

**MINUTES OF THE BOARD OF ADJUSTMENT
JULY 20, 2005**

PRESENT: Chair Harrison, Ms. English, Mr. Flood, Ms. Holloway; also, Ms. John, Esq., Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey, Vice Chair Fleischer, Mr. Haizel, Mr. Susswein, Mr. Whipple, and Mr. Mellon, 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 Ms. English, seconded by Ms. Holloway, the **Minutes of the June 15, 2005** regular meeting were adopted, Mr. Flood abstaining.

On motion by Ms. English, seconded by Ms. Holloway, the following Resolution memorializing the approval of the application of **George Sanford, 86 Yantacaw Brook Road** was adopted, Mr. Flood abstaining:

WHEREAS, George F. Sanford, owner of property at **86 Yantacaw Brook Road**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a northerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a second-story addition on property designated as Lot 3 in Block 4804 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos Inc., dated August 4, 2004, and a site plan, floor plan, and elevations, prepared by Arthur Demarest, R.A., Architecture & Design, dated October 25, 2004; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 15, 2005 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 and contains a 2-story, single-family dwelling with an attached garage at the rear of the dwelling. The property has 75 feet of frontage and contains 10,740 square feet in lot area.

2. The existing dwelling has a nonconforming side yard setback of 9.55 feet from the northerly side property line as measured to the northeasterly corner of the dwelling, where 10 feet is required.

3. The applicant's proposal is to construct a second story addition at the northeasterly corner of the dwelling, where there is an existing first floor. The footprint of the dwelling will not be modified. The proposed addition would allow the enlargement of an existing small room on the second floor that the applicant intends to use as a home office.

4. The proposed addition conforms to the height and rear yard setback requirements but does not meet the northerly side yard setback requirement of 10 feet.

5. The proposed addition would be aligned with the existing walls of the dwelling, is small in scale, and would have a no impact on adjoining properties.

6. Based upon the Board's particular knowledge of local conditions, the proposed addition is consistent 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 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 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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of George F. Sanford is hereby approved.

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.

On motion by Ms. English, seconded by Ms. Holloway, the following Resolution memorializing the approval of the application of **Maranda Fritz, 54 Tuxedo Road** was adopted as modified, Mr. Flood abstaining:

WHEREAS, **Maranda Fritz**, owner of property at **54 Tuxedo Road**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a second and third floor addition onto an existing dwelling on property designated as Lot

14 in Block 4305 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Mid Atlantic Land Services, Inc., dated June 27, 1997, and a site plan, floor plans, and elevations, prepared by Steven Papadatos, Architect, dated April 14, 2005; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 15, 2005, 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 located in the R-1 One-Family Zone and contains a 2-story single family dwelling with a detached garage in the rear yard. The detached garage is accessed by a driveway that is shared with the neighbor to the west. The subject property measures 60 feet in width and contains 9,600 square feet in lot area.

2. The side yard setback requirement for the easterly side yard is 10 feet and the existing dwelling is set back 7.5 feet from the easterly property line, which is nonconforming.

3. The existing second floor would be demolished and rebuilt with additional height, in line with the first floor below it. A new third floor is proposed over the new second floor and the third floor would also contain a room-size dormer at the easterly side of the rear half of the roof that would accommodate a bathroom and a finished room on the third level.

4. The additional height added by the taller second floor walls and the new third floor require a variance in that a 10-foot easterly side yard setback is required and an easterly side yard setback of 7.5 feet is proposed.

5. The proposed dormer on the third floor, as well as the proposed wood deck at the rear of the dwelling, have been set in an additional 2.5 feet from the easterly side property line in order to comply with the 10-foot side yard setback requirement in the easterly side yard.

6. The second and third floor addition meet the all other height and setback requirements.

7. Based upon the Board's particular knowledge of local conditions, the proposed addition is consistent 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 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 NJSA40:55D-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 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 zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variance application of Maranda Fritz is hereby approved, subject to the following condition:

1. The second and third floor addition shall be aligned with the existing easterly side wall of the dwelling and not be built closer than 7.5 feet to the easterly side property line. The proposed dormer on the third floor and the proposed deck at the rear of the dwelling shall conform to the 10-foot side yard setback requirement in the easterly side yard.

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 Ms. English, seconded by Ms. Holloway, the following Resolution memorializing the approval of the application of **Omnipoint Communications, Inc., 641 Bloomfield Avenue** was adopted as modified, Mr. Flood abstaining:

WHEREAS, Omnipoint Communications, Inc., did make application to the Board of Adjustment of the Township of Montclair as amended, to permit six telecommunication panel antennae, three equipment cabinets, and one battery cabinet on the roof of property designated as Lot 14 in Block 2209 on the Township Tax Map and located in the C-1 Central Business Zone; and

WHEREAS, the applicant requested a variance from N.J.S.A. 40:55D-70d(3) for failure to comply with all of the conditional use standards contained in Montclair Code Section 347-17.1C(4); and

WHEREAS, the applicant submitted a site plan, elevations and details prepared by Salient Architects dated June 2, 2004 revised through June 15, 2005; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on June 15, 2005 and July 13, 2005 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 measures 11,265 square feet in size and contains a six story commercial building on which three wireless telecommunications carriers have collocated roof top antennae.
2. The applicant originally proposed to install twelve panel antennae, three equipment cabinets and one battery cabinet on the roof of the building. The application was amended during the course of the hearings to reduce the number of proposed antennae from twelve to six.
3. The application complies with all of the conditional use standards contained in the Montclair Township Zoning Ordinance except that the panel antennae fail to comply with Section 347-17.1C(4)(c) in that they exceed the height of the parapet wall.
4. The subject property is built out to full capacity and the applicant cannot flush mount the antennae to the side of the subject building without securing the air rights from adjacent property owners.
5. Installation of the antennae will eliminate a coverage gap and 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 consistent with the purposes of the Municipal Land Use Law.
6. Based upon the size and location of the existing commercial building, the proposed roof top location of the site is particularly suited for wireless communication antennae.
7. The proposed antennae and related equipment shall comply with all applicable State and Federal regulation for radiation transmission levels.
8. The visual intrusion caused by the height of the proposed antennae 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.
9. 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; and

NOW, WHEREFORE, 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 applicant shall apply to the Historic Preservation Commission for approval of the plans revised through June 15, 2005.

2. The applicant shall within one week from July 13, 2005, by certified mail return-receipt, contact the adjacent property owners in an effort to secure air rights to flush mount its antennae on the subject building. The applicant shall report to the Historic Preservation Commission on the results of its inquiry.

3. The applicant shall screen the proposed equipment cabinets in accordance with the plans revised through June 15, 2005.

4. The applicant shall move the antennae in Sector B closer to the existing penthouse. The applicant shall screen those antennae with one continuous stealth screen extending from the edge of the penthouse and covering both of the antennae in the Sector. The screening shall be painted to match the existing penthouse.

5. The antennae in Sectors A & C shall only be screened if screening is recommended by the Historic Preservation Commission. Any such screening shall conform to the recommendations of the Historic Preservation Commission.

6. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 2502-39 et seq.

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.

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 Board discussed the request for an extension of time on the variance approval of **Doreen and Scott Peterson, 24 Columbus Avenue**. On motion by Ms. English, seconded by Mr. Flood, an extension of time was granted through January 18, 2006.

Chair Harrison called the variance application of **Cynthia Smith, 141 Summit Avenue**. Grant Gille, Esq. appeared as attorney for the applicant and described the application. He stated that the applicant had applied for a building permit and intended to construct a fully conforming garage; however, an error occurred when the property line was marked and the detached garage was constructed with an easterly side yard setback of approximately 3.5 feet where a minimum of 6 feet is required.

Mr. Gille called Richard J. Hingos, New Jersey Licensed Surveyor, who was sworn and stated his qualifications. Mr. Hingos described the previous land surveying work that had been done on the subject property and other properties on Summit Avenue. He stated that, based on some of the previously gathered information, certain control points were used in order to identify and mark the easterly property line in order to properly locate the detached garage on the site. He stated that the initial observations of the easterly property line indicated that the garage would have been set back 6.3 feet from the easterly side property line. He continued by stating that following the surveying done for the subject property, his firm had gathered more information by completing surveys for other properties on Summit Avenue and that an error was revealed that resulted in the previously observed easterly side property line of the subject property being shifted to the west by approximately 2.5 feet. He further stated that he then informed the applicant of the error. He continued by stating that he has been a Licensed Surveyor for 11 years and that this type of error is unusual.

Marked into evidence were:

- A-1 Property survey of 141 Summit, prepared by Richard J. Hingos dated September 29, 2004
- A-2 Property survey of 141 Summit, prepared by Richard J. Hingos dated December 15, 2003
- A-3 Property survey of 141 Summit, prepared by Capasso and Hingos, Inc., dated September 8, 1996
- A-4 Site Plan, prepared by Page Goolrick, Architect P.C., dated March 25, 2004
- A-5 Floor Plan and Elevations, prepared by Page Goolrick Architect P.C., dated March 25, 2004
- A-6a Photograph of the front of the detached garage
- A-6b Enlarged photograph of Exhibit A-6a
- A-7 Photograph of the west elevation of the detached garage
- A-8 Photograph of the east elevation of the detached garage

A-9 Property survey of 139 Summit Avenue, prepared by Capasso and Hingos, Inc., dated July 5, 1991

A-10 Property survey of 139 Summit Avenue, prepared by Albert N. Faraldi Group, P.C., dated February 22, 1985

The Board questioned Mr. Hingos. Mr. Hingos stated that the field error mostly resulted in a miscalculation of the easterly side property line and the location of the westerly side property line would have been less affected. He also stated that the miscalculation of the easterly property line on the applicant's property does not affect the other properties on Summit Avenue. Mr. Gille stated that he has spoken with the attorney for the property owner of 139 Summit Avenue and that there does not appear to be major concerns at this time.

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

Mr. Gille summarized the application. The Board discussed the application. On motion by Ms. English, seconded by Ms. Holloway, the variance application was approved.

Chair Harrison called the variance application of **Norma Alicea, 14 New Street**. Victor Rivas, son-in law of the applicant, and Harold Tullis, Architect, were sworn. Mr. Tullis described the subject property and the changes proposed to the existing single-family dwelling. He stated that the existing dwelling is rather old and that the owner is proposing a complete renovation. He stated that the footprint of the dwelling would be squared off with a 50 square-foot addition and that height would be added to the structure because it has very low ceilings. He also stated that a new roof design would be incorporated that would change the direction of the pitch of the roof and that central air-conditioning would also be added. He continued by describing the existing front yard setbacks of the existing dwellings and stated that the subject property has a nonconforming front yard and side yards.

The Board questioned Mr. Rivas and Mr. Tullis. Mr. Tullis stated that the existing front porch would be rebuilt in the same location. He also stated that the outdoor central air-conditioning unit would be located at the rear wall of the dwelling and would comply with the setback requirement. He further stated that the proposed height would be no more than 3 feet taller than either of the adjoining dwellings. He continued by stating that the roof leaders would either be directed away from the side property lines or could be channeled out to the curb.

Marked into evidence was:

A-1 Site plan with the location

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

The Board discussed the application. On motion by Ms. Holloway, seconded by Ms. English, the variance application was approved, subject to the following conditions:

1. Any central air-conditioning units shall comply with the setback requirements as depicted on Exhibit A-1.
2. The roof leaders shall be directed away from the side property lines.

Chair Harrison called the application of **Sergio Almada, 22 Orange Road**. Sergio Almada and William Godsall, Architect, were sworn. Mr. Godsall described the application and stated that the property contains a two-family dwelling. He stated that both apartments are rather small and that a third floor containing 3 bedrooms is proposed in order to create a larger duplex apartment, in which the applicant will reside with his family. Mr. Almada stated that he presently resides at 38 Sherman Street and rents out the subject property. He stated that he is married with 4 children and that the unit he is presently occupying on Sherman Street is too small for his family, as are the 2 apartments at the subject property. He further stated that he would prefer to reside at the subject property with his family so that the property could be owner occupied and properly maintained. Mr. Godsall stated that height would be added to the dwelling but the footprint will remain unchanged. He also stated that the proposed third floor would only be accessible through the second floor apartment and described the parking area at the rear of the lot.

The Board questioned the applicant and Mr. Godsall. Mr. Almada stated that the first floor would contain a one bedroom apartment and that window-mounted air conditioners would be utilized for the dwelling.

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

The Board discussed the application. On motion by Ms. English, seconded by Mr. Flood, the variance application was approved, subject to the following conditions:

1. The roof leaders shall be directed away from the side property lines.

Chair Harrison called the application of **Suzanne and Tim O'Connor, 18 Douglas Road, Glen Ridge (rear yard in Montclair)**. The applicants were sworn and Mr. O'Connor described the application. He stated that their detached one-car garage was destroyed by a fallen tree late last year. He also stated that a new detached two-car garage is proposed and that the footprint of the previously existing garage would be incorporated into the footprint of the proposed garage. He further stated that no second floor is proposed and that a loft space is proposed for overhead storage. He stated that the proposed location of the garage is consistent with location of existing garages in the neighborhood and that their rear yard is already small and providing the required setbacks would significantly reduce the usable space in the rear yard. He continued by stating that the design of the proposed garage is in keeping with the character of the

house and that the existing driveway, which consists of paved wheel tracts, would remain and that a second set of wheel tracts would be added in front of the proposed garage.

The Board questioned the applicants. Ms. O'Connor stated that the proposed 24-foot length is needed in order to fit larger vehicles and would also allow for a work bench and some storage space.

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

The Board discussed the application. On motion by Ms. English, seconded by Ms. Holloway, the variance application was approved, subject to the following condition:

1. The roof leaders shall be directed away from the side and rear property lines.

Chair Harrison called the application of **Elio Suriano, 252 North Fullerton Avenue**. Elio Suriano and John Guadagnoli, Architect, were sworn. Mr. Guadagnoli described the application and stated the proposed additions are within the existing building envelope. He described the adjoining properties and stated that a 26-foot wide lot immediately adjoins the applicant's lot on the north side and that the New Jersey Transit railroad is directly across the street giving the applicant a good amount of buffer space from nearby dwellings. He also stated that a small balcony is proposed at the front on the second level and that the height added by the proposed additions on the third floor is aligned with the existing setbacks and complies with the height requirements. Mr. Suriano stated that he has lived at the property for 10 years and has recently married and now has 3 stepchildren and that the home requires more living space. He stated that the home is presently being converted from a two-family to a one-family dwelling and described the interior layout.

The Board questioned the applicant and Mr. Guadagnoli. Mr. Suriano stated that any central air-conditioning units will meet the required setbacks.

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

The Board discussed the application. On motion by Mr. Flood, seconded by Ms. English, the variance application was approved, subject to the following condition:

1. Any central air-conditioning units shall comply with the required setbacks.

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