BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Special Meeting
of July 12, 2007

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's special meeting held on **Thursday, July 12, 2007**.

Chairman Scott Levy called the special meeting to order at 7:05 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present were: Mr. Newman, Ms. Spindel,
Mr. Sacchinelli, Mr. Diner, Mr. Meer, Mr. Charriper and Mr. Levy.

Absent were: Mr. Karas, Mr. Nakashian, Mr. Blecher and Mr. Salerno (Mr. Salerno recused himself from the Omnipoint apliction – Mr. Salerno arrived for Application #2).

Also in attendance were William Soukas, Board Attorney; Cheryl Bergailo, Board Planner; Tina Restuccia, Court Reporter; and Carol LoPiccolo, Zoning Board Clerk.

<u>Commercial Old Business</u>:

1. Application #2006-100, Omnipoint Communication, Inc.
   33-02 Morlot Avenue, Block 2410, Lot 49-56, Zone R-1-2
   The proposed antenna flagpole requires a use variance as per Section 125-57.D.(d)[1] use variance.

   Robert Garofalo [attorney for the applicant] came forward. Mr. O'Neill [previous attorney] could not be present and Mr. Garofalo is filling in for Mr. O'Neill. Mr. Kronk [planner] also came forward.

   Mr. Newman asked what the diameter of the flagpole would be. Mr. Kronk stated it is not on the site plan. Ms. Bergailo [Board Planner] stated it is on the plan to scale.

   Ms. Peck stated in the transcript of 5/29/07 it states it is 24" at the base and at the top it is 22". Mr. Kronk stated with his photo simulation he used the diameter of 26" as a hypothetical measurement.

   Mr. Newman asked if anything has been prepared to give a better visual of the size of the flagpole. Mr. Kronk stated there is no way to provide a better visual than the photos that have already been presented.

Mr. Kronk depicted photos that were presented at the December 18, 2006 meeting. Those photos were prepared from a balloon test. A simulation was done at the intersection of Morlot and Estler Court with no leaves on the trees, and a photo directly in front of the VFW property of January 18, 2007, and were done at the request of the Board.

Mr. Newman asked if Mr. Kronk is familiar with an industrial steel drum and asked what the dimension of that is. Mr. Kronk did not know. Mr. Newman stated the dimension of a steel drum is a little less than 24" and the visual of this pole would be a very big impact.

Ms. Spindel asked if the property is sold what happens to that pole. Mr. Garofalo stated that is not a question for the Planner and at this time there are no plans for the VFW to be sold.

Mr. Meer asked if something were to hit the pole – is it safe. Mr. Levy stated the engineer stated previously that the monopole is designed to withstand certain forces.

Mr. Newman stated that the engineer stated there is no crash data that exists on a pole.

Mr. Levy opened the meeting to the public within 200' for questions to the Planner. The following members of the public came forward:

Michael Bodner, 8 Lafayette Place: stated there is a letter from John Capazzi [previous Board Planner] dated 9/21/06 and asked what the height of the existing flagpole is. Mr. Garofalo read from Mr. Capazzi's report. Mr. Bodner asked why is it important that the existing flagpole be measured. Mr. Kronk stated that since 2 balloon tests were done, the height of the existing flagpole is irrelevant and the applicant is not relying on an existing structure. Mr. Levy stated that the existing flagpole is shorter than the proposed flagpole. Mr. Kronk agreed.

Renard Gaddi, 31-14 Gordon Place: Mr. Gaddi asked if the pole is erected as 1 60' structure or a telescope type construction. Mr. Gaddi felt the photos are inaccurate as how it will actually appear. Mr. Gaddi stated that with a telescopic type construction there will be a line. Mr. Kronk stated that the most this would have would be 1 joint.

Mr. Levy opened the meeting to the general public.

Mynra Beck, 5-18 Estler Court: Ms. Beck asked if there were an attempt to request a variance for the additional impervious coverage on the property. Ms. Bergailo stated that the applicant needed a variance for increasing the impervious

coverage and the existing is 83% and it is increasing slightly. Ms. Beck did not want any variances that are needed to be overlooked.

Barry Gore, 5-18 Estler Court: Mr. Gore stated that the testimony given by Mr. Kronk is that there would be no impact on the neighborhood and that the flag would not be a distraction. Mr. Gore asked if Mr. Kronk considered that next to the flagpole there is a cannon on the property. Mr. Kronk stated that the cannon was present at the site when he did an analysis. Mr. Kronk did not think it would be a distraction.

Mr. Joseph Kapon, 11 Sheridan Place: Mr. Kapon asked if a study was done on the value of the real estate market. Mr. Kronk stated no.

Vadim Seltser, 4-21 Eugene Street: On what ground was a residential area chosen for this site. Mr. Levy stated it was previously testified that this was the area needed for coverage. Mr. Seltser stated that he felt this would devalue the area of the homes.

Mark Schwartz 37-10 Lenox Drive: Mr. Schwartz asked if the Planner takes into account for a change in population for the area. Was the site taken into account that it could be diminishing. Mr. Garofalo stated there is no proof that the VFW is diminishing. Mr. Kronk did not base the analysis on the fact that the VFW has an aging population and would not be a consideration from a planning perspective.

Michael Flax, 34-09 Lenox Drive: In the planning of this, how much planning has been done for health concerns and how does this benefit the community. Mr. Levy stated the health issues were previously testified to and the planner previously testified to the benefits. Mr. Flax felt this would not be aesthetically pleasing to the neighborhood.

Josh Milow, 36-07 Lenox Drive: Mr. Milow asked what questions could be asked. Mr. Levy stated that only questions of the Planner are appropriate at this time. Mr. Charipper agreed with Mr. Levy.

Freddie Noi, 5-22 Estler Court: Mr. Noi asked if there is a reason why a list was not provided with other sites.

Mr. Levy closed the meeting to the public.

Mr. Garofalo preferred that the public give their general comments at this time.

Mr. Levy opened the meeting to the public and the following members of the public came forward:

Michael Bodner, 8 Lafayette Place: Mr. Bodner read from page 8 of the transcript of 5/29/07 stating that the existing flagpole is 40' and the required height is 30'. Mr. Bodner stated that he did some measurements and presented a photo.

TammyRand, 37-01 Lenox Drive was sworn in and testified that she took the picture presented as **Exhibit O-1**. Mr. Bodner testified that the actual height of the flagpole is 24' and not 40'. Mr. Bodner asked how the applicant came up with a measurement of 40'. Mr. Garofalo stated that the expert stated he thought it was 40'.

Mr. Bodner questioned whether or not the public can believe the applicant on any statements since they are wrong with their height calculation.

Mr. Bodner presented a photo of the diameter of the existing pole that is 5.5" and it was marked as **Exhibit 0-2.** Mr. Bodner stated that actually the flagpole will be 36' higher than what is there now, not the 22' as previously stated.

Mr. Bodner presented a ratio chart that was marked as **Exhibit 0-3**.

Mr. Bodner presented a photo of the current view that has been digitally enhanced. Mr. Garofalo objected to this photo. Mr. Levy did not allow this photo to be introduced into evidence. Mr. Newman stated that if Mr. Bodner is stating the applicant has not accurately depicted the site – Mr. Garfalo objected to this testimony.

Mr. Bodner depicted **Exhibit A-5**. Mr. Bodner felt that the view is obstructed. Mr. Bodner felt that Omnipoint's testimony has not been accurate.

Mr. Harvey Rubenstein, 28 Rutgers Terrace: Mr. Rubenstein asked if this is final testimony of the public. Mr. Levy responded possibly. Mr. Rubenstein stated the impervious coverage is such a high amount and would that cause any storm water problems. Ms. Bergailo stated that most of the coverage is existing. Mr. Rubenstein stated that there is no testimony that the pole could definitely withstand winds, etc. Mr. Rubenstein felt that should a car or truck crash into the pole the residential neighborhood would not be protected. Mr. Rubenstein felt it was too large for the neighborhood. Mr. Rubenstein stated that if even there are significant gaps of coverage, is this the least obtrusive way to satisfy these gaps. This structure would impair the Master Zone Plan and this will have a negative impact on the neighborhood and this will be a detriment to the public good. Mr. Rubenstein is against this application being approved. There is adequate level of service and that is sufficient. Should this be approved, handicapped curbs should be installed.

Mr. Kapon asked if the Board requires the applicant to provide an analysis of the real estate market. Mr. Levy responded no. Mr. Garofalo stated any testimony in

relation to the real estate market should not be admitted by a non-expert. Mr. Kapon stated that he has sold homes in Fair Lawn for the past 10 years and is qualified to give testimony. Mr. Soukas asked if Mr. Kapon has evaluated properties in relation to telecommunications applications. Mr. Garofalo stated that he would have to be licensed as an appraiser. Mr. Kapon stated that appraisers work for banks for the purpose of administering loans. As a real estate agent he has done appraisals. Mr. Garofalo objected to Mr. Kapon testifying as he is not qualified per the Court's direction. Mr. Charipper felt if testimony is given, that may potentially harm the case in Court since he cannot testify as an expert. Mr. Garofalo stated that Mr. Kapon cannot give testimony. Mr. Newman felt Mr. Kapon could give testimony as a resident only.

Mr. Kapon stated that there would be an impact of the value of homes of this project in the immediate neighborhood. Mr. Levy stated that Mr. Kapon could not give testimony in relation to the value of homes as a real estate agent. Mr. Kapon stated he has not previously given testimony in relation to any cell tower applications. Mr. Kapon wanted to give an example of how the value of the market goes down because of a cell tower. Mr. Soukas stated that there are many other factors that come into play in the effect of the value of homes.

Monice Young, 36-19 Lindsay Road: Mr. Young asked if the Board were to vote how many would vote. Mr. Soukas stated 7 members would vote. Mr. Young asked for the Board to adjourn this application to allow the public to obtain an expert in reference to the value of the homes. Mr. Young stated he has been a broker in town and would like to come as an expert and has testified in Court and this is the first antenna case and needs time to get someone to testify as an expert. Mr. Young felt that the values of the homes would be negatively affected by this application.

Mr. Garofalo objected to Mr. Young giving testimony as an appraiser. Mr. Garofalo felt the town should provide an expert in this field. Mr. Newman stated that no one has the right to testify before the Board as an expert without proving it to the Board, but anyone can testify as a resident.

Mr. Charipper asked if Mr. Young would personally go hire an expert. Mr. Young answered that he would like the option, since he thought he would be accepted as an expert.

Mr. Gore, 5-18 Estler Court: Mr. Gore stated that the tax assessor's office has an appraisal company doing a re-evaluation and had a conversation with him about a cell tower. Mr. Garofalo objected to this testimony. Mr. Gore stated that the community in writing gives the people near the water tower – Mr. Garofalo objected. Mr. Levy stated that is hearsay.

Pina Ben, 32-03 Morlot Avenue: Ms. Ben considered to sell the house because of this application. Ms. Ben stated that there is a lot of traffic in that area because of the school. Ms. Ben asked the Board to consider that this is a school zone and this should be denied and felt the value of the homes would decrease.

Renard Gaddi, 31-14 Gordon Place: Mr. Gaddi has worked for the government on pole applications and has testified before numerous boards and is a civil engineer and has done tower construction for environmental impact for the past 12 years. Mr. Gaddi wanted to present photos. Mr. Garofalo stated that there is no way to know if the photos have been enhanced and objected to the photos. Mr. Garofalo stated they have provided photos and they are accurate. Mr. Gaddi stated that on the photos there are 3 survey rods. Mr. Soukas asked if the photos have been enhanced or modified in any way. Mr. Gaddi stated no and that he took the photos in early June at approximately 6:00 p.m. Mr. Gaddi stated that he placed survey rods and measured the height of the gutter of the VFW building to the ground and all measurements have to be in the same plain. Mr. Soukas asked if the monopole in the photo is superimposed. Mr. Gaddi responded yes and has done this procedure before - more than a dozen times.

A 5 minute recess was taken at this time. The meeting resumed at 9:15 p.m.

Mr. Garofalo asked what the settings were used on the photos presented. Mr. Gaddi did not know. Mr. Gaddi was directly across the street when the photos were taken. The photos were marked as **Exhibit O-4a and O-4b**. Mr. Garofalo asked if the cropping of the photos distorted the photos. Mr. Gaddi responded no. Mr. Garofalo objected to the photos as he did not have an expert to look at these photos and thought these could cause a problem with this case in the future. Mr. Levy polled the Board as to the acceptance of Mr. Gaddi has a factual witness.

Mr. Sacchinelli accepted Mr. Gaddi as a factual witness.
Mr. Newman asked how Mr. Gaddi is different than Mr. Kronk's photos that were taken in a similar manner. Mr. Garofalo stated the Board accepted Mr. Kronk as an expert. Mr. Newman accepted Mr. Gaddi as a factual witness. Mr. Garofalo also commented that Mr. Kronk is unbiased and does this as a living.
Mr. Charipper accepted Mr. Gaddi as a factual witness, but Mr. Garofalo should be given the opportunity to ask questions of Mr. Gaddi.
Mr. Meer accepted Mr. Gaddi as a factual witness.
Ms. Spindel, Mr. Diner and Mr. Levy also accepted Mr. Gaddi as a factual witness.

Mr. Gaddi stated the photos presented by the applicant felt the tower was shown in a more flattering way being further away. Mr. Gaddi stated the photo depicts what it would really look like being right across the street.

Mr. Levy asked how this photo relates to the applicant's photo. Mr. Gaddi stated his photo was not taken from the same location and the purpose is to show the relationship between the flagpole and the existing structure. Mr. Levy asked if Mr. Gaddi considered taking the photo from the same location as the applicant. Mr. Gaddi stated that he could, but wanted to show the view from Morlot Avenue. Mr. Levy asked what was the basis for the flagpole for the height and width. Mr. Gaddi stated that the base of the cornerstone you will see a number of objects that are red and white which are stadia survey rods. Mr. Levy referred to Exhibit O-4A and asked the accuracy of the rod on the stone. Mr. Gaddi explained the methodology of his measurements. The photo showed a 60' structure with a 2' diameter ball on top with a 12'x18' flag on top.

Mr. Charipper wanted to question Mr. Kronk on these photos and how Mr. Kronk thought it was disproportionate. Mr. Kronk asked if the photo was taken horizontally. Mr. Gaddi stated yes. Mr. Kronk felt that possibly this photo is distorted since the photo was taken horizontally and then cropped.

Mr. Levy stated that there is methodology that is standard, but if there were cropping it may be inaccurate. Mr. Gaddi felt the photo was accurate and the building itself is no more than 20' high. Mr. Kronk felt the photo presented was inaccurate.

Mr. Charipper had a concern if the methodology used by Mr. Gaddi and if the photos are disproportionate and should not be considered.

Mr. Gaddi wanted the Board to see what the pole would actually look like in relation to the building. Mr. Gaddi stated the scales are correct.

Ms. Spindel asked what size was the flag portrayed at? Mr. Gaddi stated 12'x18'.

Mr. Garofalo objected to the photos.

Steve Zeoli, 36-01 Lenox Drive: Mr. Zeoli asked if there are any problems with this type of tower known at other locations. Mr. Levy stated there has not been any testimony to this type of tower. Mr. Zeoli asked if the applicant has known of any problems. Mr. Garofalo stated he would get documentation to the testimony. Mr. Zeoli referred to the minutes of 12/18/06. Mr. Zeoli had a concern over the tower in the residential neighborhood and that is a safety concern. Mr. Zeoli stated there was a flagpole erected in Morris Plains. Mr. Garofalo stated that in that installation the foundation pour was light due to the contractor and did not meet the specifications, and that Omnipoint wanted it re-poured. Mr. Zeoli stated he is involved with the sales of lenses. Mr. Zeoli asked which camera did Mr. Kronk use and what lens was used. A 50 millimeter lens was used. Mr. Zeoli stated that the settings were not accurate for a 50 millimeter lens.

Michael Bodner referred to **Exhibit A-19.** Mr. Bodner measured the flagpole with a ruler – Mr. Garofalo objected to Mr. Bodner's testimony. Mr. Levy agreed with Mr. Garofalo.

Mr. Garofalo asked if Exhibits O-4a and 0-4b were to remain.

Mr. Charipper, Ms. Spindel, Mr. Diner and Mr. Levy – No.
Mr. Sacchielli, Mr. Newman, Mr. Meer - YES.

This application was carried to a special meeting on September 6, 2007 at 7:00 p.m. The applicant waived the time requirements for the Board to act. It was noted that any objector's witnesses must notify the applicant to same.

Roll call was taken and Mr. Benny Salerno was present at this time in addition to everyone already present along with Paul Azzolina [Board Engineer] and Mark Kataryniak [Board Traffic Engineer].

2. Application #2007- 055, Hampshire Companies, L.L.C.
Bergen-Passaic Cataract Surgery & Laser Center
18-01 Pollitt Drive, Block 4802, Lot 2, Zone I-1
Medical use is not permitted in an I-1 zone. Use variance is required as per Section 125-28. Modifications to the existing site plan requires site plan approval. Proposed parking is 371 spaces. Existing spaces of 349 where 411 spaces are required, a waiver is needed.

Stuart Leibman [attorney for the applicant] came forward. Mr. Leibman stated that there is a use variance required, a parking variance, 5,045 s.f. of existing pervious area would be taken for additional parking as well as modifying the front entrance of the building and redoing the front of the building. This will support the redevelopment of this property. Valley Hospital also occupies the building. Reference to the Route 208 Corridor Study has been made and encourages the proposed medical use. This application is in conformance with the current Master Plan. Don Smart had previously indicated that the EDC is in support of the application. Previously another tenant in the building came forward and the applicant has met with that tenant and they are now in agreement.

Charles Witczak [engineer for the applicant] came forward. Mr. Witczak stated that there was a meeting between the landlord and the tenant this afternoon regarding the parking. There was a concern over the parking to the left and the access to the sidewalk. A depressed curb would be added to provide the ease of accessibility for passengers. Concept Plan revised July 12, 2007 was marked as **Exhibit A-3**.

Ms. Spindel asked about the planting area in the parking lot. Mr. Witczak did not have a final design at this time.

Mr. Levy opened the meeting to the public.

Mr. Harvey Rubenstein, 28 Rutgers Terrace: Mr. Rubenstein had a concern on the south side. From the Lea & Perrins side down to this property, it is void of trees. Mr. Leibman stated that previously it was testified that trees would be planted along that side. Mr. Rubenstein stated that from where you exit, would there be an interference of traffic. Mr. Witczak stated they would look at the site distances and make sure that everything is sufficient. Mr. Rubenstein asked how many patients would be coming to the facility. Mr. Leibman stated the traffic consultant would answer that.

Mr. Leibman stated that all new landscaping would be done in front and this would be a more aesthetically pleasing building.

Mr. Levy closed the meeting to the public.

Mr. Paul Goin [Traffic Engineer for Atlantic Traffic Engineering]. Mr. Goin was accepted as an expert witness. Mr. Goin stated he was familiar with the site and described the traffic on site circulation. Mr. Goin stated the proposed use is a medical use and employees would arrive at 7 a.m. and leave at 5 p.m. and would be open Monday through Friday. 24 employees in addition to 2 doctors and 2 anesthesiologists would be on site during peak times. With patients there would be a total of 35 people at one time. There is a potential of 35 cars on site, but there would probably be less. Approximately 70% of patients are dropped off and do not drive to their appointment. The business provides a car service for those who request that. There are proposed spaces of 371. The demand for the site is 411 spaces. The Ordinance requires 1 per 100 s.f. of medical office space. 85% of medical offices demands 1 space per 190 s.f. as per the regulations of ITE. Mr. Goin felt that more than enough parking is provided. Mr. Leibman asked if a detailed study is required. Mr. Goin did not feel a detailed study is required. There would be approximately 40 peak trips that would be done for the medical use and 30 for an office use. This is an insignificant number of trips. Mr. Goin felt the variance should be granted for a use variance and for the parking and would not have a detrimental effect.

Mr. Meer asked if Mr. Goin is familiar with the Phillips Eye Center in Elmwood Park and if this use is similar to that operation. Mr. Goin was not familiar with that use. Mr. Goin stated that this facility would be performing 3 types of surgery.

Ms. Spindel asked if this use would occupy the remainder of the building. Mr. Goin stated no and there is still vacant space. Ms. Spindel stated that when she visited the site it appeared that the parking lot is underused. Mr. Leibman stated that 20,000 to 30,000 of space is occupied and there is a remainder of 100,000 space remaining and the applicant is in anticipation of that space being leased.

Mr. Levy opened the meeting to the public.

Mr. Harvey Rubenstein stated that this Board may want to require a sidewalk on the south side of the roadway. Mr. Levy asked if the applicant would be willing to provide a sidewalk. Mr. Leibman stated that if the corridor study is implemented that they would consider that.

Mr. Levy closed the meeting to the public.

Mr. Mark Kataryniak [Board Traffic Engineer]: Mr. Kataryniak asked if 10,800 s.f. is it possible to increase the number of staff within the footprint of that space. Mr. Leibman responded no, the numbers given are the projected maximum and not the current number. Mr. Kataryniak concurred with Mr. Goin with the ITE statistics in comparison to the Ordinance which is exceptionally high. With the additional parking spaces provided, and counting the 10,800 s.f. area for general office, a negative impact for parking is not being done and has no concerns there. Mr. Kataryniak referred to Sheet 5 of his report of July 9, 2007. Mr. Goin would comply.

Paul Azzolina [Zoning Board Engineer] asked if there were spaces designated. Mr. Goin responded no. Mr. Leibman stated 4 spaces would be designated for the Laser Center.

Mr. Sean Moronski, Burgiss Associates [Planner for the applicant]. Mr. Moronski reviewed the plans and the Master Plan and Ordinance. Mr. Moronski felt the Laser Center use would be integrated in the existing building. If you look at the site, there is no conflict with what is being proposed and the use is suited for this location. This encourages space for a health care use. This is a business that has been in Fair Lawn for 18 years and needs larger quarters for their demands and needs. The circulation of the site will be improved. The goals of the Master Plan would be met. The uses that are located at this type are consistent with the Master Plan. Landscaping will be improved, signage, buffering are all being addressed. The EDC are considering the 208 corridor study and this will be consistent with that as well. Medical and health services are uses that are in demand and are present on this property right now and are successful. These are the positive criteria. The proposed use has no negative impact on the property. Circulation is improved. This will not be open on weekends and is consistent with offices that are in the area. This will enhance the commercial area. The benefit of granting this variance provides a use with no negative impact, but will help a Fair Lawn business to grow.

Ms. Bergailo [Board Planner] commented that regard to the 208 Study and spoke with a consultant who did that study and there is a lack of expansion of office space, and with the fact there are medical uses in that area, the concerns are with

retail and there are revisions being done with that study. Ms. Bergailo did not think there was a concern with office recommendations. Enhancing the streetscape was recommended.

Mr. Harvey Rubenstein asked if a sidewalk could be implemented based on the Corridor Study. Mr. Moronski stated that the Master Plan is the basis for his recommendations and down the road if the corridor study is approved, the property owner will be directed by the Ordinance at the time. Mr. Rubenstein asked if there were enough room to implement a sidewalk. Mr. Moronski did not know. Mr. Levy asked the character of the area. Ms. Bergailo stated industrial. Mr. Moronski stated that putting in a sidewalk would not fit in and is not an area that gets walked.

Ms. Spindel asked if the Borough is responsible for the road, and if the landlord is putting in street trees, who will be responsible for those trees. Ms. Peck thought that if the applicant were to put trees in the right of the way, they would probably need to discuss it with the Shade Tree Division. Ms. Bergailo recommended that the applicant plant the trees within the property line and should be responsible for them.

Mr. Leibman felt the application should be approved and this is consistent with the Master Plan.

Mr. Meer made a motion to approve this application and Mr. Charipper seconded the motion. Impervious coverage would be increased from 72.2% to 73.5%.

VOTE: Mr. Newman, Ms. Spindel, Mr. Salerno, Mr. Sacchinelli, Mr. Charipper, Mr. Meer and Mr. Levy – YES.

APPLICATION APPROVED.

Adjourn

Mr. Newman made a motion to adjourn this meeting. Mr. Charipper seconded the motion.

VOTE: All Present – Yes.
TIME: 11:05 p.m.

Respectfully submitted,

Carol LoPiccolo
Zoning Board Clerk