

MINUTES OF THE BOARD OF ADJUSTMENT
October 15, 2008

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

ABSENT: Ms. Cockey, Mr. Susswein, 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. Whipple, seconded by Mr. Rubenstein, the **Minutes of the May 28, 2008** special meeting were adopted, Chair Harrison, Ms. English and Ms. Holloway abstaining. On motion by Mr. Whipple, seconded by Ms. English, the **Minutes of the June 11, 2008** special meeting were adopted, Chair Harrison, Ms. Holloway and Mr. Rubenstein abstaining. On motion by Mr. Whipple, seconded by Mr. Rubenstein, the **Minutes of the June 18, 2008** regular meeting were adopted as modified.

On motion by Mr. Fleischer, seconded by Ms. English, the following Resolution memorializing the approval of the application of **James Brown, 36 Tuxedo Road** was adopted, Ms. Holloway abstaining:

WHEREAS, James Brown, as owner, did make application to the Board of Adjustment of the Township of to construct a dormer addition to the third floor at the rear of his dwelling on property designated as Lot 8 in Block 4313 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-45A(2)** in that a maximum of 2½ stories is permitted and the proposed addition creates a third story at the rear of the dwelling; and

WHEREAS, the applicant submitted a plot plan, attic floor plan, rear elevation, and photographs; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 17, 2008, 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 is an interior lot located in the R-1 One-Family Zone. The property contains a 2½-story, single-family dwelling with a detached garage in the rear yard. The property measures 60 feet in lot width and 160 feet in lot depth.

2. The rear elevation depicts a smaller existing dormer at the 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.

3. The ordinance permits within a half story, dormers that do not exceed 50 percent of the width of the façade. For the subject property, 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.

4. The Board determined that the variance requested could be approved, subject to the modifications described further below, 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.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested 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 aforementioned findings, concluded that the applicant did prove 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 the requirements of N.J.S.A. 40:55D-70c(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of James Brown is 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.

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 Mr. Whipple, the following Resolution memorializing the approval of the application of **Metro PCS New York, LLC, 36 Hawthorne Place** was adopted, Ms. Holloway abstaining:

WHEREAS, MetroPCS New York, LLC (hereinafter "MetroPCS"), did make application to the Board of Adjustment of the Township of Montclair (hereinafter "the Board") to install seven panel antennas, one GPS antenna and four equipment cabinets 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 prepared by Papay Engineering & Construction revised through February 26, 2008 consisting of Sheets T-1, T-1A, S-1 and S-2; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 17, 2008 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.

3. 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. 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. The application sought approval for a total of seven panel antennas. Six of the antennas were originally 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.

4. 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).

5. During the course of the hearing, members of the Board expressed their concerns with regard to the visual impact of the proposed antennas as depicted in the photo simulations offered by the applicant.

6. As a result of the concerns expressed by the Board, 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 subject to the conditions below.

7. Installation of the antennas will provide coverage and wireless broadband personal communication services to MetroPCS's subscribers as per its FCC license which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law.

8. 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.

9. 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.

10. 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.

11. 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 MetroPCS, for variance relief pursuant to N.J.S.A. 40:55D-70d(3) is hereby 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.

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 **Immaculate Conception High School, Codey Field - 267 Orange Road** was adjourned to the November 19, 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 **First Evangelical Lutheran Church, 153 Park Street** was adjourned to the November 19, 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.

Chair Harrison was recused and Vice Chair Fleischer called the application of **Omnipoint Communications, Inc., 153 Park Street** for the purpose of scheduling special meeting dates. Thomas Gordon, Esq., on behalf of James Pryor, Esq., attorney for the applicant, and Terry Thornton, Esq., resident of 160 Park Street, and objector to the application were present. After some discussion, a special meeting date of November 12, 2008 was selected to continue the application. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the continuation of the application of **New Cingular Wireless PCS, LLC, 641 Bloomfield Avenue**. Renu Shevade, Esq. appeared as

attorney and recalled Maureen Hranek, Site Acquisition Coordinator, Bechtel Corporation, who was still under oath. She stated that they have taken a closer and second look at the search ring looking for alternative sites and discussed the problems associated with the other location that could be considered as alternatives. The Board questioned Ms. Hranek extensively on her testimony. No questions were offered from the public.

Shahed Husain, PE, was recalled and was still under oath. He described the Exhibit A-11 through A-15, 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. The Exhibits presented this evening would help too clarify this information.

Marked into evidence were:

- A-11 Existing coverage map from neighboring sites, depicting each sector in different colors
- A-12 Existing coverage map from neighboring sites, depicting the offloading of Sector C from 56 Walnut Street
- A-13 Proposed coverage including subject property, depicting the offloading of Sector C from 56 Walnut Street
- A-14 Graph depicting blocked call percentages 1900 mHz
- A-15 Graph depicting blocked call percentages 850 mHz

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.

Heather Zieziula, Professional Planner, was sworn, stated her qualifications and described the application. The subject property is located on the northerly side of Bloomfield Avenue between Midland Avenue and Valley Road and contains 11,620 square feet in size upon which is situated a six story commercial building. The application complies with all the conditional use standards contained in the Montclair Township Zoning Ordinance except that eight of the antennas exceed the height of the top of the parapet wall to which it is attached by six feet contrary to Montclair Code Section 347-17.1C(5)(d). Despite the deviation from the aforementioned conditional use standard, the site continues to be appropriate for the conditional use consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994). 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. Installation of the antennas will provide improved coverage and increased capacity to Cingular's subscribers as per its FCC license which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law. Based upon the testimony of the radio frequency compliance expert, the

proposed antennas and related equipment comply with all applicable State and Federal regulations for radiation transmission levels. The visual intrusion caused by the height of the proposed antennas is minimal and will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance. The application does not involve any noise, vibrations, smoke, dust, odors, heat or glare and thus will not cause substantial detriment to the public good and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance. The Board questioned the witness extensively on her testimony. No questions were offered from the public.

Greg Johnson, PE, was recalled and was still under oath. He stated that the plan originally described at the July 16, 2008 meeting of the Board had been revised. At some point following the July 16, 2008 hearing, the applicant became aware that certain Sprint Nextel Corporation antennas on the building, that were originally approved by the Planning Board in 2000, had been modified in size and would conflict with the proposed antennas in Sector A. As a result, a revised plan was submitted which increased the height of the screen wall one foot 8 inches and consequently, the height of the proposed antennas to 82 feet 8 inches above ground level. Mr. Husain also described the revised plan from the standpoint of radio frequency engineering. He stated that the modified position of the Sprint Nextel antennas in Sector A would definitely interfere with their system and that is why they had to raise their antennas in Sector A as well. He did not know whether the Sprint Nextel modifications were approved by a Board. The Board questioned the witness extensively.

Chair Harrison called for questions from the public. Frank Haimbach, 580 Park Street, asked questions about the signal blockage issue. Luther Flurry, 18-30 South Fullerton Avenue, asked what benefits a larger sized antenna would provide. He also inquired about how a zoning violation relating to the Sprint Nextel antenna could be enforced. No public comment was offered. Ms. Shevade summarized the application. The Board had a lengthy discussion. On motion by Mr. Whipple, seconded by Mr. Rubenstein, the application was approved, Mr. Fleischer and Mr. Kenney voting in the negative, subject to the following conditions:

1. In the event the present location of the Sprint Nextel antennas is found to be consistent with the plans approved by the Montclair Planning Board in 2000 (either by the Montclair Construction Official or a court of law) or, alternatively, in the event Sprint Nextel obtains a variance for the present location of the antennas, Cingular shall be entitled to construct its facility in accordance with the revised plan. In the event the present location of the Spring Nextel antennas is found to be inconsistent with the plans approved in 2000, Cingular's approval shall be limited to the original plan. Notwithstanding the foregoing, Cingular shall have the option to construct its facility, at its risk, in accordance with the revised plan prior to any determination regarding the Spring Nextel facility. As set forth above, in the event the present location of the Sprint Nextel antennas is found to be inconsistent with the plans approved in 2000, Cingular shall be required, within 6 months of a final determination by either a court of law or land use board exercising jurisdiction over the matter, whichever is later, to relocate its antennas to be consistent with the original plan.

2. The screen wall in Sector A shall be painted to match the existing building façade.
3. The unscreened antennas in Sectors B and C shall be the color of galvanized steel.
4. The height of the antennas in Sector A shall not exceed the height of the screen wall to which they are affixed at 81 feet above ground level under the original plan and 82 feet 8 inches above ground level under the revised plan.
5. The height of the antennas in Sectors B and C shall not exceed 81 feet 5 inches above ground level.
6. The applicant shall apply to the Historic Preservation Commission for approval of the revised plan.
7. 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.

The Board took a short recess.

Chair Harrison called the application of **Craftco, 14 North Willow Street and 173 Glenridge Avenue**. William Ewing, Esq. appeared as attorney and described the application. Edward Perrin, 135 Wildwood Avenue, and part owner of the subject property was sworn. He described the ownership group named Craftco and their charitable activities as a fraternal organization called the Eureka Lodge, which has been in existence for 105 years, the past 100 years in Montclair. He stated they are seeking to subdivide the property and sell the portion with the residential building as their organization is in need of money. The Board questioned Mr. Perrin. No questions were offered from the public.

Peter Steck, PP, was sworn and stated his qualifications as a Professional Planner. He described the property and the application. The subject property is located at the northwest corner of Glenridge Avenue and North Willow Street and contains 4,434 square feet of area and is located within an historic district. The lot contains frontage of 40 feet on Glenridge Avenue and 111.95 feet on North Willow Street. A channelized brook crosses the northern end of the property. The subject property is improved with two separate buildings. The two-story building on proposed Lot 38.02 contains first floor vacant commercial space with a gross floor area of approximately 2,960 square feet. The aforementioned first floor space was used for many years as an antique business and prior to that for automotive parts sales. The second floor of the building is utilized for assembly by a Masonic lodge known as Eureka Lodge 52. The two-story dwelling on proposed Lot 38.01 contains a three room one bedroom apartment on each floor.

Marked into evidence was:

A-1 Planning Exhibit, prepared by Peter Steck, PP, dated October 4, 2008

The proposal is to subdivide the property into two lots so that each building may be accommodated on its own lot. The proposed subdivision line will run along the northerly edge of the building fronting on Glenridge Avenue. Proposed Lot 38.01 will contain 1,446 square feet and proposed Lot 38.02 will contain 2,988 square feet. A 3.59 foot wide easement is proposed between the buildings to provide access to both buildings. The plan constitutes appropriate use of land in a manner which promotes the general welfare consistent with N.J.S.A. 40:55D-2a. The building on proposed Lot 38.02 is designed for commercial use on the first floor and assembly use on the second floor and is architecturally oriented towards the Glenridge Avenue corridor. The two-family home on proposed Lot 38.01 is oriented to North Willow Street and reflects the dominant residential use on that street. The subdivision allows two unrelated uses to be separated in a logical fashion which reflects the established land use pattern in the area. Approval of the application promotes historic preservation consistent with N.J.S.A.40:55D-2j. Under existing conditions there is some incentive to demolish the two-family dwelling to provide parking for the larger building. The proposed subdivision lessens the likelihood that any of the buildings will be demolished for parking or open space to benefit the remaining building. The applicant seeks lot area and rear yard setback variances; however, the proposed subdivision does not include any physical changes to the site. By reason of structures lawfully existing on the site, the strict application of the zoning regulations results in peculiar and exceptional practical difficulties and undue hardship upon the applicant. Additionally, approval of this application would advance various purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-70-1. Approval of the application will have no adverse impact on area properties as the property will function without any change, and there will be no substantial detriment to the public good. The application is not inconsistent with the intent and purpose of the zoning ordinance or the 1978 Land Use Element of the Master Plan which recommends a zoning pattern similar to the existing pattern. The central business designation was intended to encourage a wide range of retail, office and other commercial uses as well as residential use with certain limitations.

The Board questioned Mr. Steck. No questions were offered from the public. The Board discussed the application. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, Mr. Rubenstein voting in the negative, subject to the following condition:

1. Prior to the issuance of a building permit, the applicant shall pay any and all outstanding property taxes.

Chair Harrison called the application of **S.W. Flowers, M.D., 460 Bloomfield Avenue**. Calvin Trevenen, Esq. appeared as attorney and described the application. The applicant is under contract to purchase 2 first floor commercial condominium units, combine the 2 spaces, and is seeking a variance to occupy the combined space as a

medical office. He stated that he would call one witness and request that the application be carried to the November 19, 2008 regular meeting.

Jonathan Perlstein, Architect, was sworn, and stated his qualifications. The property is a corner lot at the intersection of Bloomfield Avenue and South Fullerton Avenue. The property contains a 3-story building with commercial condominium units. The subject condominium units are located on the first floor with street frontage on Bloomfield Avenue; the unit on the left previously contained a lawfully existing nonconforming law office, and the unit on the right contains a retail use that has its entrance door in the lobby only. The plan is to combine the interior of these two units, which will contain 2,497 total net square feet of floor area. The applicant proposes to use the space as a medical office as depicted, along with a retail sales area of 620 square feet that would be located across the entire combined store front. The Board questioned Mr. Perlstein extensively. No questions were offered from the public. The application was adjourned to the November 19, 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.

Chair Harrison called the application of **Robert Crossley, 42 Mt. Hebron Road**. Robert Crossley was sworn. Y.B. Tomm was sworn and stated his qualifications as an Architect. Mr. Tomm described the property and the application. The subject property is an irregularly shaped interior lot, and contains a 2½-story, single-family dwelling with an attached 1-car garage and carport on the easterly side of the dwelling. The property has 60.07 feet of lot frontage and contains 12,300 square feet in lot area. A second floor addition is proposed on the easterly side of the dwelling, where there is presently a carport at grade level. The existing carport would be enclosed and incorporated into the existing attached garage. The second floor addition would create an additional bedroom. A balcony is also proposed on the second floor at the rear of the dwelling. The existing carport has a nonconforming easterly side yard setback of 4.75 feet at its closest point, where a minimum of 6 feet is required. The proposed second floor addition would be aligned with the walls that would enclose the carport, and would also be set back 4.75 feet from the easterly side property line, which requires a variance. The required rear yard setback for the property is approximately 60.6 feet. The existing dwelling is oddly positioned on the lot and has a section that extends significantly into the required rear yard setback, and has a nonconforming rear yard setback of approximately 42 feet at its closest point. The proposed balcony is set back approximately 57 feet from the rear property line, and a variance is requested.

The Board questioned Mr. Tomm. Chair Harrison called for questions and comments from the public. Frank Haimbach, 580 Park Street, was sworn. He asked questions about tree removal that has occurred and drainage issues. The Board discussed the application and determined that the variances requested could be approved. The proposed second floor addition is aligned with the existing nonconforming carport below it, and the proposed balcony does not exacerbate the nonconforming rear yard setback. The proposed addition and balcony would not have negative impact on nearby properties. On motion by Ms. English, seconded by Mr. Fleischer, the application was approved.

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