

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**August 18, 2010**

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

ABSENT: Mr. Burr and Mr. Whipple

Assistant Secretary 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. Susswein, the **Minutes of the June 16, 2010** regular meeting were adopted as modified. On motion by Mr. Susswein, seconded by Ms. English, the **Minutes of the June 23, 2010** special meeting were adopted as modified, Mr. Fleischer and Ms. Holloway abstaining. Ms. Cockey arrived at the meeting. On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the July 14, 2010** special meeting were adopted as modified, Ms. Cockey and Ms. Holloway abstaining. On motion by Mr. Fleischer, seconded by Ms. Cockey, the **Minutes of the July 21, 2010** regular meeting were adopted as modified, Ms. English and Mr. Susswein abstaining.

On motion by Mr. Fleischer, seconded by Ms. English, the following Resolution memorializing the Board's decision on the application of **The Mental Health Association of Essex County, Inc., 354 Orange Road** was adopted as modified, Ms. Cockey and Ms. Holloway abstaining:

**WHEREAS**, The Mental Health Association of Essex County, Inc., did make application to the Board of Adjustment of the Township of Montclair, as amended, for site plan approval to construct two buildings containing six residential units each to be utilized as supportive housing for individuals with mental illness on property designated as Lots 69 and 70 in Block 2904 on the Montclair Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to allow the proposed use which is not a permitted principal use in accordance with Montclair Code Section 347-41.
2. A variance pursuant to N.J.S.A. 40:55D-70d(1) to permit more than one principal structure on the property contrary to Montclair Code Section 347-20.
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit 12 parking spaces where a minimum of 27 parking spaces are required pursuant to Montclair Code Section

347-101 and an exception from the New Jersey Residential Site Improvements Standards which require 22 parking spaces.

4. A variance pursuant to N.J.S.A. 40:55D-70c for failure to provide one-third of all of the off-street parking within a garage building and/or within the principal building or buildings pursuant to Montclair Code Section 347-101.

**WHEREAS**, the applicant submitted a preliminary and final site plan prepared by EKA Associates, P.A. consisting of Sheets 1, 3 through 9 dated November 9, 2009 revised through February 24, 2010 and Sheet 2 dated May 12, 2009 as well as floor plans and elevations prepared by Julie Anne Cecere, Architect, Sheets A1 and A2 dated November 2, 2009 revised through February 26, 2010 and Sheet A3 dated November 2, 2009 revised through February 8, 2010; and

**WHEREAS**, this matter came on to be heard at meetings of the Board of Adjustment held on January 20, April 7, May 26, June 23 and July 14, 2010 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 is vacant and located on the westerly side of Orange Road between Hitchcock Place and Orange Road West. It contains lot area of 55,156 square feet, lot frontage of 177.46 feet and lot depth in excess of 310 feet. A 100 unit four story senior citizen housing complex is located on the property to the north. The adjacent property to the south is a vacant lot approximately 75 feet by 315 feet; further to the south is a two story 38 unit garden apartment complex. Single family homes exist to the east across Orange Road and bordering the rear of the subject parcel on Pleasant Avenue.

2. The application contemplates construction of two, two and one-half story buildings on a single lot, each containing six residential units. The units consist of a bedroom, bathroom and kitchen area that range in size from 468 to 611 square feet. The northerly building contains a 1,886 square foot basement including a mechanical room, storage and 541 square foot community room and 220 square foot office. The southerly building contains a 1,985 square foot basement including a mechanical room, storage area, bathroom and 527 square foot fitness room. An 18 foot wide driveway bisects the two buildings and provides access to a parking area to the rear of the buildings consisting of 12 off-street parking spaces including one handicap space. A recreation area is proposed in the rear of the property consisting of a one-tenth of a mile walking path and 24 foot by 24 foot basketball court.

3. MHA is a not for profit organization dedicated to providing care and treatment to individuals with mental illness. The MHA proposal is for two buildings each containing six residential units of supportive housing for individuals with mental illness. The facility would not be licensed by the State. MHA has stipulated all the units would

be deed restricted to be occupied by persons with low and moderate incomes. Robert Davison, Executive Director of MHA, testified prospective residents are evaluated prior to selection for the program to ensure they are capable of living independently within the guidelines of the State licensed program. Support staff will visit the property on a daily basis and each resident will be visited by a staff member three to four times a week for approximately one hour.

4. The proposed use is sufficiently beneficial to qualify as “inherently beneficial” which satisfies the positive criteria. Holmdel Builders Ass’n v. Township of Holmdel, 121 N.J. 550 (1990) (“Housing needs are clearly related to the general welfare under the zoning laws”); Homes of Hope v. Eastampton Tp., 409 N.J. Super. 330 (App. Div. 2009) (affordable housing continues to be an “inherently beneficial use” even after the municipality has met its statutory fair share obligations); Homes of Hope, Inc. v. Zoning Bd. of Adj., 236 N.J. Super 584 (Law Div. 1989) (“[H]ousing accommodations for the underprivileged at a reduced cost makes an important contribution to the general welfare.”). The proposed supportive housing for individuals with mental illness and low and moderate incomes is a compelling use of significant importance to the public.

5. In accordance with Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992), the balancing of the positive and negative criteria involving an inherently beneficial use is as follows:

First, the board should identify the public interest at stake. Some uses are more compelling than others . . . .

Second, the Board should identify the detrimental effect that will ensue from the grant of the variance ...When minimal, such an effect need not outweigh an inherently beneficial use that satisfies the positive criteria . . . .

Third, in some situations, the local board may reduce the detrimental effect by imposing reasonable conditions on the use. If so, the weight accorded the adverse effect should be reduced by the anticipated effect of those restrictions.

Fourth, the Board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good. (citations omitted)

127 N.J. at 166-167.

6. Effective November 20, 2009, a definition of “inherently beneficial use” was added to the Municipal Land Use Law and provides as follows:

“Inherently beneficial use” means a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind,

solar or photovoltaic energy facility or structure.

7. The Board is required to identify the detrimental effects that will result if the application is approved. The 1997 amendment to N.J.S.A. 40:55D-70 provides:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. [underline indicates language added by the amendment]

The purpose of the amendment was set forth in New Brunswick Tel. v. South Plainfield, 305 N.J. Super. 161, 167 (App. Div. 1997), remanded and reaffirmed, 314 N.J. Super 102 (App. Div. 1998), rev'd on other grounds sub nom. New Brunswick Cellular v. Bd. of Adj. 160 N.J. 1(1999) which was:

. . . intended to counteract what the Legislature perceived as a trend whereby courts would make a determination that a use was inherently beneficial, and then require that the variance simply be issued, regardless of the local board's analysis under the statute . . . The amendment was designed to clarify "that it is not enough for a use variance applicant to prove that the proposed use constitutes an inherently beneficial use . . ." *Id.* The amendments seek to make it clear that "an applicant must still prove that the use will *not substantially impair the zoning plan*. By restoring this balance, municipalities will again be able to evaluate a proposed use on a particular site to ensure that it does not have a negative impact on the overall zoning plan of the community." *Id.* (emphasis added).

8. The subject property is located within the R-1 One-Family Zone which in accordance with Montclair Code Section 347-41 permits as principal uses: one-family detached dwellings, carriage houses and municipal facilities. In 1985, the Planning Board approved the application of Montclair Senior Housing Corp. to construct a 100 unit senior citizen housing facility on the adjacent property to the north which at the time was a permitted conditional use. On or about 1950, a 38 unit garden apartment complex to the south was constructed, which at the time was a permitted use. The governing body subsequently amended the zoning ordinance rendering both sites as preexisting nonconforming uses.

9. The Board determined that approval of the proposed multi-family dwellings would effectively rezone the westerly side of Orange Road in this area to multi-family use. Such action by the Board would constitute an improper arrogation of governing body authority and violate the long standing principle that municipalities make zoning decisions by ordinance rather than by variance. This policy is reflected in the statutory provision requiring a municipality to reexamine its Master Plan at least once every six years or adopt a new plan. N.J.S.A. 40:55D-89.

The 2006 Master Plan Reexamination Report did not recommend that the subject property be rezoned. There are many zoning districts located throughout the Township of Montclair where the proposed multifamily use would be a permitted use. There are numerous multifamily buildings located throughout the Township of Montclair containing thousands of dwelling units. The applicant testified that its existing units of supportive housing for the mentally ill are located in existing buildings that did not require a use variance. In this case, the applicant did not sufficiently consider the Master Plan and Zoning Ordinance and undertook only a cursory investigation of available sites. The applicant failed to adequately explore opportunities within existing buildings as well as sites where the proposed use is permitted.

One of the goals set forth in the 2006 Master Plan Reexamination Report is to:

Offer housing types for a diverse population. Provide a wide range of housing styles – from apartments to townhouses to single-family homes – to meet the needs of a population diverse in age, income and physical ability. Maintain a zoning pattern which permits a range of housing types at appropriate densities throughout the community.

(emphasis added).

The objectors presented testimony and Exhibit 0-4 (incorporated herein by reference) which established that the overwhelming majority of affordable housing and support facilities (e.g. senior citizen housing, rehabilitation facilities and halfway houses) are concentrated in the southeasterly quadrant of the Township. The proposed site is located in the southeasterly quadrant contrary to the goal of locating “a range of housing types... throughout the community.” The Board found that a substantial detriment would ensue if this application was approved at this location. The zone plan and zoning ordinance would be substantially impaired and the previously stated goal of the Master Plan Reexamination Report would be violated.

For the reasons stated, the Board found that substantial detriment would result if the application was approved. The detrimental effects cannot be mitigated by the imposition of conditions. On balance, the substantial impairment of the zone plan and zoning ordinance override the benefits of the proposed use at this location.

10. The applicant anticipated that the residents would typically not have automobiles and would rely on public transportation. The applicant asserted the proposed 12 parking spaces provided on site were adequate to accommodate

anticipated parking need for residents, visitors and staff. The applicant requested a variance from Montclair Code Section 347-101 which requires 27 parking spaces and an exception from N.J.A.C. 5:21-4.14(b) which requires 22 spaces. The applicant also argued that an alternate parking standard should be accepted in accordance with N.J.A.C. 5:21-4.14(c), however, the applicant failed to provide a sufficient factual basis in support of such an alternate parking standard. In addition, the Board determined the applicant did not prove one space per resident constituted adequate on-site parking. Family and friends of residents as well as staff members visiting the site require adequate parking. The anticipated use of the community room further increases parking demand on site. There is nothing with respect to the physical characteristics of the land or physical conditions pertaining to the development that result in undue hardship and warrant relaxation of the parking standards. The applicant argued an aesthetic benefit is gained by providing less than the required number of parking spaces, however, any benefit is substantially outweighed by inadequate on-site parking. Forcing overflow parking off site would result in substantial detriment to area properties since there is insufficient street parking on Orange Road.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant failed to meet the requisite proofs for the variances sought pursuant to N.J.S.A. 40:55D-70d as outlined in the Sica decision; and

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variances 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 N.J.S.A. 40:55D-70c(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variances 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 N.J.S.A. 40:55D-70c(2).

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within application of The Mental Health Association of Essex County, Inc. for site plan approval and variances is hereby denied.

**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 Ms. Cockey, the following Resolution memorializing the Board's decision on the application of **Jennifer & Robert Thornton, 38 Highland Avenue** was adopted, Ms. English and Mr. Susswein abstaining:

**WHEREAS, Jennifer and Robert Thornton,** 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 from **Montclair Code Section 347-34A(2)(a)** for a northerly side yard setback less than permitted for a proposed detached garage in the rear yard of the property designated as Lot 10 in Block 407 on the Township Tax Map and located in the R-0 Mountainside Zone; and

**WHEREAS,** the applicant submitted a property survey dated December 22, 1997, and plans prepared by Sionas Architecture, dated May 25, 2010; and

**WHEREAS,** this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 21, 2010 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 Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is an interior lot located in the R-0 Mountainside Zone and contains a single-family dwelling. The property measures 80 feet in frontage width and 20,948 square feet in lot area. A detached garage located in the rear yard was recently demolished after it was severely damaged by a fallen tree in March 2010.

2. A detached garage is proposed that would be located in the same area as the previously existing garage, except that the proposed garage would be larger. The footprint of the proposed garage measures 24 feet wide by 24 feet long. The previously existing garage had a northerly side yard setback of 5 feet at its closest point, and the northerly side yard setback would be increased to 6 feet for the proposed garage.

3. A variance is requested in that a side yard setback of no less than 12 feet is required and a lesser side yard setback of 6 feet is proposed from the northerly side property line. The garage would comply with the maximum height of 15 feet. No other variances are requested.

4. The Board determined that the requested variance could be granted. The garage is being replaced in the same area as the previously existing garage and the northerly side yard setback would be increased. The proposed northerly side yard setback of the garage is in keeping with that of similar properties in the neighborhood and the application would have no substantial detriment to the public good; 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 of **Jennifer and Robert Thornton** 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. Fleischer, seconded by Ms. Cockey, the following Resolution memorializing the Board's decision on the application of **Charles Adickman, 402 North Fullerton Avenue** was adopted, Ms. English and Mr. Susswein abstaining:

**WHEREAS, Charles Adickman**, 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 from **Montclair Code Section 347-46A(2)(a)** for a northerly side yard setback less than permitted for a proposed detached garage in the rear yard of the property designated as Lot 7 in Block 2505 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey dated January 9, 1998, and construction drawings for the proposed detached garage; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 21, 2010 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 Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is an interior lot located in the R-1 One-Family Zone and contains a single-family dwelling. The property measures 50 feet in frontage width and 150 feet in depth. The property survey depicts the location of a previously existing detached one car garage in the rear yard that was recently demolished due to its age and poor condition.

2. The garage is proposed to be constructed on the existing footings and foundation. The foundation of the previously existing garage is located 2.14 feet from the northerly side property line at its closest point. A variance is requested in that a side

yard setback of no less than 6 feet is required and a lesser side yard setback of 2.14 feet is proposed from the northerly side property line. No other variances are requested.

3. The proposed garage will have the same width and length dimensions as the previously existing garage. The footprint of the detached garage measures 12.5 feet wide by 20.3 feet long. A conforming height of 12 feet is proposed.

4. The Board determined that the requested variance could be granted. The garage is being replaced on the existing footings and foundation and the northerly side yard setback is remaining the same. The proposed garage is small in size and the northerly side yard setback of the garage is in keeping with that of similar properties in the neighborhood. Subject to the condition imposed below, the application would have no substantial detriment to the public good; 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 of **Charles Adickman** is hereby approved, subject to the following condition:

1. All roof leaders on the proposed garage shall be directed away from the northerly side property line.

**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. Fleischer, seconded by Ms. Cockey, the following Resolution memorializing the Board's decision on the application of **Sprint Nextel Corp. 36 Hawthorne Place** was adopted as modified, Ms. English and Mr. Susswein abstaining:

**WHEREAS**, Sprint Nextel Corp. (hereinafter "Sprint"), did make application to the Board of Adjustment of the Township of Montclair (hereinafter "Board") to install three panel antennas, one GPS antenna, two dish antennas and one equipment cabinet on the roof of the 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 a site plan and details prepared by Ramaker & Associates, Inc. revised through March 24, 2010 consisting of Sheets T-1, Z-1 through Z-4; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on July 21, 2010 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.

3. The proposed antennas will be utilized by Clearwire Corp., a subsidiary of Sprint licensed by the Federal Communications Commission to provide wireless communication services which is in the process of a 4G wireless network build-out in this region, approval of which constitutes appropriate municipal action in a manner which promotes the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law.

4. The application contemplates the installation of three panel antennas, one in each of the Alpha (southerly), Beta (westerly) and Gamma (northerly) sectors. A 26.1 inch diameter flush-mounted dish antenna is proposed in the Beta sector. As amended

at the public hearing, a 12 inch diameter flush-mounted dish antenna will be affixed to the northeasterly corner of the screened equipment enclosure. The antennas shall be 65 feet in height measured from ground level to the top of the antennas. A GPS antenna is also proposed in the Gamma sector to be mounted onto the screened equipment enclosure and a new equipment cabinet is proposed on the roof within the enclosure.

5. The 2006 Sprint approval provided for the installation of 13 panel antennas, however, only three were installed. Pursuant to Montclair Code Section 202-20, the variances associated with the antennas which were not constructed have expired. The panel antenna proposed in the Beta and Gamma sectors as part of their application, are in the same location as two of the antennas which were not constructed as part of the 2006 approval.

6. 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 height of the proposed antennas exceed the height of the top of the building roof line contrary to Montclair Code Section 347-17.1C(5)(d).

7. 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).

8. 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.

9. 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.

10. 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.

**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(3) to permit installation of three panel antennas, one GPS antenna, two dish antennas and an equipment cabinet on the roof is hereby approved subject to the following conditions:

1. The antennas shall be painted to match the structure to which they are affixed.
2. The proposed panel antenna in the Alpha sector shall be enclosed by a cylindrical stealth screen of the minimum size necessary not to exceed three feet in diameter.
3. The cylindrical stealth enclosures in the Alpha sector shall be separated by a distance not less than the diameter of the largest of the two cylindrical enclosures.
4. The antennas not constructed by Sprint in accordance with its 2006 approval shall require application to the appropriate Land Use Board for approval.
5. The plans shall be revised to reflect the 12 inch dish antenna opposite the Beta sector shall be affixed to the northeasterly corner of the screened equipment enclosure.
6. 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.

The application of **John Reimnitz, 9 Glenwood Road** was postponed until the September 15, 2010 regular meeting at the request of the applicant. No public notice was required and no extension of time was necessary. Chair Harrison was recused. James Pryor, Esq., was present on behalf of **Omnipoint Communications, Inc., 153 Park Street**. The applicant is still negotiating with the entity that will construct a tower on municipal property. There was some brief discussion. Mr. Sullivan stated that a special meeting date to continue the application would be selected at the Board's regular meeting on October 20, 2010. No further notice would be given. The Board was granted an extension of time.

Chair Harrison rejoined the Board. The continuation of the application of **Sprint Nextel Corp., 641 Bloomfield Avenue** was called. James Pryor, Esq. appeared as attorney for the applicant and summarized what was completed on the application at the previous meeting on July 21, 2010. The applicant proposes to install 3 panel antennas, 1 GPS antenna, and 1 dish antenna on the roof of the existing commercial building at 641 Bloomfield Avenue. A new equipment cabinet is proposed in an existing equipment room within the building. Ron Evans was sworn and stated his qualifications in radio frequency Engineering. The applicant is licensed by the Federal Communications

Commission to provide personal communication services which includes wireless telephone, data and other communications services to its subscribers. He described the proposed installation, the existing coverage, proposed coverage, and other more specific information relating to the antennas and the network. Three sectors are identified on the rooftop plan: Alpha, Beta, and Gamma. The outline of an interior equipment room on the first floor of the building is depicted on the plan. One 12-inch diameter dish antenna is proposed in the Beta sector, which allows the sites to communicate with each other.

Exhibits marked:

A-1 Radio Frequency Coverage Map with overlays, depicting existing and proposed coverage

The Board questioned the witness extensively. Mr. Evans provided additional information on the coverage map submitted as Exhibit A-1. Mr. Evans described coverage gaps depicted on Exhibit A-1 and indicated that there are open search rings to find a site in West Orange that might provide additional coverage in certain parts of southeast Montclair. He also described the predicted coverage from the proposed Sprint installation at 10 Crestmont Road. The technology required to adapt to the growth of the wireless telecommunications industry requires more sites at lower heights in order to provide reliable coverage and less interference. No questions were offered from the public.

Tim Kronk was sworn and stated his qualification as a Professional Planner. The subject property is 11,620 square feet in size and contains a 6-story commercial building. The property is located in the C-1 Central Business Zone, which permits the installation of telecommunications equipment as a conditional use pursuant to Montclair Code Section 347-17.1C(4). The panel antennas proposed in Beta and Gamma sectors, the proposed dish antenna in the Beta sector, and the proposed GPS antenna in the Alpha sector require a variance from Montclair Code Section 347-17.1C(4)(c) since they all exceed either the height of the parapet wall or penthouse to which they are attached. Based upon the size and location of the existing 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. In 1997, an application by Sprint was approved to install 9 panel antennas on the roof of the building; however, only 6 were installed. The 3 panel antenna proposed as part of this application, are in the same location the antennas which were not constructed as part of the 1997 approval. 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 proposed antennas will be utilized by Clearwire Corp., a subsidiary of Sprint licensed by the Federal Communications Commission to provide wireless communication services which is in the process of a 4G wireless network build-out in this region. Approval of the application constitutes appropriate municipal action in a manner which promotes the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law.

Exhibits marked:

- A-2 Photo simulations on a board depicting the proposed antennas
- A-3 Photo simulations on a board depicting the proposed antennas
- A-4 Photo simulations on a board depicting the proposed antennas
- A-5 Photo simulations on a board depicting the proposed antennas

The Board questioned the witnesses. Mr. Evans stated that the proposed panel antenna in the Gamma sector on the westerly side of the building could be flush-mounted on the outside face of the parapet wall from a radio frequency or technical perspective, although it would require an easement from the owner of the adjoining property which is the Township of Montclair. Mr. Kronk indicated that the antennas would be painted an appropriate color in order to camouflage them. Mr. Pryor agreed that any Sprint antennas from the 1997 approval or Nextel antennas from the 2000 approval that have not been installed now require Board approval. Mr. Evans indicated that the dish antenna could be lowered to be alongside the panel antenna. The dish antenna could also be relocated and flush-mounted to the northwesterly bulkhead on the roof of the building. They will also examine the possibility of flush-mounting the Gamma sector panel antenna to the northwesterly bulkhead on the roof. No questions were offered from the public. Mr. Pryor requested that the application be continued at a subsequent meeting of the Board. He indicated that revised plans would be submitted. Chair Harrison announced that the application would be continued at the September 15, 2010 meeting of the Board and that no further notice would be given.

The application of **Macrina Hamilton, 269 Grove Street** was called. The applicant was present. Jerry Guzman was sworn and stated that the applicant is his mother-in-law who resides at the property, and that he and his wife reside at the property as well. He described the application for variances associated with proposed additions to the dwelling. The proposal involves expanding the interior space of the first floor by infilling an enclosed porch at the rear of the dwelling, expanding the interior space of the second floor by building out northerly sections of the second floor out to the existing footprint, and then expanding upward for a new third floor/attic on the whole footprint under a new taller roof. The only changes to the footprint from a lot coverage perspective are minor, and include the columns proposed for the new roof covering the existing front stoop and steps, and the new unroofed rear stoop and steps. The proposed modifications will require the demolition of the entire existing roof and entire existing northerly side wall, and sections of the existing front and rear walls. The proposed roof to cover the existing front stoop and steps would have a front setback of 19 feet 6 inches and a variance is requested. The existing dwelling footprint has nonconforming side yard setbacks of 9.45 feet at the southerly side yard and 5.93 feet at the northerly side yard. The extension of the northerly side wall rearward on the second floor and upward for the new third floor/attic, and the extension of the southerly side wall upward for the new third floor/attic along these nonconforming side yard setbacks require a variance. The proposed shed dormer third floor/attic at the rear elevation measures 31 feet in width, which creates a third story and requires a variance.

The Board questioned the applicant. Mr. Guzman answered a few questions about the plans. Chair Harrison called for questions or comments from the public. Hugh Boyd, 271 Grove Street was sworn, and stated his opposition. He stated that the enclosing of the porches on the northerly side of the dwelling and the increased elevation of the dwelling would negatively impact his property. The Board questioned Mr. Boyd and Mr. Guzman. The Board discussed the application and suggested that the applicant consider revising the plan. Mabel Burdier-Guzman, 269 Grove Street, was sworn. She is the wife of Mr. Guzman and the applicant is her mother. She stated that many features of the design are related to her mother's needs since she suffers from osteoarthritis and a heart condition. She also stated that her home and Mr. Boyd's home are not aligned and that Mr. Boyd's home extends further to the rear. Mr. Boyd described the windows on the southerly side of his where he has a clear view of the northerly side of the applicant's property. The Board continued their discussion about revising the plans. Mr. Guzman indicated that he would try to revise the plans. Chair Harrison announced that the application would be continued at the September 15, 2010 meeting of the Board and that no further notice would be given.

The application of **Matt & Cathy Roberts 131 Wildwood Avenue** was called. The applicants were present. Dan Barrett was sworn. He is the builder of the proposed garage. An application has been filed for a variance to construct a new detached garage that would replace the existing detached garage in the rear yard that is structurally damaged. The existing garage has an easterly side yard setback of 1.52 feet at its closest point. The new garage would be constructed on a new foundation in the same location where it currently exists, with the same dimensions, and with the same easterly side yard setback described above, which requires a variance. The footprint of the garage measures 20 feet wide by 20 feet long. The garage would be 13 feet 6 inches feet tall. A variance is requested that a side yard setback of no less than 6 feet is required for a new detached garage and a lesser side yard setback of 1.52 feet is proposed from the easterly side property line. No other variances are requested. The Board questioned Mr. Barrett. Mr. Barrett indicated that storm water collected from the roof of the proposed garage would be directed away from the easterly side property line. He also indicated that the easterly side yard setback can be increased to 3 feet. Matt Roberts was sworn and stated that he prefers the setback to be left at the proposed 1.5 feet, that the neighbor on that side is not opposed to the variance, but that he would accept the increase if imposed. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could only be granted if the proposed easterly side yard setback was increased to be no less than 3 feet. The proposed garage is in keeping with that of similar properties in the neighborhood, and subject to the condition imposed below, the application would have no substantial detriment to the public good. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved subject to the following condition:

1. The proposed detached garage shall have an easterly side yard setback of no less than 3 feet, and all roof leaders on the proposed garage shall be directed away from the easterly side property line.

The application of **Anthony & Elizabeth Murphy, 15 Glenwood Road** was called. Anthony Murphy was sworn and described the application. A deck is proposed at the rear of the dwelling. The proposed deck measures approximately 590 square feet including the 2 sets of stairs from the deck. Variances are requested for a rear yard setback less than required, for a principal building coverage exceeding the maximum permitted, and for permitted principal structure width exceeding the maximum permitted. The rear yard setback required for the property is 39 feet  $8\frac{3}{8}$  inches, or 30 percent of the lot depth of 132.42. The proposed deck has a rear yard setback of 25 feet  $8\frac{1}{8}$  inches, which requires a variance. The maximum permitted principal building lot coverage, including the proposed deck, is 25 percent of the lot area of 7,945 square feet. A principal building lot coverage of 31 percent of the lot area is proposed, which requires a variance. The plan indicates that the proposed coverage exceeds the maximum permitted by 479 square feet. The maximum permitted principal structure width is 39 feet, or 65 percent of the lot frontage width of 60 feet. The existing dwelling measure approximately 37.5 feet in width using the widest points. The proposed deck would add approximately 3 feet to the overall width of the dwelling, to approximately 40.5 feet or 67.5 percent of the lot frontage width, which requires a variance.

Exhibit marked:

A-1 Computer-generated rendering of the proposed deck

The Board questioned the applicant. Elizabeth Murphy was sworn and described certain design features of the proposed deck. Mr. and Mrs. Murphy indicated that they would be willing to reduce the size of the deck. No questions or comments were offered from the public. The Board discussed the application. The Board took into account that the variances requested are for a deck and not for a typical building addition. The Board determined that the size of the proposed deck could be slightly reduced in order to eliminate the principal structure width variance and to reduce the principal building lot coverage to a degree. The rear yard setback variance requested could be approved due to the location of the dwelling on the lot. The variance requested for principal structure width was denied, which reduced the size of the deck by 1.5 feet on the westerly side. The principal building lot coverage variance was granted, although it could not exceed more than 410 square feet of what is permitted.

On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved subject to the following conditions:

1. The variance requested to exceed the maximum permitted principal structure width is denied.
2. The variances granted for a rear yard setback less than required and to exceed the maximum principal building lot coverage are limited to a deck.
3. The maximum principal building lot coverage variance granted for the deck is limited to 410 square feet over what is permitted.

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