

**MINUTES OF THE BOARD OF ADJUSTMENT
MARCH 12, 2003**

PRESENT: Chair Harrison, Ms. Cockey, Ms. Costello, Vice Chair Fleischer, Mr. Flood, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey, and Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: None

Secretary Sammet called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison called the site plan and variance application of **Montclair Radiological Associates, 114-116 Park Street**. Mr. Susswein stepped down for this application. Grant Gille, Esq., appeared as attorney for the applicants and described the application. He stated that the subject property previously consisted of 2 lots that have since been merged into a single lot. He also stated that the zoning history of the subject property provides evidence that establishes the existing office use at 114 Park Street as a pre-existing, lawful, nonconforming use.

Marked into evidence were:

- A-1 Full Copy of the Township of Montclair Code Book, certified by the Township Clerk on April 15, 1980 and including Chapter 347, Zoning, adopted January 23, 1979
- A-2 Copy of Montclair Code Section 224-54, Regulations for OR-3 Garden Apartment and Office Building Zone, dated February 25, 1981
- A-3 Enlarged portion of the 1979 Zoning Map showing the subject property in the OR-3 Garden Apartment and Office Building Zone
- A-4 Portion of the 1979 Zoning Map showing the adoption date of January 1979
- A-5 Full copy of the 1986 Zoning Map, amended to October 4, 1988
- A-6 Enlarged portion of the 1986 Zoning Map showing the subject property located in the R-3 Garden Group Zone

Mr. Gille stated that 116 Park Street contains a one-story medical office building and that 114 Park Street contains a 2½-story building used as offices supporting the

medical office at 116 Park Street. He described the history of the property and stated that the Planning Board approved 116 Park Street as a medical office in 1954 and that the applicant purchased 114 Park Street in 1964. He stated that testimony would be provided that would demonstrate that the use of 114 Park Street as office space commenced during 1979 and 1980. He further stated that, at the time of the change in use, 114 Park Street was located in the OR-3 Zone, in which office uses are permitted. He continued by stating that by 1986, the zone of the property was changed to the R-3 Zone and office uses were prohibited, rendering the office use at 114 Park Street a pre-existing, nonconforming use.

Mr. Gille called William DiTosto, Chief Executive Officer of Montclair Radiological Associates, who was sworn. He stated that he has been with Montclair Radiological Associates since December of 1979. He stated that 114 Park Street contained a 2-family dwelling prior to 1979 and that during that year, the first floor of the building at 114 Park Street began to be used as offices related to the medical office use at 116 Park Street. He further stated that during 1980, the second floor was then also utilized for offices related to the medical office use at 116 Park Street and that the building has been used in that manner ever since. He described the use of office space within 114 Park Street and stated that patients are not treated at 114 Park Street. He continued by stating that the number of employees working in the offices at 114 Park Street has not changed significantly since the its initial conversion to offices.

The Board questioned Mr. DiTosto.

Chair Harrison called for questions from the public. None were offered.

Mr. Gille called Dennis Mylan, Architect and Professional Planner, who was sworn.

Marked into evidence were:

- A-7 Site Plan and Elevations, Sheets A-1 through A-3 on boards, prepared by The Mylan Architectural Group, revised to October 10, 2002
- A-8 Floor Plans depicting the existing condition within 114 and 116 Park Street, prepared by The Mylan Architectural Group, dated April 5, 2002

Mr. Mylan described the subject property, neighborhood, and the land uses in the vicinity of the site. He stated that the existing parking lot contains 23 stalls and a one-way entrance drive from Chestnut Street and a one-way exit drive to Park Street. He stated that the existing parking lot was approved in a previous site plan application in 1963. Mr. Mylan described the proposed one-story building connector addition and stated that its purpose is to provide proper barrier-free access to both buildings. He described the proposed floor plans and stated that barrier-free restrooms would be added. He also stated that a screen would be installed on the roof of 116 Park Street to shield existing mechanical equipment from public view.

Mr. Mylan stated that the parking lot would be re-striped and that 1 barrier-free stall would be created near the new barrier-free entrance. He also stated that the total number of parking stalls on the site would be reduced from 23 to 22 and that the proposed number of parking stalls would adequately serve the property. He described the landscaping on the site and stated that the only new lighting on the site would be a light under the canopy at the rear entrance that would shine directly down and would not shine onto neighboring properties.

Mr. Mylan described the variances being sought by the applicant and stated that the proposal does not increase the intensity of the use on the site. He also stated that the barrier-free access that is being added to the site is required by building codes and is an improvement to the site. He further stated that no new office space is proposed within the new addition and that no new procedures are contemplated at the medical office. He stated that 114 Park Street would retain its residential appearance and that the impact of the building connector addition would have a minimal impact on the Park Street frontage. He continued by stating that the variances requested could be granted without substantial detriment to the Master Plan, the Zoning Ordinance, or the public good and that the benefits of the application outweigh the detriments.

Mr. Mylan stated that the angled parking stalls on the site would be reserved for compact vehicles and be marked as such. He also stated that the barrier-free stall meets all of the necessary requirements and that the existing aisle widths would remain. He further stated that the applicant would comply with any recommendations from the Board Engineer.

The Board questioned Mr. Mylan.

Chair Harrison called for questions from the public. None were offered.

Mr. Gille recalled Mr. DiTosto, who was still under oath. He stated that 114 Park Street has been taxed as a commercial building for some time and that the property tax records indicate office usage at 114 Park Street.

Marked into evidence were:

A-9 1972 Property Tax Record Card

A-10 1988 Property Tax Record Card

Mr. DiTosto stated that Montclair Radiological Associates provides radiological services for Mountainside Hospital. He stated that 116 Park Street is the location for examination procedures and that 114 Park Street contains the business and clerical offices. He stated that not more than one doctor is practicing at the site at any one time. He also stated that approximately 15 employees are on the site daily and that a maximum of 20 employees may be on the site at any one time. He further stated that

approximately 12 employees are at 116 Park Street and approximately 4 employees are at 114 Park Street. He continued by stating that many employees are part-time workers.

Mr. DiTosto stated that the hours of operation are Monday, Tuesday, and Thursday from 8:30 a.m. to 7 p.m., Wednesday and Friday from 8:30 a.m. to 5 p.m., and Saturday from 8:30 a.m. to 12 p.m.. He also stated that a technician is typically on site on Saturdays until 1:30 p.m. for emergency cases. He stated that a maximum of 14 patients may be on the site at any one time and that the typical number of patients on the site is 10. He continued by stating that the arrival and departure of patients from the site is staggered.

Mr. DiTosto described the parking area. He stated that there is parking reserved for 1 doctor in the parking area. He also stated that 4 other staff members are allowed to park in the parking area and that all other staff are instructed to park in legal areas of the street. He further stated that patient parking in the parking area is always available. He continued by stating that an increase in hours of operation, practicing doctors, staff, or patients is not contemplated.

The Board questioned Mr. DiTosto.

Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for public comment. None was offered.

Mr. Gille gave his closing remarks.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, it was resolved to approve the site plan and variance application, subject to the following conditions:

1. The angled parking spaces reserved for compact vehicles shall be delineated as such in compliance with Montclair Code Section 281-9E.
2. No more than fourteen patients shall be on site at any one time.
3. No more than two doctors shall be on site at any one time.
4. No more than twenty employees (exclusive of doctors) shall be on site at any one time.
5. Patient visits at 114 Park Street shall be prohibited.

6. Hours of operation shall not exceed Monday, Tuesday, Thursday, 8:30 a.m. to 7:00 p.m.; Wednesday, Friday, 8:30 a.m. to 5:00 p.m.; and Saturday, 7:30 a.m. to 1:00 p.m.

7. The curb detail shall be revised to indicate a depth of 18 inches in accordance with the Board of Adjustment Engineer's memo dated October 23, 2002.

8. The applicant shall take the necessary steps to ensure the parking lot is not being regularly utilized for parking outside of business hours.

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

Chair Harrison called the variance application of **Omnipoint Communications, 630 Valley Road**. Richard Schkolnick, Esq., appeared as attorney for the applicant and described the application. Mr. Schkolnick called Tim Kronk, Professional Planner, who was sworn and stated his qualifications.

Marked into evidence was:

A-1 Zoning Drawing, Sheet Z-1 of the plans submitted on a board, prepared by Salient Architects, dated September 11, 2002

Mr. Kronk stated that the applicant currently has 3 antennas on the building, 2 of which can be seen at the east elevation. He also stated that 1 one of the existing antennas is 9 feet above the parapet wall and another exceeds the screening wall by approximately 6 inches. He further stated that the third existing antenna, located at the west elevation, is mounted at a conforming elevation and that the existing antennas were approved by the Board in 1998. He continued by stating that 2 existing antennas on the east elevation would be lowered so that they do not exceed the height of the parapet wall or screening wall.

Mr. Kronk stated that the applicant is proposing to install 3 additional panel antennas, 1 located at the north elevation in front of the screening wall and not exceeding the height of the screening wall and 2 at the south elevation onto the façade of the building and not exceeding the height of the parapet wall. He also stated that two (2) 6-inch tall whip antennas, which are related to 911 emergency service, and one (1) 6-inch tall GPS whip antenna are proposed that would all exceed the height of the parapet wall. He continued by describing the size and look of the 3 whip antennas and stated that they are very small and thin.

The Board questioned Mr. Kronk.

Chair Harrison called for questions from the public. None were offered.

Mr. Schkolnick called Michael Littman, who was sworn and stated his qualifications as an Electrical Engineer and Radio Frequency Engineer.

Marked into evidence was:

A-2 USGS Quadrangle Map with overlay depicting reliable coverage

Mr. Littman described exhibit A-2 and stated that it depicts the subject location and other antenna locations utilized by the applicant. He also described the increase in the reliable coverage that the proposed antennas would provide. He stated that increased usage has created a need for increased capacity and that the extra coverage provided by the proposed equipment would allow the applicant to serve more customers in the area and provide improved service. He further stated that the project site is currently underachieving with regards to meeting the demand for reliable coverage.

Mr. Littman described the spacing of the proposed antennas and stated that FCC regulations require the GPS whip antenna for E911 code compliance. He also stated that a technician would need to visit the site once per month and that the FCC regulates the equipment so that it does not interfere with typical household devices.

The Board questioned Mr. Littman.

Chair Harrison called for questions from the public. None were offered.

Mr. Schkolnick called David Collins, who was sworn and stated his qualifications as an expert in the field of Federal & State Radio Frequency Emissions Compliance Standards. He described the report submitted by the applicant, titled Antenna Site RF Compliance Assessment, dated February 14, 2003, and stated that the report takes all of the antennas and equipment on the site. He also stated that the site as proposed would be 31 times below the limit utilizing the most strict guidelines in the nation.

The Board questioned Mr. Collins.

Chair Harrison called for questions from the public. None were offered.

Mr. Schkolnick called Charles Whelan, who was sworn and stated his qualifications as an Architect.

Marked into evidence was:

A-3 Site Plan, Sheet S-1 of the plans submitted, on a board, prepared by Salient Architects, dated September 11, 2002

Mr. Whelan described the site plan and the location of the proposed equipment on the building and described the view of the proposed equipment from each elevation. He also described the location of the existing equipment from other carriers. He

continued by describing the existing screening wall and stated that it is painted to match the brick color of the building. Mr. Whelan described the proposed equipment cabinets and stated that the location chosen for the cabinets is the best location on the roof and has the least visual impact. He also stated that screening is not proposed for the cabinets.

The Board questioned Mr. Whelan.

Chair Harrison called for questions from the public. None were offered.

Mr. Schkolnick recalled Tim Kronk, Professional Planner, who was still under oath.

Marked into evidence were:

A-4 Photoboard prepared by T.K. Design Associates

A-5 Photoboard prepared by T.K. Design Associates

A-6 Photoboard prepared by T.K. Design Associates

A-7 Photoboard prepared by T.K. Design Associates

Mr. Kronk described exhibits A-4 through A-7 and stated that the existing view of each elevation is shown alongside a computer simulation of the elevation view with the proposed equipment. He also described the location and visibility of the proposed equipment cabinets and stated that only portions of the cabinets would be visible from the street and parking lot.

The Board questioned Mr. Kronk.

Mr. Kronk stated that the equipment cabinets could be screened.

Chair Harrison called for questions from the public. None were offered.

Mr. Schkolnick recalled Michael Littman, Electrical Engineer and Radio Frequency Engineer, who was still under oath. Mr. Littman stated that if the proposed cabinets were to be screened with a screening wall, the applicant would prefer that the whip antennas on the cabinets and the panel antennas mounted on the façade below the existing screening wall be mounted onto any screening wall placed in front of the equipment cabinets.

Mr. Schkolnick recalled Tim Kronk, Professional Planner, who was still under oath. Mr. Kronk stated that the proposed wireless telecommunication equipment is a permitted conditional use in the N-C Zone and described the variances requested. He stated that for a conditional use variance such as the subject application, the focus

should be on whether the noncompliance with the standards makes the site unsuitable. He stated that the extension of the proposed whip antennas above the building parapet height is a minor deviation and that the applicant is bringing other existing nonconforming antennas into conformity by reinstalling them at lower height on the building. He also stated that the portions of cabinets visible from the ground have a minor visual impact that could be abated by screening.

Mr. Kronk stated that the proposed use is an inherently beneficial use. He further stated that the site presently has a service capacity problem and that the Courts have found that gaps in service that are related to capacity do not differ from gaps in service that are related to coverage. He continued by stating that the application could be granted without substantial detriment to the Master Plan and the Zoning Ordinance.

The Board questioned Mr. Kronk.

Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

Mr. Schkolnick stated that the applicant would investigate the possibility of locating the proposed equipment cabinets at a less visible area on the roof that may be satisfactory to the Board and present those findings.

Chair Harrison announced that the application of **Omnipoint Communications, 630 Valley Road** would be continued at the May 21, 2003 regular meeting of the Board and that no further notice would be given. Mr. Schkolnick stated that the applicant would consent to an extension of time for which the Board to act on the application.

Chair Harrison announced that the application of **W. Thomas & Kathleen McDonough, 129 Valley Road** would be carried to the March 19, 2003 regular meeting of the Board and that no further notice would be given. Calvin O. Trevenen, Esq., for the applicants, stated that the Board would be granted an extension of time for which to act on the application.

Chair Harrison called the variance applications of **Verizon New Jersey, Inc., 80 Glenridge Avenue** and **50 Montclair Avenue**. Alan Reddy, Esq., appeared as attorney for the applicant. Mr. Reddy called Paul Bauman, Professional Engineer and Professional Planner, who was sworn and stated that he is the Manager of Land Use Matters for Verizon New Jersey, Inc.

Chair Harrison stated that the applicant should describe any general information regarding the proposed cabinets and then describe the proposed installation for each property and that the Board would then follow with a separate vote on the application for each property.

Mr. Bauman described the proposed cable distribution cabinets and stated that the purpose of the installation is to address the need for infrastructure relief. He stated that Verizon is seeking to replace older cables where there are existing cable distribution cabinets and that the proposed cabinets are used to cross connect these cables. He further stated that each of the proposed cable distribution cabinets would replace more than 1 existing cabinet in the vicinity of the proposed installations and that the size of the cable distribution cabinet is predicated on the size of the area served.

The Board questioned Mr. Bauman.

He stated that both aerial and underground cables would be involved with the proposed cabinets. He also stated that each proposed cabinet would replace approximately 2 or 3 existing cabinets and that many of the existing cabinets are located on public property. He further stated that the proposed cabinets need to be installed in areas that are accessible 24 hours a day 7 days a week and that the proposed cabinets and cables have a life span of approximately 40 years.

Mr. Bauman described the proposed easement and cabinet installation at 80 Glenridge Avenue and stated that the local ordinance states that the preferred location for such structures is underground. He then stated that the proposed cabinet could not be placed underground because the cables and connections inside cabinets require maintenance by technicians and placing the cabinet underground would prohibit the necessary access. He continued by stating that the proposed cabinet at 80 Glenridge Avenue is centrally located in a service area and that it would eliminate the need for a number of existing cabinets in the area.

Mr. Bauman stated that a service technician would visit the site once or twice a month for about 15 to 20 minutes at a time. He described the proposed landscaping and stated that 12 plantings are proposed around the perimeter of the cabinet. He continued by stating that the applicant provides an essential service to the local community and that the proposed cabinet is an inherently beneficial use. He also stated that the drainage of the site would not be affected by the proposal and that the proposed plantings effectively screen the cabinet from public view. He further stated that the application satisfies the positive and negative criteria and that the benefits of the application outweigh the detriments.

The Board questioned Mr. Bauman.

Mr. Reddy called Louis Scheidt, Professional Engineer and Professional Planner, who was sworn. Mr. Scheidt stated that the proposed location is the most suitable for the applicant, the owner of the property, and the tenants of the property. He stated that the service technicians must work from the vehicle and that the proposed location is least utilized by tenants of the property.

Mr. Bauman stated that no locations further from the street were suitable for the reasons stated by Mr. Scheidt. He also stated that the cabinets come in light green and light beige colors, but could not be painted.

Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for public comment. None was offered.

The Board discussed the application for 80 Glenridge Avenue.

On motion by Mr. Gallardo, seconded by Mr. Haizel, it was resolved to approve the variance application of **Verizon New Jersey, Inc., 80 Glenridge Avenue**, subject to the following condition:

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

Mr. Bauman described the proposed easement and cabinet installation at 50 Montclair Avenue and stated that the proposed location is adjacent to Essex Park. He stated that the proposed cabinet could not be placed on Essex Park land due to the Green Acres Funding the Park has received. He described the proposed plantings around the perimeter of the cabinet and stated that the proposed landscaping blends in with existing landscaping at the border of Essex Park. He further stated that the proposed location is the most suitable for the applicant and the owner of the property and allows the service technicians to visit the site with minimal disturbance to the property owner.

Mr. Bauman stated that the applicant provides an essential service to the local community and that the proposed cabinet is an inherently beneficial use. He also stated that the drainage of the site would not be affected by the proposal and that the proposed plantings effectively screen the cabinet from public view. He further stated that the application satisfies the positive and negative criteria and that the benefits of the application outweigh the detriments.

The Board questioned Mr. Bauman.

Mr. Bauman stated that the applicant maintains the proposed landscaping and would replace any failing plantings.

Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for public comment. None was offered.

The Board discussed the application for 50 Montclair Avenue.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey, it was resolved to deny the variance application of **Verizon New Jersey, Inc., 50 Montclair Avenue.**

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