

**MINUTES OF THE BOARD OF ADJUSTMENT  
MAY 16, 2001**

PRESENT: Chair Harrison, Vice Chair Fleischer, Mr. Chapman, Ms. Costello, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey, Mr. Susswein; also, Michael Sullivan, Esq., Donald Sammet, Assistant Secretary and Nicholas Graviano, Land Use Planner

ABSENT: Vice Chair Fleischer and Secretary Kadus

Mr. Sammet 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. Chapman, seconded by Ms. Rock-Bailey, the **Minutes of the April 11, 2001** regular meeting were adopted as modified.

On motion by Mr. Chapman, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Omnipoint Communications, 5 Roosevelt Place** was adopted, Mr. Gallardo abstaining:

**WHEREAS**, Omnipoint Communications, Inc., did make application to the Board of Adjustment of the Township of Montclair, as amended, to install 9 wireless telecommunication antennae and equipment cabinets on the roof of property designated as Lot 12 in Block 3106 on the Township tax map and located in the OR-4 and R-4 Zones; and

**WHEREAS**, the applicant requested a variance from *N.J.S.A. 40:55D-70c(3)* for failure to comply with all of the conditional use standards contained in Montclair Code Section 347-17.1C(5); and

**WHEREAS**, the applicant submitted plans and elevations prepared by Lulay & Illescas Associates, Inc., Engineers, dated August 4, 2000 revised through March 2, 2001; and

**WHEREAS**, this matter came on to be heard at meetings of the Board of Adjustment held on February 14, March 21 and April 11, 2001, 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. The application, as amended, proposes a total of 9 antennae as shown on the plan and revised by Sheet P-2 of Exhibit A-5 introduced into evidence at the public hearing held on April 11, 2001.

2. The application complies with all of the conditional use standards contained in the Montclair Township Zoning Ordinance except that the 3 antennae proposed in the 150 degree sector exceed the height of the existing structure on which they are proposed to be mounted contrary to Montclair Code Section 347-17.1C(5)(d). The Board finds that the aforementioned 3 antennae which will exceed the height of the existing structure by 18 inches represent a minimal visual intrusion which will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

3. Installation of the antennae will improve wireless communication service to the applicant's subscribers as per the applicant's FCC license which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare.

4. Based upon the size and location of the existing building, the proposed rooftop location of the site is particularly suitable for wireless telecommunication antennae.

5. The proposed antennae and equipment shelter shall comply with all applicable State and Federal regulations for radiation transmission levels.

6. The application does not involve any noise, vibrations, smoke, dust, odors, heat or glare and involves minimal noise 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;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of Omnipoint Communications, Inc. for a variance pursuant to *N.J.S.A. 40:55D-70d(3)* is hereby approved subject to the following conditions:

1. The antennae shall not exceed the height of the existing structure on which they are mounted with the exception of the 3 antennae in the 150 degree sector which shall not exceed the height of the structure by more than 18 inches.

2. The antennae shall be painted to match the color of the structure to which they are affixed.

**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. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Jerome Gibbs, 124 Claremont Avenue**, was adopted, Mr. Gallardo abstaining:

**WHEREAS, Jerome J. Gibbs**, owner of property at **124 Claremont Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a side yard setback less than that required pursuant to **Montclair Code Section 347-104** and for a driveway width less than that required pursuant to **Montclair Code Section 347-102C** for the construction of a driveway on property designated as Lot 15 in Block 3212 on the Township Tax Map and located in the R-2 Two-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Farro Brothers Engineers and Surveyors, dated December 11, 1970; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on April 11, 2001 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, measures approximately 4,200 square feet in size and contains a 2 ½ story two-family dwelling.
2. The applicant has owned the dwelling since 1971 and had previously used a neighbor's driveway for off-street parking. That driveway is no longer available for use by the applicant.
3. The applicant's proposal is to create a parking area in the westerly side yard with space for two vehicles.
4. The 35 foot width of the property and configuration of the single-family dwelling on the property prevents the applicant from placing a driveway at another location on the property.
5. The location of a bay window and fence prevents the applicant from extending the driveway into the rear yard.

6. The applicant has attempted to find parking elsewhere in the neighborhood but none is available.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the 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 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 application of Jerome J. Gibbs for variances pursuant to N.J.S.A. 40:55D-70c to construct a driveway in the westerly side yard is hereby approved,

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

Mr. Sammet announced the adjournment of the application for **Two Countries, 18-20 Willard Place** to the June 20, 2001 regular meeting of the Board and that no further notice would be given. The applicant consented to an extension of time. He also announced the adjournment of the application for **Family Services League, 204 Claremont Avenue** to the June 20, 2001 regular meeting of the Board and that no further notice would be given. The applicant consented to an extension of time. Lastly, Mr. Sammet announced the adjournment of the application for **Steve Lauda, Murray Street** because the applicant consented to an extension of time.

On motion by Mr. Chapman, seconded by Mr. Gallardo, a six-month extension for a variance due to expire on June 16, 2001 was granted to **Richard and John DiGeronimo, 420 Bloomfield Avenue.**

Chair Harrison called for the continuation of **Barry Pote, 72 Greenwood Avenue.** Barry Pote, applicant and owner came forward, he was still under oath.

Mr. Pote summarized the nature of the application to install a "people door" on a building that would be used for storage.

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

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Haizel, it was resolved to approve the request to modify condition number six of the resolution.

Chair Harrison announced the continuation of the variance application of **Edmund and Marina Gaetjens, 34 Clinton Avenue**. Edmund and Marina Gaetjens, applicants and owners, and Frances Klein, Architect came forward. Mr. Sammet stated that they were still under oath.

Frances Klein stated that he surveyed the neighbor's property and found that the neighbor's tree had a drip line of 22 feet.

Marked into evidence was:

A-2 Photograph of a tree

Mr. Klein stated that proposed plan "Type B" was altered to have a side yard setback of three feet instead of the 1.5 feet proposed in the initial application. In proposed plan "Type D" the garage is placed in the center of the rear yard. He commented that the driveway could not be moved to the southerly side yard because it would disturb trees. He also stated that other properties in the neighborhood have detached garages in the same area as shown in the applicant's proposal.

The board questioned the applicants.

Chair Harrison called for questions and comments from the public.

Rachel and Rodney Roth, the neighbors of the Gaetjens, of 32 Clinton Avenue came forward.

Mr. Sammet reminded Mr. and Ms. Roth that they were still under oath.

Mr. Roth stated that they did not see the Gaetjens' plans and that their neighbors did not contact them regarding the plans. Mr. Roth stated that Ryan Moore, an arborist from Save a Tree said that a tree on the Roth's property as well as a tree on the Gaetjen's property would be damaged by the proposed garage.

Ms. Gaetjens stated that digging a foundation would damage trees and that a raised foundation would cause less damage.

Mr. Klein stated that the proposed garage is located further from the property line than the existing garage and that the foundation system proposed is much kinder to trees than traditional foundations.

The board discussed the application.

On motion to by Ms. Costello, seconded by Mr. Haizel, it was resolved to deny the request for a variance with Ms. Rock-Bailey in the negative.

Chair Harrison announced the variance hearing on the application of **Robert Beinish and Carol Taylor, 7 Marion Road**. Robert Beinish and Carol Taylor, applicants and owners, were sworn. Mr. Taylor described the application. He stated that his family needs additional space and that a variance is required to put an addition on his kitchen. He commented that the addition would be placed where a deck currently stands.

The board questioned the applicants.

Marked into evidence was:

A-1 Two photographs of the house

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

The board discussed the application.

On a motion by Mr. Gallardo seconded by Mr. Susswein, it was resolved to approve the variance application subject to the following conditions:

1. The addition shall not extend more than fifteen (15) feet from the back of the existing house
2. The addition must follow the line of the existing house
3. All portions of the roof must be located entirely on the property of Mr. Beinish and Ms. Taylor.

On a motion by Ms. Rock-Bailey seconded by Ms. Costello, the meeting was adjourned at 9:03 p.m.