

**MINUTES OF THE BOARD OF ADJUSTMENT
DECEMBER 14, 2005**

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, Ms. Holloway, Mr. Susswein and Mr. Whipple; also, Ms. John, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Haizel, Mr. Flood and Mr. Mellon, Secretary

Assistant Secretary Charreun 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.

On motion by Mr. Susswein, seconded by Ms. English, the **Minutes of the November 9, 2005** regular meeting were adopted as modified, Mr. Fleischer, and Mr. Susswein abstaining.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the **2006 Schedule of Regular Meetings** was adopted subject to a verification that the proposed meeting dates do not conflict with any holidays.

On motion by Mr. Fleischer, seconded by Ms. English, the following Resolution memorializing the denial of the application of **Dr. and Mrs. Bernard Crawford, 35 Parkway** was adopted, Ms. Cockey and Ms. Holloway abstaining:

WHEREAS, Dr. and Mrs. Bernard Crawford, owners of property at **35 Parkway**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to permit an accessory structure within a front yard pursuant to **Montclair Code Section 347-46C** in connection with the construction of an accessory structure on property designated as Lot 32 in Block 1608 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey and a site plan, floor plan, and elevations prepared by the Hottenroth & Joseph, Architects, with a revision date of October 28, 2005, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on November 9, 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 a corner lot located in the R-1 One-Family Zone at the intersection of Parkway and Edgemont Road. The property is irregular in shape, measures approximately 26,904 square feet in area and contains a 2½-story single-

family dwelling and a detached garage near the northeasterly corner of the property, which is accessible via a driveway from Parkway.

2. The applicants propose to construct an accessory structure in the northerly side of their property which will contain a new detached 2-car garage, a pool house, and a storage room. The plan indicates that a swimming pool would be constructed in the rear yard and that the existing garage would be removed completely.

3. The height of the proposed accessory structure has been revised to comply with the 15-foot maximum height as measured to the peak of the roof, therefore the variance previously cited from **Montclair Code Section 347-46A(1)** for the height of the accessory structure is no longer required. The applicant also stated that the side yard setback of the proposed swimming pool would be landscaped in accordance with the requirements of the ordinance.

4. The proposed accessory structure would be set back approximately 36 feet from Edgemont Road. The existing dwelling on the property is set back approximately 45 feet from Edgemont Road. The 45-foot front yard setback of the dwelling from Edgemont Road establishes the front yard of the subject property for its full width along Edgemont Road and therefore, no accessory structure is permitted to be located closer to the street than the dwelling.

5. The applicants failed to demonstrate any hardship regarding the proposed location of the accessory structure on the subject property. Furthermore, the size and scale of the proposed accessory structure coupled with the proposed location within the required front yard setback is inconsistent with the character of the neighborhood and would adversely impact the adjoining properties.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants failed to prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not 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 not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and did not 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 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 Dr. and Mrs. Bernard Crawford is hereby denied; and

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 Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Clayton Bauer, 4 Valley Place** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, Clayton Bauer, owner of property at **4 Valley Place**, 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 westerly side yard setback less than that required pursuant to **Montclair Code Section 347-51** in connection with the construction of a wood deck onto the rear of the dwelling located on property designated as Lot 42 in Block 1801 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Falcon Surveying, LLC, and a site plan, floor plan, and elevation, with no preparer or date indicated; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 16, 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 located in the R-2 Two-Family Zone and contains a 2½-story, single-family dwelling with a paved driveway in the easterly side yard. The subject property is located on a private street, measures 50 feet in width and contains 5,215 square feet in lot area.

2. The existing dwelling has a nonconforming westerly side yard setback of 3.1 feet as measured to the rear corner of the dwelling.

3. A wood deck is proposed at the rear of the dwelling that would be aligned with the rear corners of the dwelling. The angled position of the dwelling on the lot causes the westerly side yard setback of the proposed wood deck to be less than that of the dwelling moving towards the rear of the lot.

4. At the hearing, the applicant indicated that the westerly side yard setback of the proposed wood deck would be 2 feet 5 inches (29 inches), as measured to its closest point from the westerly side property line. The proposed wood deck would comply with all other setback requirements.

5. Based upon the existing location of the dwelling on the lot and the Board's particular knowledge of local conditions, the proposed wood deck 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 Clayton Bauer is hereby approved, subject to the following conditions:

1. The proposed deck shall be aligned with the existing westerly side wall of the dwelling and shall not be constructed closer than 29 inches from the westerly side property line.

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 Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Damien and Dasha Dwin, 222 Upper Mountain Avenue** was adopted, Ms. Cockey abstaining:

WHEREAS, **Damien and Dasha Dwin**, owners of property at **222 Upper Mountain Avenue**, 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 front yard setback less than that required pursuant to **Montclair Code Section 347-33B(1)** and a southerly side yard setback less than that required pursuant to **Montclair Code Section 347-33C(1)** in connection with additions proposed to the dwelling on property designated as Lot 4 in Block 602 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicants submitted a property survey, prepared by Vincent Manno, dated August 18, 2005 and architectural plans, prepared by Francis C. Klein and Associates, Architects, dated September 29, 2005 that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on November 16, 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 located in the R-0 Mountainside Zone and contains a 2½-story, single-family dwelling and detached garage at the rear of the lot.

2. A large one-story addition is proposed at the northerly side of the dwelling, in an area where an existing slate patio exists, and a second-story addition is proposed over an existing one-story section located at the southerly side of the dwelling.

3. The existing front wall of the dwelling (not including the front porch) is setback 156.88 at the southerly front corner and 156.77 feet at the northerly front corner. Both of the proposed additions are aligned with the existing front wall of the dwelling and would have the same front yard setback as the dwelling.

4. The average front yard setback of the 4 nearest principal structures, 2 on either side of the subject property, is approximately 202.75 feet and a front yard setback variance is required.

5. The existing dwelling has a nonconforming southerly side yard setback of 11.10 feet, as measured to the rear corner of the one-story section at the southerly side of the dwelling. The proposed second story addition on the southerly side of the dwelling would be aligned with the existing one-story section below it, and requires a variance.

6. Based upon the location of the existing dwelling and the fact that the proposed additions are aligned with the walls of the existing dwelling, the proposed additions will not adversely impact the public good.

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 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 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 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 Damien and Dasha Dwin is hereby approved subject to the following conditions:

1. The proposed additions shall be aligned with the walls of the existing dwelling.
2. The plan shall be approved by the Board Engineer for Steep Slope construction.

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 Mr. Fleischer, seconded by Ms. English, the following Resolution memorializing the denial of the application of **Michael J. Murphy, 131 Lloyd Road** was adopted as modified, Mr. Whipple abstaining:

WHEREAS, Michael J. Murphy, as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to permit an existing retaining wall and new construction of the remainder of the originally proposed retaining wall to exceed the maximum 7 foot height limitation contained in Montclair Code Section 347-27.1B on property designated as Lot 15.01 in Block 204 and located in the R-0(a) One-Family Zone; and

WHEREAS, the applicant submitted a site plan, details and elevations prepared by Gregory A. Comito, A.I.A. dated September 12, 2005; a planting plan prepared by Keller & Kirkpatrick dated January 21, 2005 revised through September 12, 2005 as well as a topographic survey prepared by Pronesti Surveying, Inc. dated November 15, 1999; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on November 9 and November 28, 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 is an interior lot containing 27,900 square feet with 150 feet of frontage on Lloyd Road. The subject property contains an existing retaining wall along the rear and north side property line which varies in height, ranging from approximately 2 feet to 15.4 feet (excluding a 4 inch cap proposed to be added to the

top of the wall). The wall is located between 3.2 feet and 5.0 feet from the common boundary line of Lot 15.06.

2. On or about June 8, 2002, the Township Engineer approved the applicant's plans to remove trees and to install the subject retaining wall and associated improvements to the rear of the subject property. On June 11, 2002, Fran Adler, the owner of adjoining Lot 15.06 filed a lawsuit challenging, *inter alia*, the height of the subject retaining wall, claiming that the height exceeded the maximum permitted under the Zoning Ordinance then in effect. On July 12, 2002, the applicant filed an Answer and Third-Party Complaint with respect to the Adler lawsuit. Thereafter, on July 18, 2002, the applicant obtained a building permit and then proceeded to build the subject retaining wall, notwithstanding the fact that the Adler lawsuit was pending against the applicant. On November 26, 2002, the Township Council passed an amendment to the Zoning Ordinance providing, *inter alia*, that retaining walls on interior lots shall not exceed 4.5 feet in height when built in front of the extreme rear corners of the principal building and shall not exceed 7 feet in height when built on the remainder of the lot. After the trial court issued its decision in the Adler lawsuit and the Appellate Division issued its decision affirming the trial court's decision but remanding the matter for further consideration of an appropriate remedy, on September 2, 2005 the parties entered into an Order Of Settlement (Exhibit A-3) whereby the applicant elected to apply to the Board of Adjustment for variance relief with respect to the subject retaining wall height.

3. The applicant initially proposed to install a three and one-half foot tall fence on the top of the existing retaining wall which would require a variance from Montclair Code Section 347-27.1F since the proposed fence on the top of the existing retaining wall must be set back from the top of the retaining wall by one foot for every foot of height of the fence and no setback from the top of the retaining wall was proposed. At the November 9, 2005 public hearing, the applicant stipulated he would relocate the fence in order to comply with the aforementioned requirement and abandoned the request for the variance.

4. The retaining wall, although existing, is not now and never was a lawful structure. Consequently, it is distinguished from a preexisting nonconforming structure which was lawful at its inception and rendered nonconforming by virtue of a subsequent amendment to the Zoning Ordinance and protected pursuant to N.J.S.A. 40:55D-68.

5. The applicant failed to meet the burden of proof that he is entitled to a variance pursuant to N.J.S.A. 40:55D-70c(1). The applicant proceeded at his own risk when he constructed the retaining wall while there was a pending lawsuit challenging its compliance with the height limitation in the Zoning Ordinance. There is no exceptional narrowness, shallowness, or shape of the subject property, the topographic conditions and physical features are neither exceptional nor unique (nor is there an extraordinary and exceptional or unique situation) because many surrounding properties share the same steep slope, and there is no lawfully existing structure on the subject property. As well, the applicant argues for but did not prove financial hardship, nor is financial consideration in and of itself sufficient to afford relief under 70c(1). The "hardship" is self created and unrelated to the physical characteristics of the land since the applicant

could have built a conforming wall at its inception, could have delayed construction until after the conclusion of the litigation or can modify this wall in order to meet the Zoning Ordinance requirements.

6. The applicant also failed to meet the burden of proof that he is entitled to a variance pursuant to N.J.S.A. 40:55D-70c(2) and failed to prove that any purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-2 would be advanced by granting his application. To the contrary, the Board determined that a number of purposes would be undermined by approval. Specifically, the applicant's argument that the existing retaining wall constitutes appropriate municipal action consistent with the general welfare is flawed in that it benefits the property owner and not the community at large (-2a). The proposal fails to provide adequate light, air and open space (-2c). The mass of the subject retaining wall is less aesthetically pleasing than a conforming wall thus does not promote a desirable visual environment (-2i).

7. The applicant argued that approval of this application would secure safety from flood and other natural and man made disasters pursuant to N.J.S.A. 40:55D-2b. The applicant testified an extensive stormwater management system was installed to prevent virtually all stormwater from reaching the abutting property owner to the rear. The Board determined the drainage improvements had nothing to do with the height of the wall and adequate stormwater management measures could be employed in connection with a conforming wall.

8. The mass of the subject retaining wall which substantially exceeds the maximum allowable height results in a substantial adverse visual impact on the property owner to the rear.

9. With knowledge of the litigation arising from the construction of the subject retaining wall, the Governing Body amended the Zoning Ordinance to clearly delineate the 7 foot height limitation. The clear legislative intent was to permit 7 foot tiered walls rather than one monolithic wall. Approval of this application would substantially impair the intent and purpose of the recent Zoning Ordinance amendment.

10. Approval of this application is inconsistent with the intent and purpose of the goals of the community as expressed in the Master Plan Revision adopted April 28, 1986, page 22, which provides:

The band of properties that covers the top of the First Mountain constitutes a heavily wooded ridge that is an important regional feature and a valued aspect of Montclair. Every effort should be made to retain the wooded character of the ridgeline. Tree clearance should be minimized along the top and sides of the ridge and the protrusion of structures above the tree line should be discouraged.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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 zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1);

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to 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 zoning ordinance pursuant to the requirements of N.J.S.A. 40:55D-70c(2).

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Michael J. Murphy for a variance to permit an existing retaining wall and new construction of retaining wall to exceed the maximum 7 foot height limitation is hereby denied;

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

Assistant Secretary Charreun announced that at the request of the applicant, the application of **Guy Maxwell, 559 Upper Mountain Avenue**, would be carried to the January 18, 2006 regular meeting of the Board, that the applicant has granted the Board an extension of time, and that no further notice would be given.

Chair Harrison called the continuation of the application of **PAAG, LLC, 7 Fidelity Place**. Laurence Olive, Esq. was not present. Chair Harrison asked one of the applicants who was present to phone Mr. Olive's office, since he should be present for the Board's discussion and vote.

Chair Harrison called the variance application of **Robert & Nina Sloan, 8 Windsor Place**. Nina Sloan was sworn and described the application.

Marked into evidence was:

A-1 Photographs of the subject property on a board

Ms. Sloan stated that she is proposing to relocate an existing central air-conditioning unit from the rear yard of her property to the westerly side yard. She stated that the proposed location of the unit would encroach into the required 6-foot setback by no more than 1.5 feet and the unit would be screened by 2 evergreen shrubs that she would plant. She stated that, although other options along the westerly side of the home may provide a larger setback, these locations would be a greater nuisance to her neighbor on the westerly side. She continued by describing the existing location of the

unit in her rear yard and stated that she would like to make better use of her rear yard by creating a patio and removing some overgrown shrubs and that relocating the unit would help her to achieve this. She stated that the easterly side of her property is not an option because her driveway takes up the majority of the space in that side yard and that her westerly neighbor is present to support her application.

The Board questioned Ms. Sloan. Chair Harrison called for questions and comments from the public. Ms. Magnusson, 10 Windsor Place, was sworn. She stated that she is the neighbor of the applicant on the westerly side and that she supports the application.

Ms. Sloan gave her closing statement and stated that the noise level of the central air unit is 71 decibels, and that for comparison a lawn mower is typically at 90 decibels and a speaking voice is 60 decibels. She also stated that she has researched noise reduction techniques and would look into installing noise absorption pads if necessary.

The Board discussed the application. On motion by Mr. Susswein, seconded by Ms. Holloway, the application was approved, Chair Harrison, Mr. Fleischer, and Ms. Cockey voting in the negative, subject to the following conditions:

1. The applicants shall screen the proposed central air conditioning unit as depicted in their plan using evergreen plantings.
2. The westerly side yard setback of the proposed central air conditioning unit shall not be less than 4.5 feet.

Chair Harrison called the continuation of the application of **Coldwell Banker/NRT, 242 Bellevue Avenue**. Calvin Trevenen, Esq. appeared as attorney for the applicant. Assistant Secretary Charreun stated that there are not 7 eligible Board members present for this application. Mr. Trevenen requested a few minutes to discuss the situation with his client and stated that they would wait until after the next application is heard to decide whether to continue at this hearing or carry the application.

Chair Harrison called the application of **Omnipoint Communications, Inc., 641 Bloomfield Avenue**. Joseph O'Neill, Esq., appeared as attorney for the applicant and described the background. He stated that after the previous application was approved by the Board subject to conditions, the applicant went before the Montclair Historic Preservation Commission, which approved the application but did not approve the screen wall that was required by the Board in Condition 4 of their resolution. He stated that the applicant is seeking that the Board amend their own approval or, in the alternative, that the applicant would seek an appeal of the Historic Preservation's requirement that the screen wall not be constructed on the easterly facade. Mr. O'Neill called Timothy Kronk, who was sworn and stated his qualifications as a Professional Planner.

Marked into evidence was:

A-1 Photo simulations, on a board, depicting the proposed easterly façade of the subject property and the proposed antennas with and without the screen wall that was required by the Board

Mr. Kronk stated that in his professional opinion, both options are acceptable, and that the choice of whether or not the antennas on the easterly side of the rooftop are screened is the choice of the Board.

The Board questioned Mr. Kronk. Mr. Kronk stated that the decision of the Historic Preservation Commission not to have a screen wall was based upon the fact that they felt that the proposed screen wall was not part of the original architecture of the building and that the additional bulk added by the screen wall had a negative effect on the aesthetics of the building.

Chair Harrison called for questions and comments from the public. Estelle Sirkin, owner of 635 Bloomfield Avenue, was sworn. She stated that she was contacted by the applicants regarding the possibility of obtaining air rights over her property. She stated that the offer from the applicant was low and would not have covered the legal costs of handing such a request.

The Board questioned the applicant. Mr. O'Neill stated that a fair market offer was made to the owners of 635 Bloomfield Avenue and that the applicant acted in good faith, however, no agreement was reached.

The Board discussed the application and it was determined that Condition 4 of the Board's July 20, 2005 Resolution would be modified by deleting the first and second sentences of that Condition, so that no screen wall would be required on the easterly façade of the building on the subject property. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved, subject to the following conditions:

1. The applicant shall screen three proposed equipment cabinets in accordance with the revised plans through June 15, 2005.
2. The applicant shall move the antennae in Sector B closer to the existing penthouse.
3. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 2502-39, et seq.
4. 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.

Mr. O'Neill withdrew his alternative request for an appeal of the Historic Preservation Commission's requirement that the screen wall not be constructed.

Chair Harrison called for a short recess.

Chair Harrison called the continuation of the application of **Coldwell Banker/NRT, 242 Bellevue Avenue**. Mr. Trevenen requested that, in light of the fact that there are not 7 eligible Board members present, that the application be adjourned until the next available hearing date. Mr. Trevenen inquired about the status of returning Board members for 2006 and also asked for a clarification on whether the "d" variance requested would be considered a d(1) or a d(3) variance. Chair Harrison stated that the Township Council has not yet acted on the terms of the 3 Board members that are expiring at the end of this year and that the question concerning the "d" variance should be addressed by the Board Attorney. Chair Harrison announced that the application would be continued at the January 18, 2006 regular meeting of the Board and that no further notice would be given.

Chair Harrison called the application of **Sprint Spectrum, 36 Hawthorne Place**. Frank Ferraro, Esq., appeared as attorney for the applicant and described the application. Mr. Ferraro called Glen Pierson, who was sworn and stated his qualifications as a Radio Frequency Engineer. Mr. Pierson stated that Sprint presently has a gap in coverage within Montclair that would be addressed by the proposed installation.

Marked into evidence was:

- A-1 Radio Frequency Propagation Exhibit, consisting of a USGS base map and 2 overlays

Mr. Pierson described Exhibit A-1 and stated that one of the overlays depicts the existing coverage presently provided by Sprint and also depicts the existing gaps in coverage. He stated that the second overlay depicts the coverage that would be provided by the proposed antenna installation and that the site is one of the few suitable locations for an antenna installation in the area. He continued by describing the other sites in the vicinity that were examined as potential antenna installation sites and indicated the problems associated with those alternative locations. He stated that the proposed antennas are mounted at below the minimum height that is actually needed for the existing gap and that the proposed installation would not interfere with other existing wireless antennas on the rooftop.

The Board questioned Mr. Pierson. Mr. Pierson stated there is no plan at the present time for addressing the remaining gap in coverage. He also stated that the number of antennas proposed is not determined by the size of the coverage gap. He continued by describing the wireless network and how the number of antennas proposed and their locations on the rooftop work to provide efficient coverage.

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

Mr. Ferraro called Joseph Chiaravallo, who was sworn and stated his qualifications as a Radio Frequency Emissions Expert.

Marked into evidence was:

- A-2 FCC Compliance Report, prepared by Joseph Chiaravallo, dated September 22, 2005

Mr. Chiaravallo described the report marked as Exhibit A-2 and stated that a study was conducted using FCC standard calculation methods and that the exposure levels at the site would be at approximately 0.63 percent of the FCC standards and more than 150 times below the FCC limitations.

The Board questioned Mr. Chiaravallo. Chair Harrison called for questions from the public. None were offered.

Mr. Ferraro called Glen Scherer, who was sworn and stated his qualifications as a Professional Engineer. Mr. Scherer described the roof plan and stated that a screen wall is proposed around the equipment cabinets on the roof and that the screen wall would rise above the top of the roof deck by 12 feet. He described the elevations depicted on the plans and heights and locations of the proposed antennas. He stated that the proposed antennas would be mounted 5 feet lower than the existing Cingular antennas that are mounted on the bulkhead on the roof. He also stated that the proposed antennas that are not mounted on the screen wall are encased in a cylindrical enclosure that would be painted a color that would allow them to blend into the surroundings and limit their visibility.

The Board questioned Mr. Scherer. Mr. Scherer stated that the mounting height of the antennas is being proposed in order to get clearance from the edge of the roofline. Chair Harrison called for questions from the public. None were offered.

Mr. Ferraro called Timothy Kronk, who was sworn and stated his qualifications as a Professional Planner. Mr. Kronk described the building located on the subject property and the proposed antenna installation and accompanying equipment. He continued by describing the conditional use standards of the Montclair zoning ordinance for antenna installation and the variances required by the applicant.

Marked into evidence were:

- A-3 Photo-board depicting the existing view of the site and the photo simulation view looking northwest
- A-4 Photo-board depicting the existing view of the site and the photo simulation view looking south
- A-5 Photo-board depicting the existing view of the site and the photo simulation view looking east

Mr. Kronk described the photo Exhibits and stated that they provide the correct perspective of one viewing the building from the ground. He stated that the views depicted on the photo-simulations would be furthered obscured once the deciduous vegetation returns. He also stated that the equipment proposed by the applicant resembles typical rooftop appurtenances found on rooftops and that the proposed installation would not have a detrimental visual impact. He continued by describing the standards required by the Municipal Land Use Law in order for the requested variances to be approved and stated that the deviations are minor and do not render the site unsuitable for the proposed installation and that the plan meets the spirit and intent of the ordinance.

The Board questioned Mr. Kronk. Harrison called for questions and comments from the public. None were offered.

Mr. Ferraro gave his closing statements.

The Board discussed the application. The Board expressed serious concerns regarding the number of antennas proposed for the amount of coverage provided, the proposed construction of a taller and wider screen wall than is necessary to screen the equipment cabinets in order to mount panel antennas at a taller height and at certain distances apart, and the high visibility of the screen wall enclosure and the cylindrical antenna enclosures. The Board also expressed concerns regarding a lack of information provided by the applicant in terms of the effect that lowering the antennas would have on the coverage provided. As a result, the Board requested that Mr. Pierson address the specific issue regarding the effect on the coverage provided if the antennas proposed on the screen wall were lowered along with the screen wall by approximately 3 feet.

Mr. Pierson, still under oath, stated in order to provide sufficient coverage with the installation, lowering the antennas would require that the antennas be located closer to the edges of the building. He also stated that in order to relocate the equipment cabinets at another location on the roof, Mr. Scherer would have to investigate the structural features of the rooftop. He stated that simply lowering the height of the antennas on the screen wall in their proposed locations could cause cancellations of signals. He stated that in order for an antenna to properly function, it could be lowered by 1.5 feet for every 5 feet it is moved closer to an edge of the building. Based on the information provided by Mr. Pierson, the Board discussed several conditions that would modify the proposal, not have an impact on the applicant's required coverage, and provide a significant visual improvement from the original proposal. Mr. Ferraro requested a few minutes to discuss the potential modification with his witnesses.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. The proposed equipment cabinets shall be enclosed in screening no higher, wider or longer than necessary for enclosure.

2. The placement of the equipment cabinets shall be shifted along the rooftop no closer to South Fullerton Avenue than necessary to achieve the proposed coverage as presented to the Board.

3. Three panel antenna shall be flush-mounted to the equipment cabinet enclosure toward Hawthorne Avenue at a high no greater than the enclosure.

4. The two additional cylindrical enclosures proposed by the applicant's amended plan shall be mounted above the building parapet at a height not to exceed 65 feet from ground level, and shall no contain more than two panel antennae each.

5. The cabinet screening and cylindrical enclosures shall be painted to match the grey brick color of the building to which they are attached.

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.

Chair Harrison called the continuation of the application of **PAAG, LLC, 7 Fidelity Place**. Laurence Olive, Esq. was still not present. Ms. John stated that the Board should not proceed with the discussion and vote on the application without the applicant's attorney present because the attorney should be present if the Board were to discuss any conditions of approval that may be considered. Chair Harrison announced that the application would be continued at the January 18, 2006 regular meeting and that no further notice would be given. The applicant consented to an extension of time.

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