Zoning Ordinance, Montclair Code Section 347-151 as applicable.

Chair Harrison announced that the applicant would return for site plan approval at the June 20, 2007 regular meeting of the Board and that revised plans have to be submitted by June 8, 2007. Mr. Taylor granted the Board an extension of time.

Chair Harrison announced the continuation of the application of **Alter Family, LLC for the Deron School (II), 130 Grove Street**. Mr. Rubenstein left the meeting. Jerry Friedland, Esq. appeared as attorney for the applicant and stated that the applicant has submitted revised plans for site plan approval. He also stated that the applicant is requesting amendments to conditions 7 and 9, and the deletion of condition 16 from the March 21, 2007 Resolution. Mr. Friedland called Matthew Jarmel, Architect, who was sworn. Mr. Sullivan stated that Exhibits marked at this time would start at A-1.

Marked into evidence was:

- A-1 Rendering of south elevation, on a board, depicting the gable parapet feature that was denied by the Board
- A-2 Rendering of south elevation, on a board, depicting the removal of the gable parapet feature
- A-3 Sheet A-5 of the architectural plans, dated July 7, 2006, depicting the gable parapet feature
- A-4 Cultured stone sample

Mr. Jarmel stated that the gable parapet on the roof has been removed from the revised plans as required. He described the revised parking lot plan and stated that the driveway to Christopher Street has been removed. He also stated that the Oxford Street parking lot is not being expanded from what exists today and that the existing buffer around that parking lot would be preserved. He described the proposed exterior of the addition and stated that it is not changed from what was described at prior hearings.

The Board questioned Mr. Jarmel. He stated that attempts to recreate the granite exterior for the addition are cost prohibitive and that they would explore ways to more closely match the color of the existing exterior. He stated that 54 parking spaces

are depicted on the plan, and that the chart on plan erroneously indicates 61 spaces, which was revised by letter and the submission of a revised plan sheet in the file.

Chair Harrison called for questions from the public.

Fred Halper, 45 Christopher Street, asked questions about the parking spaces, turnaround spaces, and driveways and whether they are suitable for the buses that could access the site.

Mr. Friedland called Richard Jarmel, Professional Engineer, who was sworn. Mr. Jarmel stated that revised plans filed with Essex County on April 9, 2007. He described the revised plans in details, including the parking areas, turnaround and back-up areas, and driveways. He stated that the County has requested a 20-foot wide driveway on Grove Street, and that the Water Department has indicated that the fire hydrant on Grove Street can not be relocated, which eliminates any possibility to widen the driveway. He described the landscaping and lighting and stated that the proposed junipers along the section of the driveway near Grove Street could be removed from the plan or trimmed to a height that would not affect visibility near Grove Street. He also stated that the revised plan eliminates the removal of 4 to 5 large Oak trees, and that about 4 to smaller trees and larger shrubs would be removed. He described the existing and proposed light fixtures and stated that the pole-mounted lights would be shielded. He reviewed the Board Engineer's comments and stated that he has been in conversation with the Board Engineer regarding a drainage system for the Oxford Street lot, and that the Board Engineer has indicated that a recharge system would be acceptable, subject to the permeability tests that will be performed.

The Board questioned Mr. Jarmel. He agreed that a waiver is required from the site plan requirement that all off-street parking lots or groups of lots on the same property accommodating 50 or more cars in total shall provide landscaped areas within the pavement perimeter amounting to at least 5 percent of the paved area. Chair Harrison called for questions from the public.

Fred Halper, 45 Christopher Street, asked questions regarding drainage.

Una Delaney, 50 Label Street, asked how many large Oak trees would be removed. Mr. Jarmel stated that no large Oaks on the westerly side of the site would be removed, but that at least 2 large trees near the Grove Street driveway would be removed.

Mr. Friedland called Richard Keller, Professional Planner, who was sworn. Mr. Keller described the March 21, 2007 Resolution approving certain variances and stated that Condition 9, which included a prohibition of left turns from the Grove Street driveway, should be revised to allow left turns. He stated that the County does not object to left turns from the proposed driveway and that it would also benefit the neighborhood because it would keep more vehicles heading north on Grove Street. He also stated that Condition 7, which requires seepage pits that would negatively impact trees, should also be revised. He stated that the Board Engineer has been agreeable to

a modification in the drainage plan that takes into consideration the trees in the vicinity of the Oxford Street lot. He continued by stating that Condition 16 regarding Title 39 should be deleted because it is no longer applicable now that the driveway does not cut through the lot.

The Board questioned Mr. Keller. He stated that traffic counts were not included for the intersection of Walnut Street and Grove Street in the traffic study submitted by the applicant's traffic engineer.

Mr. Friedland stated that he had no further witnesses. Chair Harrison called for questions from the public.

Fred Halper, 45 Christopher Street, asked if buses presently access the site through the existing driveway on Grove Street. He also asked numerous questions regarding the application and handicapped students.

William Milczarski, 11 Cloverhill Place, asked numerous questions that were answered by the 3 witnesses who testified at the meeting. He asked if a variance was required for the new driveway to the Oxford Street parking lot since it is less than 200 feet from the intersections of Oxford Street with Grove Street and Christopher Street. Mr. Keller stated the previous testimony did indicate that a variance for that was required, and that if it was omitted from the March 21, 2007 Resolution, the applicant would ask that the variance be included in the request for site plan approval.

Una Delaney, 50 Label Street, asked if any Oak trees along Oxford Street would come down. Mr. Keller stated that the 2 large Oaks that are coming down are located near the enlarged Grove Street driveway. He also identified the smaller scrub Oaks on the site that would be removed.

Ann Marie Nazzaro, 11 Cloverhill Place, asked why the addition and site changes are being proposed by the applicant.

Chair Harrison called for public comment. Before getting to the public comment, Vice Chair Fleischer stated that due to the late hour, the next application on the agenda, **Omnipoint Communications, Inc., 153 Park Street**, would not be reached at this meeting and that a subsequent meeting date would be discussed at the conclusion of the current application before the Board.

Una Delaney, 50 Label Street, was sworn and stated her opposition to the plan. She made numerous comments stating that the plan would have a negative impact on the neighborhood.

Regina Flimlin, 13 Montclair Avenue, was sworn and stated her opposition to the plan.

Fred Halper, 45 Christopher Street, was sworn. He stated his opposition and voiced concerns over traffic issues.

William Milczarski, 11 Cloverhill Place, was sworn and stated his opposition to the plan. He made numerous comments stating that the plan would have a negative impact on the neighborhood. He voiced concerns over the traffic impacts and also stated that Title 39 should be enforced on the property in order to prevent over-parking on the site.

Mr. Friedland called Richard Keller, Professional Planner as a rebuttal witness, who was still under oath. He stated there will not be an increase in vehicles going from the site onto Grove Street. Mr. Friedland gave his closing statements.

The Board discussed the application. It was determined that site plan approval could be approved, subject to conditions. Chair Harrison stated that the variance for the driveway on Oxford Street was clearly part of the plans approved by the March 21, 2007 Resolution. On motion by Mr. Fleischer, seconded by Mr. Whipple, the site plan application was unanimously approved, subject to the following conditions:

1. The three pole mounted light fixtures in the Oxford Street parking area shall be shielded.

2. The proposed stop sign to the south of the access drive on Grove Street shall be moved back out of the sidewalk area.

3. The proposed junipers adjacent to the Grove Street driveway shall be replaced with plantings that will have a maximum height that will not exceed 30 inches to allow adequate sight distance.

4. The building exterior shall be consistent with the testimony at the April 11, 2007 public hearing and the sample board marked as Exhibit A-4.

5. There shall be no exterior trash storage except the applicant is permitted to use a dumpster at the end of the school year for a period not to exceed 2 weeks per year.

6. The applicant shall comply with Conditions 1, 2, 4 and 7 contained in the April 6, 2007 memorandum from W. Thomas Watkinson, Montclair Board of Adjustment Engineer. With respect to Condition 3, the applicant shall comply and also provide a permeability test in connection with drainage to be provided under the Oxford Street parking lot. With respect to Comment 6, the applicant shall comply or utilize an alternative drainage solution which minimizes damage to tree roots and maximizes drainage provided same is approved by the Board of Adjustment Engineer.

7. The applicant shall comply with the conditions imposed by the March 21, 2007 resolution not inconsistent herewith. Specifically, Condition 7 is modified to provide an alternate drainage system may be utilized under the Oxford Street parking lot provided same is approved by the Board of Adjustment Engineer. Condition 9 is modified to delete the right turn only requirement at the egress from the south parking lot.

8. Sheet C-401 shall be revised to correct the mathematical error under the caption "Area 2-Off-Site".

9. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

Vice Chair Fleischer called the application of **Omnipoint Communications, Inc., 153 Park Street**. Chair Harrison recused himself and left the meeting. Mr. Fleischer stated that due to the late hour the application would be continued at a subsequent meeting. James Pryor, Esq., appeared as attorney for the applicant. Terry Thornton, 160 Park Street, requested a brief discussion regarding procedural issues. Mr. Sullivan stated that it is not required that certain reports and exhibits be provided in advance of a public hearing. Mr. Pryor stated that the applicant would agree to provide reduced sized copies of exhibits and to provide reports and correspondence directly to Ms. Thornton in advance of a public hearing.

Ms. Thornton also requested that following expert testimony from the applicant's witnesses, the Board exercise its discretion and allow the public's cross-examination at a subsequent meeting, in order to give the public time to prepare. Mr. Pryor objected to that request. Mr. Fleischer stated that the Board would not deviate from their normal process in terms of witness cross-examination. Ms. Thornton stated that she believes the application is incomplete because a use variance is required for expansion of the nonconforming church use, which was not cited. Mr. Sullivan stated that Board would deal with that issue during the public hearing. She also stated that the applicant has been in contact with the Township regarding a proposal to lease Township property for the proposed installation. Mr. Pryor stated that there has been no conclusion relating to that situation and that the Board should consider the application before them. After more discussion, Mr. Fleischer announced that the application would be heard at the special meeting of the Board to be held on May 9, 2007, and that no further notice would be given. Mr. Pryor granted the Board an extension of time.

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