

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
MARCH 18, 1998**

PRESENT: Chair Harrison, Vice Chair Chapman, Ms. O'Connell, Messrs. Church, Fleischer, and Williams; also Michael Sullivan, Esq., and Mr. Zichelli, Assistant Secretary.

ABSENT: Ms. Holden, Ms. Freundlich, Mr. Tobin, and Secretary Karen Kadus.

Mr. Zichelli called the roll and announced it to be a regular meeting of the Montclair Board of Adjustment for which notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the **Minutes of the January 21, 1998** meeting were adopted.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following **Memorializing Resolution of Omnipoint Communications, Inc., 630 Valley Road** was adopted, Mr. Church abstaining:

WHEREAS, Omnipoint Communications, Inc., did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70d* to install three wireless telecommunication antennae and an accessory unmanned equipment cabinet on the roof of the existing building on property designated as Lot 1 in Block 2601 on the Township tax map and located in the NC Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted a site plan prepared by Lapatka Associates, dated September 8, 1997 as well as architectural plans, elevations and details prepared by Arcnet Architects, Inc. dated September 26, 1997; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 18, 1998, 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; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. One of the antennae shall be mounted to the existing parapet wall at a height of 52 feet above ground level. The remaining two antennae shall be located on the roof of the building at heights of 59 feet 8 inches and 63 feet above ground level respectively.

2. Although the height of the proposed antennae exceeds the maximum permitted building height of 36 feet, installation will provide improved wireless communication service to the applicant's subscribers as per Omnipoint's F.C.C. license

which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare.

3. The proposed site is particularly suitable given the topography and development of the area and allows for installation of the antennae on an existing building without requiring construction of a tower or monopole.

4. The proposed antennae will comply with all applicable State and Federal regulations for radiation transmission levels.

5. The proposed antennae are aesthetically inconsequential and constitute a minimal intensification of the nonconformity.

6. 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.

7. The proposed telecommunications antennae constitute a technological advance not contemplated or addressed by the existing zoning law, and the proposal 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;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Omnipoint Communications, Inc. is hereby approved subject to the following conditions:

1. The accessory unmanned equipment cabinet shall be relocated to the interior of the building unless one of the following is submitted to the Board: (a) an affidavit of the property owner indicating the interior of the building is not available for such relocation; or (b) an affidavit from the applicant indicating the proposed rental of the relocation substantially exceeds the fair market rental in the area. In the event the unmanned equipment cabinet cannot be relocated to the interior of the building as outlined above, it shall be relocated on the roof top centered against the 6 foot high parapet so as to minimize its visual impact.

2. The antennae to be affixed to the parapet shall be painted to match as closely as possible the exterior of the building. The two roof mounted antennae shall be painted so as to blend in with the skyline.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the applicant, Township Manager, Township

On motion by Mr. Chapman, seconded by Mr. Church, the following **Memorializing Resolution of Penelope Bassett Hackett & Marcus C. Hackett, 5 James Street** was adopted:

WHEREAS, Penelope Bassett Hackett & Marcus C. Hackett, owners, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a 2.7 foot easterly side yard setback where a greater setback is required pursuant to Montclair Code Section 224-46 in connection with the construction of an addition on property designated as Lot 5 in Block 2306 on the Township Tax Map and located in the R-2 Two Family Residential Zone; and WHEREAS, the applicants submitted a site drawing and floor plan prepared by the applicant, dated January 14, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 18, 1998 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 has approximate dimensions of 50 feet by 119 feet and contains a single-family dwelling and accessory building in the rear.
2. The house sits on an irregular angle on the rectangular lot with a narrow side yard.
3. The applicants' proposal is to construct a kitchen addition onto the rear of the dwelling to accommodate an eat-in kitchen for their growing family. The proposed side yard setback is 2.7 feet as measured from the closest portion of the addition to the easterly side lot line.
4. The applicants demonstrated that due to the interior configuration of the house and the location of a bathroom, there are no other options as to where the proposed kitchen addition can be located.
5. The 12 foot by 18.5 foot one-story expansion is in line with the existing side wall of the dwelling.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants 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 NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Penelope Bassett Hackett & Marcus C. Hackett is hereby approved, subject to the following condition:

1. The addition shall follow the line of the existing house and be built no closer to the side property line than 2.7 feet.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicants, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

Chair Harrison called for the continuation of the application of **DeCamp Bus Lines, 100 Greenwood Avenue**. James Andrews, Esq. appeared as attorney for the applicant. Chair Harrison stated that only five members were present. The applicant consented to present the case to its conclusion and requesting that the full Board vote on the application at the next regular meeting.

Mr. Andrews stated that the applicant seeks a variance to park 14 buses at the Greenwood Avenue parking lot during the days on holidays and weekends. Mr. Arthur Johnsen, architect and planner, who was still under oath, was made available for questions by the Board and the public.

Andrzej Kuhl of 106 South Fulerton Avenue, asked Mr. Johnsen to clarify any easements, rights-of-way, or additional property owned by DeCamp not shown on the site plan. Marked for identification was the following:

O-2 Site plan prepared by Arthur Johnsen, revision dated March 20, 1997, with overlays drawn by Mr. Kuhl & Mr. Hawthorne

Mr. Kuhl asked Mr. Hawthorne to further describe the location of bus spaces and the interior configuration of the main building on DeCamp's property.

Mr. Andrews stated that he had no further witnesses to present to the Board.

The meeting was then open to public comment.

Ms. Una Delaney of 50 Label Street was sworn. She stated her concerns about bus idling, noise, pollution, and vibrations caused by the buses. Ms. Delaney then described specific times of excessive idling by DeCamp buses.

Board member Mr. Williams joined the meeting.

Marked for identification were the following:

- O-3 Field notes of bus idling prepared by Una Delaney
- O-4 Letter to Louis Nigro, DeCamp General Manager, from Una Delaney dated May 25, 1993
- O-5 Letter to Karen Kadus, Planner, from Una Delaney, dated July 11, 1994
- O-6 Letter to Suzanne DeCamp from Karen Kadus, Planner, dated July 13, 1994

Mr. Andrews asked Ms. Delaney to describe her specific objections to this application.

Mr. Richard Candy of 30 Christopher Street was sworn. He stated his concerns about the excessive idling times of buses.

Mr. Andrews asked Mr. Candy to describe his specific concerns about this application.

Ms. Lisa Matthews of 82 Greenwood Avenue was sworn. She stated her concerns about the visual impact of the buses parking in an open air lot.

Mr. John Moore of Greenwood Avenue stated his concerns about the idling of the buses.

Mr. Andrews asked Mr. Moore to describe his specific concerns with the proposed application.

Mr. Andrzej Kuhl of 106 South Fullerton Avenue was sworn. He stated that the application should be denied and that the applicant has not proved a need for this variance. Marked for identification were the following:

- O-7 Letter to Karen Kadus from Suzanne DeCamp dated June 10, 1991
- O-8 Site Plan with colored boxes placed on it by Andrzej Kuhl
- O-9 Contract for sale of Lot 9 in Block 3210, dated November 30, 1994 & easement agreement dated July 5, 1998
- O-10 Deed cover page for Lot 4.01 in Block 3210
- O-11 Photo album of site taken by Mr. Kuhl

Members of the Board asked Mr. Kuhl how he proposed to limit the number of bus movements on the site.

A brief recess was taken.

Upon reconvening Chair Harrison stated that the application of **Robert & Elaina Richardi, 170-172 Lincoln Street** will be carried to the next regular meeting on

April 15, 1998 and that no further notice will be given. Mr. Richardi granted all necessary extensions of time.

The hearing of the **DeCamp Bus Lines, 100 Greenwood Avenue** application resumed.

Ms. Moore of 90 Greenwood Avenue stated that the application should be denied due to the adverse impact of the noise and pollution.

Mr. Patterson Smith of 23 Prospect Avenue was sworn. He stated that the application should be denied. He voiced his concerns about open air bus parking, noise, pollution, and the idling of buses.

Mr. Thomas Kelly of 23 Prospect Avenue was sworn. Mr. Kelly stated his concerns about noise and pollution. Marked for identification were the following:

- O-12 Collection of complaints (correspondence regarding the 100 Greenwood Avenue lot only)
- O-13 1996 DeCamp Buslines Annual Report
- O-14 Transcript of March 18, 1981 Montclair Board of Adjustment meeting (page 8 only)
- O-15 Transcript of April 29, 1998 Montclair Board of Adjustment meeting (pages 60-61 only)

He stated that the variance will have a negative impact on the community.

Since only six members of the Board were present, Mr. Andrews stated that he would like to make his summation to the full board at the next meeting.

Chair Harrison stated that the public comment portion of the hearing is closed and that only one summation by a representative of the objectors and one summation by the applicant will be heard at the April 15, 1998 meeting. The Board will then discuss and vote on the application.

Due to the late hour, the Chair stated that the application of **Michael L. Shulman, 34 Union Street** will be heard at the April 15, 1998 meeting and that no further notice will be given. Mr. Shulman consented to any necessary extensions of time.

On motion by Mr. Chapman, seconded by Mr. Williams, the meeting was adjourned.