

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**September 17, 2008**

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

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

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 Ms. English, the following Resolution memorializing the approval of the application of **Nancy Trehella, 380 Grove Street** was adopted, Mr. Whipple abstaining:

**WHEREAS, Nancy Trehella**, owner of property at **380 Grove Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA 40:55D-70c to permit a southerly side yard setback less than the minimum of 6 feet required by **Montclair Code Section 347-45C(1)** in connection with the proposed construction of a one-story addition onto the dwelling on property designated on the Township Tax Map as Lot 23 in Block 3501 and located in the R1 One Family Zone; and

**WHEREAS**, the applicant submitted a plot plan, floor plans, and elevations, on one sheet prepared by John Thomas Collins, dated July 2008; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on August 20, 2008 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, measures 52.78 feet in frontage width and 5,338 square feet in lot area, and contains a 2½ story single-family dwelling and a detached garage.

2. A one-story addition is proposed at the southerly rear corner of the dwelling, behind an existing one-story section of the dwelling. The addition would align with the southerly side wall of the existing dwelling and a rear wall of the dwelling, "filling in" a corner of the dwelling. The addition is to enlarge a family room.

3. The existing dwelling has a nonconforming southerly side yard setback of 4.61 feet at its closest point. The southerly wall of the addition will extend 10 feet further into the rear yard. The southerly side property line is angled in relation to the dwelling,

which causes the side yard setback of the proposed addition to be reduced from the existing 4.61 feet down to 4.5 feet, and a variance is requested. The proposed addition complies with all other zoning requirements.

4. The Board determined that the requested variance could be approved. The proposed addition is aligned with the walls of the existing dwelling and would not have a negative impact on any nearby property. The slight decrease in the southerly side yard setback is very minor and is caused by the angled position of the dwelling to the property line.

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 NJSA 40:55D-70C(1); and

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant did prove 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 NJSA 40:55D-70C(2); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within variance application of Nancy Trehwella 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. English, the following Resolution memorializing the approval of the application of **Cadbury Properties, LLC, 33 Plymouth Street** was adopted, Mr. Whipple abstaining:

**WHEREAS**, Cadbury Properties, LLC, as owner and applicant with respect to property located at 33 Plymouth Street, Montclair, New Jersey (hereinafter "the property"), did make application to the Montclair Township Board of Adjustment (hereinafter "the Board") for use and bulk variances, as well as site plan approval, to renovate and utilize the existing building on the property for business, professional, and medical offices, to construct two lobby additions (one containing an elevator) onto the building, and to redesign and expand the off-street parking areas on the property, designated as Lot 1 in Block 2203 on the Montclair Township Tax Maps and located in the R-1 One-Family Zone and R-4 Three-Story Apartment Zone; and

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

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to permit business, professional, and medical offices which are not permitted under Montclair Code Sections 347-41 and 347-66;
2. A variance pursuant to N.J.S.A. 40:55D-70d(6) to permit the lobby addition containing the elevator and elevator enclosure to exceed by more than 10 percent the maximum permitted linear height in the R-1 Zone under Montclair Code Section 347-45A(1);
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit the elevation at the southerly basement terrace to exceed the maximum permitted story height in the R-1 Zone under Montclair Code Section 347-45A(2);
4. A variance pursuant to N.J.S.A. 40:55D-70c to permit redesigned and expanded on-site parking spaces to be located in front yards between the building and the curbs of the streets on which the building fronts under Montclair Code Sections 347-46c and 347-71;
5. A variance pursuant to N.J.S.A. 40:55D-70c to permit masonry piers along the front property lines to exceed the maximum permitted height of 4 ½ feet under Montclair Code Section 347-27A(2);
6. A variance pursuant to N.J.S.A. 40:55D-70c to permit plaque signage on masonry piers along the front property lines which is not permitted signage under Montclair Code Section 347-108;
7. An exception from Montclair Code Section 281-9B to permit regular size parking spaces to have minimum dimensions of 9 feet by 18 feet; and
8. An exception from Montclair Code Section 281-9H to permit parking lots to provide less than 5 percent landscaped areas within the pavement perimeter; and

**WHEREAS**, the applicant submitted architectural plans prepared by Sionas Architecture, P.C. dated April 25, 2008 (A1 through A8), a landscape plan prepared by Sionas Architecture, P.C. revised through August 18, 2008, a Ruud Lighting plan dated April 25, 2008, an off-street parking requirements chart prepared by Sionas Architecture, P.C. dated May 19, 2008, engineering plans prepared by RCC Design, Inc. revised through June 20, 2008 (SP1 through SP6), a drainage report prepared by RCC Design, Inc. dated April 25, 2008, and a traffic engineering report prepared by Hamal Associates, Inc. dated June 30, 2008; and

**WHEREAS**, this matter came on to be heard at meetings of the Board held on July 16, 2008 and August 20, 2008, at which time it was established that notice was properly published and that property owners within 200 feet of the property had been properly served with notice; and

**WHEREAS**, the Board carefully reviewed the testimony, exhibits (A-1 through A-20), questions, and comments presented at the public hearings and established the following findings:

1. The property is a corner lot consisting of 1.22 acres. It has three frontages on Plymouth Street, Trinity Place, and The Crescent. It is split-zoned, with the southerly portion extending to Plymouth Street in the R-1 Zone and the northerly portion extending to The Crescent in the R-4 Zone. The northerly portion of the property abuts the OR-4 Three-Story Apartment and Office Building Zone. The property is approximately one block south of the Central Business District;

2. The property contains a large building, which is now vacant, and several parking lots. The building includes a southerly section that was originally a single-family dwelling constructed in or about 1877, however, over time that section has been expanded and extended to the north and west so that now most of the building consists of the additions. The interior square footage of approximately 19,234 square feet consists of classrooms, offices, assembly space, and related areas. It is deteriorated and needs rehabilitation. The building exterior and surface parking lots also require rehabilitation;

3. The property and building have been in commercial school use for many years. The Kimberly School occupied the property and building from 1906 to 1950. The Katherine Gibbs School occupied the property and building from 1950 to 2004;

4. The applicant proposes to retain the existing building, restore its interior and exterior, and refit it for use as business, professional, and medical offices in a project to be named "Academy Square";

5. The plans provide for a new lobby, elevator, and hallway/stairway addition to the west side of the building and a new lobby addition to the east side of the building. They consist of approximately 1,215 square feet. They are intended to provide barrier-free accommodation and improved circulation in the building. The plans also provide for basement terraces to be excavated on the west side of the building. They are intended to provide direct ingress and egress and to increase light to the basement level. The plans further provide that the existing classrooms, offices, and assembly space will be made into a variety of unique offices. The building's interior square footage will increase from approximately 19,234 square feet to approximately 20,449 square feet, an increase of 1,215 square feet attributable to the barrier-free accommodation and improved circulation;

6. The plans provide that the current inventory of 92 surface parking spaces distributed in parking lots on the easterly portion of the property and the northwesterly portion of the property will be reconfigured, resurfaced, and reduced to 90 parking spaces. The plans eliminate the existing "stacked" or "valet" parking spaces. They extend the existing parking spaces in the Trinity Place front yard further to the south;

7. The landscape plan eliminates certain trees and other vegetation, relocates three holly trees, and introduces substantial new plantings in the form of trees, shrubs, and flowers. The lighting plan provides bollard-style light fixtures to illuminate the parking lots;

8. With respect to the use variance to permit business, professional, and medical offices, there are various purposes of zoning and special reasons in support of the use variance, including that it promotes the appropriate use of land and the general welfare because the site is particularly suitable for the project (N.J.S.A. 40:55D-2(a)), provides sufficient space at an appropriate location for commercial office use (N.J.S.A. 40:55D-2(g)), promotes a desirable visual environment through creative development techniques (N.J.S.A. 40:55D-2(i)), retains and conserves a property and building with historical and architectural value (N.J.S.A. 40:55D-2(j)), and coordinates public and private initiatives shaping land development and the more efficient use of land (N.J.S.A. 40:55D-2(m)). The property is particularly suitable for the proposed offices because it has been in continuous commercial school use for many years and because it is logical to renovate existing classrooms, offices, and assembly areas and to refit them for use as offices proximate to the Central Business District. The project creates a desirable visual environment by restoring the building's interior and exterior and by introducing substantial plantings and decorative fencing. The project conserves a notable building and property, combining private investment with the public interest in reviving and reusing valuable property;

9. The height variances are caused by the construction of the lobby containing the elevator and elevator enclosure and the excavation of the southerly basement terrace. The height of the proposed elevator enclosure is at its highest point 42 feet 10 inches (reduced from 45 feet), which exceeds the permitted linear height of 35 feet by more than 10 percent. The elevation at the proposed southerly basement terrace increases from three stories to four stories, which exceeds the permitted story height of 2 ½ stories.

10. There are purposes of zoning and special reasons in support of the linear height variance, including the aforementioned special reasons and that the proposed elevator is in furtherance of barrier-free access to the building and thus promotes public accommodation and safety (N.J.S.A. 40:55D-2(a)). Furthermore, the proposed height of 42 feet 10 inches is less than the existing height of the existing roof ridgeline of 43 feet. In addition, the proposed lobby containing the elevator and the elevator enclosure are consistent with the purposes of the height limitation set forth in the zoning ordinance because, among other things, they permit adequate light, air, and open space and they provide a desirable visual environment. There are also purposes of zoning in favor of the story height variance, including the aforementioned goals of zoning and that the proposed terrace allows increased light and air to the basement level and thus provides for improved light, air, and open space (N.J.S.A. 40:55D-2(c));

11. There are purposes of zoning in favor of the parking location variance, necessitated by redesign of existing front yard parking and extension of existing front yard parking in the Trinity Place front yard, including the aforementioned goals of zoning

and that the proposed front yard parking permits an adequate parking supply without burdening on-street parking spaces, thereby promoting the free flow of traffic and eliminating traffic congestion (N.J.S.A. 40:55D-2(h)). At the same time, the corner lot with three frontages and three front yards, in combination with the lawfully existing building on the property, require that most of the requisite on-site parking must be provided in a front yard, thereby causing an exceptional situation uniquely affecting the property and peculiar and exceptional practical difficulties and exceptional and undue hardship;

12. The plans provide that the current inventory of 92 surface parking spaces will be reduced to 90 parking spaces. The project as proposed by the applicant requires 90 on-site parking spaces under the zoning ordinance. The proposed 17,359 square feet of general business and professional offices require 69.4 parking spaces, and the proposed 3,090 square feet of medical offices require 20.6 parking spaces, for a total of 90 parking spaces. Although the applicant has proposed 90 on-site parking spaces in compliance with the zoning ordinance, it is preferable to provide some additional lawn or landscape area along a portion of the Trinity Place frontage (west frontage), in particular, at the fifth, sixth, seventh, and eighth parking spaces north of the Trinity Place driveway shown on the layout plan. This additional green area necessitates a variance for four less parking spaces than required by the zoning ordinance. Such variance is justified under zoning purposes providing for adequate open space and for a desirable visual environment (N.J.S.A. 40:55D-2(c) and (i)). This variance represents a benefit to the surrounding properties and represents a minor departure from the zoning ordinance. As noted in paragraph 5 above, the increase in the building's square footage is attributable to barrier-free accommodation and improved circulation, and such improvements necessitate approximately four of the parking spaces required under the zoning ordinance, however, such improvements do not include any new office space that generates workers or automobiles;

13. There are purposes of zoning in favor of the variance for the height of masonry piers, proposed to be 5 feet 8  $\frac{3}{4}$  inches rather than 4  $\frac{1}{2}$  feet, and the variance for plaque signage, which is an accessory signage not permitted in the zone, including the aforementioned goals of zoning and that the proposed masonry piers and plaque signage increase the residential appearance of the property and promote a desirable visual environment (N.J.S.A. 40:55D-2(i));

14. The variances do not cause substantial detriment to the public good or substantial impairment of the intent and purpose of the master plan or the zoning ordinance. They eliminate an intense and often unwelcome school use. They revitalize and substantially improve the building and grounds. They improve the neighborhood. They create jobs and services in the community. They provide barrier-free access to all levels of the building. They provide adequate on-site parking, and the vast majority of the proposed front yard parking is a longstanding condition of the property. They do not cause adverse traffic impacts, as testified to by the applicant's traffic engineer. They provide significant new plantings, attractive fencing, and minimal signage. They are consistent with the master plan and master plan reexamination policies. The 1987 Master Plan provides that the northerly portion of the property should be in office and

residential use, reflecting the traditional and surrounding uses. The 2006 Master Plan Reexamination Report endorses planning principles which support conservation of existing buildings, adequate parking capacity, accessible design, and environmentally sound buildings. While office use is ordinarily not appropriate in residential zones, the existing large commercial building and its interior design, the existing parking lots, and the specific characteristics of the property present a unique situation that makes the property especially appropriate for the proposed business, professional, and medical offices;

15. In the case of the bulk variances founded upon purposes of zoning, the benefits thereof substantially outweigh any detriment;

16. The exception for providing parking spaces with dimensions of 9 feet by 18 feet rather than 9 feet by 19 feet is justified because the dimensions of 9 feet by 18 feet are adequate under accepted engineering standards and are also in compliance with the state-wide residential site improvement standards. The literal enforcement of the parking space dimension standard is impracticable or will exact undue hardship given the characteristics of the property, and the exception is reasonable and within the general purpose and intent of the site plan ordinance.

17. The exception for providing less than 5 percent interior landscaping in the easterly parking lot is justified given that it is preferable to maintain all proposed parking spaces at that location and that there will be substantial perimeter landscaping at that location. The literal enforcement of the 5 percent interior landscaping standard is impracticable or will exact undue hardship given the characteristics of the property, and the exception is reasonable and within the general purpose and intent of the site plan ordinance. The exception for providing less than 5 percent interior landscaping in the northwesterly parking lot is denied for the reasons set forth in paragraph 12 above;

18. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant proved the requisite special reasons for granting the use variance and the linear height variance and proved by a preponderance of the evidence that the same 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;

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the parking location 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 N.J.S.A. 40:55D-70c(1); and

**WHEREAS**, the Board, based on the foregoing findings, concluded with respect to the story height variance, the parking location variance, the parking supply variance, the masonry pier variance, and the plaque signage variance that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that 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 pursuant to 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 Cadbury Properties, LLC for use and bulk variances, exceptions, and preliminary and final site plan approval is hereby approved and granted as set forth herein, subject to the following conditions:

1. The medical offices shall be limited to a maximum of 3,090 square feet, however, if the zoning ordinance is amended in the future to provide a less stringent on-site parking supply requirement for medical offices, then the medical office square footage may increase consistent with such amendment and the terms of this resolution;
2. The highest point of the lobby containing the elevator and the elevator enclosure shall not exceed the height of the existing roof ridgeline of 43 feet;
3. The plans shall be revised to eliminate any exterior stairs leading down to the basement terraces;
4. One of the two barrier-free parking spaces in the easterly parking lot shall be relocated next to the two barrier-free spaces in the northwesterly parking lot so that the easterly lot shall contain one barrier-free parking space and the northwesterly lot shall contain three barrier-free parking spaces;
5. The easterly parking lot shall be limited to building tenants only;
6. The five most easterly parking spaces in the northwesterly parking lot shall be limited to building tenants only;
7. The masonry piers shall be limited to one pier on each side of the three driveways servicing the property and one pier on each side of the building entrance facing Plymouth Street;
8. The applicant shall be provided with the maintenance manual for the stormwater system and shall comply with the maintenance schedule;
9. The applicant shall comply with items 1, 3, and 5 of the Board Engineer's letter dated June 25, 2008 and shall comply with item 2 of the Board Engineer's letter date June 25, 2008 so long as the Township has historically required that a developer install new curb and if the Township Engineer recommends such new curb within 60 days of the date of this resolution;

10. Pursuant to the on-site parking supply variance granted herein, the layout plan for the northwesterly parking lot shall eliminate the fifth, sixth, seventh, and eighth parking spaces north of the Trinity Place driveway and shall substitute therefore lawn and/or additional plantings; and

11. The northwesterly parking lot shall in compliance with Montclair Code Section 281-9H include 5 percent interior landscaping which as testified to by the applicant's engineer shall consist of the proposed landscaping in the northwesterly parking lot and the four parking spaces and additional green area referred to in paragraph 12 above.

**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 **Wallwood Gardens, Inc, 400 Orange Road** was adjourned to the December 10, 2008 regular meeting of the Board, at the applicant's request, subject to the condition that the applicant would be required to complete a public notice for the December 10, 2008 date. The Board was granted an extension of time on the application. The application of **Immaculate Conception High School, Codey Field - 267 Orange Road** was adjourned to the October 15, 2008 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application. The application of **Pinnacle Asset, LLC, 295 Bloomfield Avenue** was withdrawn, at the applicant's request, without prejudice to its reinstatement at a later date.

Chair Harrison called the application of **James Brown, 36 Tuxedo Road**. James Brown was sworn and described the application. The property contains a 2½-story, single-family dwelling with a small existing dormer at the rear on third floor or attic level. The proposal is to remove the small dormer and construct a full width dormer at the third floor level on the rear elevation. The proposed dormer would allow for the expansion of a third floor bathroom, bedroom, and study in connection with the reconfiguration of the third floor. The height of the dwelling would not change and would remain at less than the maximum permitted height of 35 feet. The ordinance permits within a half story, dormers that do not exceed 50 percent of the width of the façade. Approximately 16 feet of dormer width would be permitted in the roof at the rear of the dwelling without a variance and the proposed dormer addition measures 32 feet in width. The Board questioned Mr. Brown, who stated that he would be willing to reduce the width of the dormer. No questions or comments were offered from the public. The Board discussed the application and determined that the variance requested could be approved, subject to a reduction in the width of the dormer, since the dwelling would remain in keeping with the existing size, scale, and character of the dwellings in the neighborhood, the overall height of the dwelling would not be increased, and the proposed addition would not be visible from the street or have a negative impact on nearby properties. On motion by Mr. Fleischer, seconded by Ms. English the application was approved, subject to the following condition:

1. The width of the proposed dormer shall be decreased by at least 18 inches on each of its sides, reducing its overall width to 29 feet.

Chair Harrison called the continuation of the application of **New Cingular Wireless PCS, LLC, 641 Bloomfield Avenue**. Renu Shevade, Esq. appeared as attorney and called Maureen Hranek, Site Acquisition Coordinator, Bechtel Corporation, who was sworn. She stated that they have been instructed by the owner of the building that they cannot flush-mount any of the proposed panel antennas on the sides of the building because the building is located at the property lines and the antennas would extend over the property lines. The Board questioned Ms. Hranek extensively on the subject property and other potential sites in the area. She stated that the owner is aware that there are currently flush-mounted antennas on the westerly side of the building, which are in the air-space of the adjoining Township owned property. She stated that they would have to look further into the availability other sites mentioned by the Board. No questions were offered from the public.

Shahed Husain, PE, was sworn and stated his qualifications in Radio frequency Engineering. He described Exhibit A-1 "Existing Coverage Map" which was marked at the last meeting and also described the proposed installation, the existing coverage, proposed coverage, and other more specific information relating to the antennas and the network. He stated that the proposed installation also provides capacity offload from existing on-air sites which would help the effectiveness of their network.

Marked into evidence were:

- A-6 Coverage provided by proposed site
- A-7 Graph depicting blocked call percentages 1900 mHz
- A-8 Graph depicting blocked call percentages 800 mHz
- A-9 FCC compliance report dated June 18, 2008
- A-10 Topographic Map

The Board questioned the witness extensively on the testimony, the Exhibits, the proposed antennas, and other potential sites that could work. No questions were offered from the public. Ms. Shevade requested that the application be continued at the next meeting so that they could look into the Board's concerns and granted the Board an extension of time. Chair Harrison announced that the application will be continued at the October 15, 2008 regular meeting and that no further notice would be given.

Chair Harrison called the application of **Metro PCS New York, LLC, 36 Hawthorne Place**. Greg Meese, Esq. appeared as attorney and described the application. Peter Papay, PE, was sworn and stated his qualifications as a Professional Engineer and described the plans. Four equipment cabinets are proposed within a screened enclosure measuring 13 feet 10 inches by 20 feet 7-3/4 inches and 9 feet in height. The roof top enclosure is to be located between an existing equipment area to the west and a fenced enclosure to the east. A total of seven panel antennas are proposed. Six of the antennas are proposed to be located within stealth enclosures with

two antennas each to be located on the northerly, easterly and southerly sections of the roof. The remaining panel antenna is proposed to be flush mounted to an existing bulkhead in the center of the roof measuring 51.3 inches in height by 11 foot 8 inches in width by 2.7 inches in depth. The Board questioned Mr. Papay. No questions were offered from the public.

Fahd Kananth, PE, was sworn and stated his qualifications in Radio frequency Engineering. MetroPCS 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.

Marked into evidence was:

A-1 Base Map with 2 overlays, Existing Coverage and Proposed Coverage

The Board questioned the witness extensively on the testimony, the Exhibits, and the proposed antennas. No questions were offered from the public.

Mark Nidle, PE, was sworn and stated his qualifications as an Electrical Engineer 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.

A-2 Antenna Site FCC RF Compliance Assessment and Report, prepared by Pinnacle Telecom Group, dated March 13, 2007

The Board questioned the witness. No questions were offered from the public.

Ronald Rinertsen, PP, was sworn and stated his qualifications as a Professional Planner. He described the application. 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. 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 six 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. Installation of the antennas will provide coverage and wireless broadband personal communication services to MetroPCS's subscribers as per its FCC license which will promote the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law. 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-3 Aerial Photograph indicating locations of the photo simulations
- A-4 Photo simulation depicting the proposed antenna installation
- A-5 Photo simulation depicting the proposed antenna installation
- A-6 Photo simulation depicting the proposed antenna installation
- A-7 Photo simulation depicting the proposed antenna installation

The Board questioned the witness extensively and expressed their concerns with regard to the visual impact of the proposed antennas as depicted in the photo simulations. A discussion ensued among the witnesses and the Board and the applicant agreed to modify the application to relocate the two beta section antennas to the bulkhead and the two alpha and two gamma section antennas to the proposed screen enclosure with the flexibility to enlarge the screen as describe within conditions of approval. The Board discussed the application and concluded that the application could be approved subject to conditions. Based upon the conditions imposed below, 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. On motion by Ms. English, seconded by Mr. Fleischer the application was approved, subject to the following conditions:

1. The two beta section antennas originally proposed along the easterly edge of the building shall be relocated and mounted to the bulkhead.
2. The antennas to be mounted to the bulkhead shall not exceed the height of the bulkhead and shall be painted to match the color of the bulkhead.
3. The two alpha sector antennas originally proposed at the northerly edge of the building and the two gamma sector antennas originally proposed along the southerly edge of the building shall be relocated and attached to the outside of the proposed screening around the equipment platform at a height not to exceed 69 feet 8 inches. The proposed screening enclosure may be enlarged not more than two feet in length, width and height.
4. The antennas to be attached to the screen shall be painted to match the color of the screen.
5. 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. Fleischer, seconded by Mr. Susswein the meeting was adjourned.