

BOROUGH OF MOUNTAINSIDE

Planning Board Meeting

MINUTES

June 3, 2020

CALL TO ORDER

The virtual meeting was called to order at 6:39 p.m. Chairman Tomaine read the Open Public Meetings statement in accordance with the law.

ROLL CALL & FLAG SALUTE

Present

Mr. Disko
Mr. Tomaine
Mr. Zawislak
Mr. Garran
Mr. Parker
Mr. Matlin
Mr. Jakositz
Ms. Dillon
Mr. Kostin

Also Present

Vince Loughlin, Board Attorney
John Chadwick, Board Planner
Matthew DeAnna, Technical Coordinator

Absent

Mayor Mirabelli
Councilman Dierkes

Mr. Loughlin advised that Mayor Mirabelli and Councilman Dierkes were absent as a result of their inability to participate in Board of Adjustment applications.

RESOLUTIONS

Drive Auto Works - Block 23, Lot 20 (1167 Route 22)

Motion by Mr. Disko, **seconded** by Mr. Tomaine and unanimously carried to approve the resolution, as presented.

Roll Call:

Aye: Mr. Disko, Mr. Tomaine, Mr. Parker
Nay:
Abstain:

Thomas & Brittany Moore - Block 22.02, Lot 40 (1121 Wychwood Rd.)

Motion by Mr. Garran, **seconded** by Mr. Parker and unanimously carried to approve the resolution, as presented.

Roll Call:

Aye: Mr. Disko, Mr. Tomaine, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin, Mr. Jakositz, Ms. Dillon, Mr. Kostin
Nay:
Abstain:

Mark & Susan Doherty - Block 22.03, Lot 3 (1140 Wychwood Rd)

Motion by Mr. Garran, **seconded** by Mr. Matlin and unanimously carried to approve the resolution, as presented.

Roll Call:

Aye: Mr. Disko, Mr. Garran, Mr. Parker, Mr. Matlin, Mr. Jakositz
Nay:
Abstain: Mr. Tomaine, Mr. Zawislak

Michael & Elena Patricco - Block 15.09, Lot 13 (248 Evergreen Court)

Chairman Tomaine announced that the memorializing resolution for the Patricco application would be addressed later in the meeting.

William & Karen Dillon- Block 16.14, Lot 12 (344 Edgewood Court)

Motion by Mr. Garran, **seconded** by Mr. Zawislak and unanimously carried to approve the resolution, as presented.

Roll Call:

Aye: Mr. Disko, Mr. Tomaine, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin,
Mr. Jakositz, Ms. Dillon, Mr. Kostin

Nay:

Abstain:

MINUTES

Motion by Mr. Zawislak, **seconded** by Mr. Garran and unanimously carried to approve the February 25, 2020 Minutes, as *written*.

Roll Call:

Aye: Mr. Disko, Mr. Tomaine, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin,
Mr. Jakositz, Ms. Dillon, Mr. Kostin

Nay:

Abstain:

The May 26, 2020 Minutes were tabled.

PLANNING BOARD

APPLICATIONS

Drive Auto Works - Block 7.04, Lot 19 (204 Summit Rd.)

Attorney for the applicant, Steve Hehl announced that the application was being withdrawn.

Paparatto - Block 7.02, Lot 14.01-14.04

The Board acknowledged a request from Mr. Hehl to adjourn the matter to 6/23/20 at 6:30 without further Notice.

BOARD OF ADJUSTMENT

APPLICATION

Inna Petrusenko & Nicholas Caruso

Block 5.20, Lot 18 (1125 Corrine Terrace)

Nicholas Caruso and Inna Petrusenko were sworn in. Mr. Caruso provided an overview of the application and introduced his engineer, Daniel W. Caruso.

Daniel Caruso, P.E. (201 Province Line Road, Wrightstown NJ) was sworn and qualified. Referencing a photo displayed on the screen, Mr. Caruso explained that the application was for four variances [two existing and two proposed].

The applicant explained that the original two story design had to be changed to a single floor layout in order to accommodate Ms. Petrusenko’s medical issues. He testified that as a result of the design change, they

would still be able to stay within the setbacks and FAR but would exceed the foundation limit and ground projection limits. He offered that the proposal would fit in with the neighborhood regardless.

The following exhibits were marked into testimony and discussed by the Applicant:

Exhibit A-1 (referred to as "Slide 2") was identified as an aerial view of the property highlighted in blue, obtained from the SDL portal on the Township website.

Exhibit A-2 (referred to as "Slide 3") was identified as an enlarged aerial view of the neighborhood showing lot size & square footage, obtained from a New Jersey Assessment Records Search. Mr. Caruso pointed out semi mature vegetation and the undeveloped commercial site in the rear of the property.

Exhibit A-3 (referred to as "Slide 4") was identified as a rendering of the house and surrounding areas showing existing and proposed conditions. Mr. Caruso pointed out the semi mature vegetation and heavily wooded area in the rear yard, both of which he offered, would help to limit impact to the surrounding community. He confirmed that the photos were obtained from Google Street view and that he generated the rendering by superimposing it over lot.

Exhibit A-4 was identified as the proposed front elevation. Mr. Caruso pointed out the architectural details including the brick façade and roof features.

Exhibit A-5 was identified as the proposed right side elevation. Mr. Caruso pointed out the window and door to the garage as well as the proposed master bath.

Exhibit A-6 was identified as the proposed rear elevation. Mr. Caruso pointed out the similarities of the rear roof to that of the front roof and a small deck leading to the yard which he advised, would likely be turned into a small patio in the future.

Exhibit A-7 was identified as the proposed left elevation.

Exhibit A-8 was identified as the Existing Plot Plan. Mr. Caruso identified the setback, existing house [to be demolished] and provided the lot dimensions.

At the behest of Mr. Loughlin, Mr., Disko confirmed that the proposed deck and front porch were shown on the drawings.

The following additional exhibits were marked into testimony and discussed by the Applicant:

Exhibit A-9 was identified as the Proposed Plot Plan showing the proposed new home which Mr. Caruso provided dimensional testimony for. He identified the new setbacks and living space. He also spoke about the direction of the driveway and utilities. Mr. Caruso indicated that a stormwater management plan had been incorporated into the proposal given the increase in lot coverage and provided details on same.

Exhibit A-10 was identified as a Zoning Review from Mr. Disko identifying the relief needed.

Exhibit A-11 was identified as a Foundation Plan. Mr. Caruso provided dimensional testimony with respect to same and pointed out that the plan falls below maximum FAR with most of the increase made to depth for purposes of blending.

Exhibit A-12 was identified as [inaudible]. Mr. Caruso indicated that his engineer would speak to the ground projections for lot area which they were unable to reduce.

Exhibit A-13 was identified as a placeholder for the next +/- 10 graphics to be referenced later.

Chairman Tomaine polled the Board for questions. At the behest of Mr. Zawislak, Mr. Caruso confirmed that the proposed porch and deck/patio are included in the plans. He acknowledged that he would return for a lot coverage variance if needed when/if the deck is converted to a patio. Positioning of the driveway was discussed in response to a question from Mr. Garran.

Mr. Deanna confirmed that there appeared to be no public comment. The Board Secretary provided an overview of instructions for public participation. Chairman Tomaine clarified that the period was for questions of the applicant.

Walt Petrillo (241 Summit Road) identified himself as the owner of the property on the southeast corner. Citing concerns over shielding, Mr. Petrillo asked whether there was a landscape plan. He related that while he was not opposed to the proposal, he felt that the "compromises" were made in the name of street appeal so the changes occurring mainly in the rear would "infringe" on his property the most, referencing the patio and possible elevated deck in particular.

Referencing the commercial zone to the "direct rear" of his own property, Mr. Caruso offered that they themselves bear the brunt of any impediment. He advised that they anticipate putting vegetation along their property line for aesthetic reasons.

Mr. Petrillo asked if there were any plans for the existing fencing. Mr. Caruso explained that they would likely remove the chain link fence and replace it with a more appealing fence or shrub row. Mr. Petrillo expressed concerns about the applicant being able to "peer" into his yard while using their deck/patio. Mr. Caruso offered to work on a solution with him. Mr. Caruso provided details on the proposed plantings in response to a question from Chairman Tomaine about same.

Exhibit A-1 was displayed in response to a request from Mr. Kostin regarding the distance between properties. The height of the deck/patio was discussed in response to a question from Mr. Zawislak. Mr. Caruso testified that it would be ground level/two steps up from ground level and "not raised." He provided rough dimensions for the distance of the deck to the back of the property. Mr. Disko confirmed that the deck was 4'9" x 8'4" and about 45' from property line.

Mr. Deanna confirmed that there were no further questions from the public. Ms. Petrusenko indicated that she had no testimony to add.

Daniel Caruso, P.E. provided testimony in support of the driveway design {questioned earlier} to the satisfaction of Mr. Garran. He also provided calculations for projection and spoke to how he would adjust coverage for a paver patio by removing the steps/landing. Mr. Caruso testified that direct access from the basement [via Bilco doors] was added as a safety feature which caused the projection numbers to increase.

Engineer Caruso provided testimony regarding the coverage variance and the calculations he used for the stormwater management design. Mr. Disko agreed that they could work together on the design. Mr. Caruso spoke briefly about the relief needed for the existing variances.

Chairman Tomaine polled the Board for questions. Referencing Exhibit, A-4, Engineer Caruso described the façade materials in response to a question about same from Mr. Matlin.

Chairman Tomaine opened the floor to questions of the witness at 7:33.

Shereen Hickman (241 Summit Road) welcomed the applicant to the neighborhood. Chairman Tomaine clarified that the floor was open to questions/comments about the application in particular. There were no further questions/comments.

Mr. DeAnna confirmed that there did not appear to be any members of the public trying to speak in response to an observation made by Mike Disko about a participant on the screen.

The applicant concluded testimony at 7:36 and the Board entered into deliberations.

Mr. Tomaine offered that the benefits of the proposal substantially outweighed the detriments and that there was no substantial detriment to the public good or zoning ordinance. Mr. Disko concurred. Mr. Zawislak offered that they tried their best to conform given the medical hardship.

Motion by Mr. Zawislak, to approve the application with the caveat that stormwater management be discussed with Mr. Disko. Mr. Loughlin asked about the imposition of a condition regarding keeping the house to a single story. Although Mr. Zawislak questioned the necessity of same, Mr. Disko endorsed it. The motion was **seconded** by Mr. Jakositz and unanimously carried to grant the relief, as requested with standard and special conditions as previously discussed and as further enumerated by the Board Attorney. Mr. Disko mentioned the testimony regarding the landscaping plan. Mr. Zawislak confirmed that he would accept all of the conditions, as discussed and as enumerated by the Board Attorney into his motion.

Roll Call:

Aye: Mr. Disko, Mr. Tomaine, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin,
Mr. Jakositz, Ms. Dillon, Mr. Kostin

Nay:

Abstain:

Mr. Loughlin prompted the Board to move into Executive Session for a "short presentation" to be made by him. Chairman Tomaine announced that the public portion of the meeting was adjourned and that the Board would be moving into closed session for purpose of discussing the Patricco resolution. Mr. Loughlin suggested that the Board consider a motion to go into executive session as permitted by the Open Public Meetings Act for consideration of a matter that is a permitted exception. He clarified that he wanted to make a presentation about "several cases that might impact on the possibility of litigation."

Motion by Chairman Tomaine, **seconded** by Zawislak and unanimously carried to move into closed session at 7:46. Mr. Deanna explained that in order to facilitate the closed session, the public would be moved to a virtual meeting area. Mr. Loughlin clarified that this would be done with no recording and advised that that executive session is subject to "limited notes and minutes." He further advised that the Board would return to the regular meeting upon reconvening.

The Board Secretary asked Mr. Deanna to pause the recording rather than stop it if possible. Mr. Loughlin clarified that both visual and audio should stop and that public should not be able to hear the discussion or see the demeanor of the Board. Mr. DeAnna confirmed that all members of the public had been moved to the waiting room.

Chairman Tomaine announced that the Board was returning to the public portion of the meeting at 8:39 and Mr. DeAnna acknowledged that the recording resumed. Mr. Loughlin advised that the Board had discussed matters of pending litigation or matters that could be developed into litigation with him. He further advised

that the results of that discussion would be disclosed when and if appropriate at a future date to be determined by the Board.

Chairman Tomaine asked for a Motion to consider the Patricco resolution. Mr. Loughlin explained that the application for FAR and other variance relief was denied at the May meeting and advised that the Board Secretary had received an email from Architect David Andriola on behalf of the applicant. Mr. Loughlin related that the email request was for the Board to not consider/formalize the resolution from the prior meeting in order to allow the applicants the opportunity to consult with an attorney in contemplation of requesting a reconsideration of the decision.

Mr. Loughlin explained that Mr. Andriola's email stated that the applicant never intended to request permission to exceed FAR and mentioned the possibility of debating the Zoning Officer's interpretation. He requested that the Board give him the opportunity/direction to respond to Mr. Andriola and share the statutory limitations for an Interpretation under the MLUL with the applicant. Speaking to the doctrine of res judicata, he asserted that this was not a case for an interpretation but rather for FAR and explained that any attempt to argue the former would be a different procedure under the MLUL. He explained that the Board would not be allowed "to not move forward" on the denial resolution and asserted that it was clear from the application and case that was presented that the FAR variance was the primary relief being sought.

David Andriola interjected. He stated that they had just received the resolution "less than an hour before" and that it had "plenty of incorrect statements in it." Mr. Loughlin advised him that he would be given an opportunity to speak and asked him to identify himself, which he did. Michael Patricco also identified himself.

Mr. Andriola asserted that there were "a couple of major things" that were "factually incorrect." Mr. Loughlin advised him that it was not correct for him to address the Board and that it was not appropriate for him to dispute factually the contents of the resolution. Stating that it was "not a transcript," Mr. Loughlin asserted that the resolution "confirms the action of the board" and "memorializes the decision." He further stated that it was not subject to modification, negotiation or correction and offered that there were "legal remedies that may be existing" if they wished to challenge the Board's decision.

Mr. Andriola advised that they received Mr. Chadwick's memo before the hearing or they would have "stressed" the points he noted "more thoroughly." He asserted that the resolution says that they acknowledged that they saw it when they never did. Mr. Loughlin cautioned the Board not to consider expanding the record. He advised that the applicant has the right to take legal action if they disagreed with what was stated in the resolution or with the decision of the Board. As far as not "understanding" Mr. Chadwick's report, Mr. Loughlin indicated that he was not going to engage that as the Board Attorney nor would he encourage the Board to. He asserted that it was "clearly understood" that the applicant was seeking FAR, that the Board discussed it with the Architect and that the nature of the relief was clearly understood inasmuch as Mr. Andriola discussed and debated it with the Board.

Mr. Andriola asked whether the next step would be voting on finalizing the resolution. When Mr. Loughlin acknowledged that it was, Mr. Andriola asked whether given this information, the resolution wasn't something they would have a chance to review for accuracy to which Mr. Loughlin replied "no" and reiterated that it was to memorialize the Board's decision. Mr. Andriola stated that it was "strictly false," and then stated that they would "take whatever matters" that they had to, noting for the record his assertion that "the memo states false accusations." Calling it bogus, he asserted they never received the review. Mr. Loughlin acknowledged his comments.

Motion by Chairman Tomaine, **seconded** by Mr. Zawislak to vote on authorizing Mr. Loughlin to communicate with the Mr. Andriola and/or the applicant.

Roll Call:

Aye: Mr. Disko, Mr. Tomaine, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin,
Mr. Jakositz, Ms. Dillon, Mr. Kostin

Nay:

Abstain:

Mr. Loughlin instructed the Board to vote on the resolution, as presented.

Michael & Elena Patricco - Block 15.09, Lot 13 (248 Evergreen Court)

Roll Call:

Aye: Mr. Disko, Mr. Tomaine, Mr. Zawislak, Mr. Garran Mr. Matlin, Mr. Jakositz, Mr. Kostin

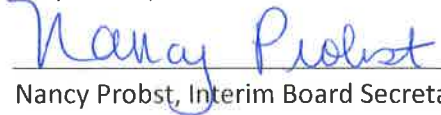
Nay:

Abstain:

ADJOURNMENT

Motion by Chairman Tomaine, seconded by Mr. Zawislak to adjourn the meeting at 8:50.

Respectfully submitted,



Nancy Probst, Interim Board Secretary

Approved: 7/28/20