

**BOROUGH OF MOUNTAINSIDE
PLANNING BOARD
JOHN TOMAINE, CHAIRMAN**

Regular Meeting
August 24, 2021

**OFFICIAL MINUTES
Adopted 9/28/21**

Chairman Tomaine called the regular meeting to order at 7:30 pm.

ROLL CALL

Mike Disko, P.E.	Steve Matlin (Absent)
John Tomaine, Chairman	Thomas Jakositz
Mayor Paul Mirabelli (Absent)	Karen Dillon Alt. #1 (Absent)
Councilman Steven Matejek (Absent)	Victor Kostin, Alt. #2
Ted Zawislak, Vice-Chairman	Vincent K. Loughlin, Esq., Board Attorney
Todd Garran (Absent)	John T. Chadwick, PP, Board Planner
Thomas Parker	Theresa Snyder, Board Clerk

Chairman Tomaine read the statement indicating the meeting was being conducted according to the Sunshine Law and the Municipal Land Use Law requirements, and the recording of the Minutes as required by law. He then led the flag salute to the American flag and board members identified themselves for the record.

MINUTES

On motion by Mr. Zawislak, seconded by Mr. Garran, the minutes for the Regular Meeting of July 27, 2021, were adopted based on the following roll call vote:

Roll Call:

Ayes: Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran,
Mr. Matlin, and Ms. Dillon

Nays:

Not Eligible:

Abstain:

Absent: Mr. Parker, Mr. Jakositz, and Mr. Kostin

RESOLUTIONS

RESOLUTION PB 21-R21
CASE NO.: 21-15; GRUNBERG
1563 COLES AVENUE
BK: 3.11 LT: 1.02
R-2 ZONE
Approved 7/27/21

On motion by Mr. Zawislak, seconded by Mr. Kostin, the resolution was memorialized based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Chairman Tomaine, Mr. Zawislak, and Mr. Kostin
Nays:	
Not Eligible:	Mr. Parker, Mr. Jakositz
Abstain:	
Absent:	Mr. Garran, Mr. Matlin, and Ms. Dillon

BOARD OF ADJUSTMENT

Case No. 21-14; Las Medulas
1239 Rt. 22
Bk: 23.02 Lt: 1 & 4
Represented By: Stephen F. Hehl, Esq.
L-I Zone

Mr. Hehl, Esq. continued representation of the applicant for consideration of the permanent outdoor seating area structure. Mr. Hehl contended outdoor seating is now the new normal for restaurants, and people were still concerned with going in doors to dine. He contended the continued use of the outdoor structure was important for the continuation of operations. The applicant submitted a revised site plan which included ADA compliant parking spaces, the structure was sound. The applicant added bollards and complied with the building code. The applicant was not increasing impervious coverage, and the buffering and walls would remain in place. The applicant was seeking a slight parking variance, but with Uber and Lift, the parking demands are not what they used to be. As far as the seating, if the outdoor area was in use, the seating indoor either upstairs or downstairs would be closed off to customers. They do not have the staff or kitchen space to seat to capacity.

The Board only had six members present. The applicant was seeking a use variance which needed 5 affirmative votes. Mr. Hehl explained the number of votes needed to his client, and his client chose to proceed.

Mr. Cesar Padilla, having a business address of 109 Elsworth Terrace, Glen Rock, NJ, remained under oath to testify. Mr. Padilla took the board through the revisions dated 7/26/21. The parking area was updated to include ADA compliant spaces by removing two spaces. One of the spaces was marked for van parking with striping and an isle way. In response to Mr. Disko's memo, Mr. Padilla presented the following information:

- He explained that 83 parking spaces were required, and the site had 79 existing spaces. They lost 2 spaces for the ADA parking. Mr. Padilla explained that there was a 187 total seating capacity. Based on the seating capacity, only 63 spaces were required.
- There was a total of 60 seats downstairs and 40 seats outside.
- There would be a maximum of 40 seats outside.
- It was an existing condition that the isle way is too small, but is functioning adequately.
- The exit path is where the applicant lost 2 tandem spaces. The clients usually exit onto Locust, not Rt. 22.
- The applicant offers valet parking every Friday to Sunday and during party events.
- The applicant would comply with item #6 from Mr. Disko's memo.
- Either the downstairs or upstairs would close if the outdoor area was being used. One area will always be closed.
- Mr. Padilla could confirm the structural integrity of the structure. The step was improved to include a landing to be code compliant. The footings and foundation of the structure were also code compliant.

On question of Mr. Zawislak, Mr. Padilla responded that the emergency door opened outwardly.

Mr. Disko suggested that the bollard decision should be made with police Chief Giannuzzi as they were close to Rt. 22. He also inquired about signage for the ADA parking.

Mr. Hehl suggested signage could be subject to Mr. Disko's approval.

On question of Mr. Chadwick, Mr. Padilla responded the structure was not properly heated or air conditioned to be considered a four-season structure, but the applicant would like to use it as much as possible.

Mr. Padilla also informed the board that the structure was code compliant and could handle snow loads.

The meeting was opened to the public. There were no questions from the public.

Mr. Joe Staigar having a business address of 245 Main Street, Chester, NJ, remained under oath to testify. He conducted a traffic and parking analysis. He concluded there would be no increase in seating; therefore, the parking demands remains the same. There is a total of 187 seats. When the 40 seats outside are in use, 60 seats downstairs will be closed. There would be no impact to

parking, while providing ADA spaces. There would be no detrimental impact. Mr. Staigar opined the applicant meets the justification for a use variance. The applicant was requesting a d(2) expansion of a non-conforming use. The benefits of the structure promoted the health, safety of the public. COVID triggered the application. There would be no light spillage.

Chairman Tomaine expressed to Mr. Staigar that the applicant must prove that the structure or expansion would minimize the non-conformities and that the expansion fulfills a need that is otherwise not being fulfilled elsewhere.

Mr. Staigar responded that the expansion was to promote the general welfare of the public who would feel more comfortable dining outside due to the pandemic. He testified that the expansion of the structure did not increase the intensity of the use. The applicant would be reducing the total number of seats by 20 when the outdoor section was being used. Further to his testimony, Mr. Staigar opined that the applicant feels there is a demand for outdoor dining, and therefore, a demand creates a need.

The meeting was opened to the public. There were no comments from the public.

Monica Castro and Jose Rodriguez were sworn in to give testimony. Monica testified their business had a need for outdoor dining. She explained the problems they experienced with using temporary tents. The applicant does not use the downstairs area on a daily basis. It is reserved for parties. The applicant would use dividers to section off the seats that are not being used. They maintain a good relationship with their neighbors. They utilize valet parking on the weekends, and have noticed a decline in the amount of parking used because of the increase in the use of Uber and Lyft. They would stipulate to not placing a table in front of the exit door in the structure. They would like to use the structure for as many months as possible, weather permitting. There would be no heating in the outdoor area. The main reason for the structure was for COVID, and they will see how it goes after COVID.

Mr. Rodriguez testified that construction began in December of 2020. He said they did everything late and wrong. They had material coming from Turkey. The whole purpose was for emergency dining. They attempted to make it better with the tents, and they were acting under the Borough Council's emergency ordinance.

The meeting was opened to the public. There were no comments from the public.

The Board took a 5-minute recess.

Mr. Hehl gave his summation.

During Board discussion, Chairman Tomaine expressed his concerns regarding the expansion of a non-conforming use. He opined there are certain requirements that have to be met by the applicant to prove the special reasons for the expansion. The increase of the expansion is adding

17% floor area of the original use and at least 20% of seating. He opined it was not clear from the testimony if there will be a lessening of the non-conformity. The testimony was an attempt to set-off the seating. In effect, this was not a minimization of a non-conformity. The other issue was that the non-conformity must be proven to meet an unmet need in the Borough and surrounding area. The applicant's response was there is a demand for it; therefore, there is a need. However, the applicant must prove there is not a substantial detriment to the zoning plan. He opined the set-off of seating did not minimize the non-conformity but maintained status quo. Further, the proposed expansion must be proven to meet an unmet need in the Borough and surrounding area. He did not consider the applicant's response that a demand for the outdoor seating creates a need. He opined that the board has the authority to grant variances, but the board was deprived of that because the structure was already built.

Mr. Zawislak spoke in favor of the application. The Borough Council authorized the outdoor dining. He opined the applicant would not be at the hearing but for the pandemic. The applicant did not have success with the tents and wanted a more permanent solution. This structure keeps the restaurant functioning. If they are going to trade off seats, they are not expanding the intensity.

Mr. Disko concurred that the outdoor dining was put in place as a result of COVID. The Ordinance passed by the Borough Council mirrored the executive order to aid restaurants. The guidelines relied on common sense. The police chief and Mr. Disko oversaw the safety. The change in temperature and snow loads effected the outdoor dining. The restaurant committee allowed non-tent facilities. The building department also was involved with safety issues. The applicant failed to interact with the building department. If the application was to be approved, the applicant would need to go through the process of applying to the building department. Mountainside was trying to be pro-active to help restaurants stay open. The emergency protocol was still in place.

On motion by Mr. Zawislak, seconded by Mr. Kostin, the application was approved with conditions based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Mr. Zawislak, Mr. Parker, Mr. Jakositz, and Mr. Kostin
Nays:	Chairman Tomaine
Not Eligible:	
Abstain:	
Absent:	Mr. Garran, Mr. Matlin, and Ms. Dillon

CASE NO.: 21-21; Fiorenza
1287 Poplar Ave.
BK: 16.01 LT: 3R-2 ZONE
R-2 Zone

The applicant, Michelle Fiorenza, appeared with her uncle before the board and were sworn in to give testimony. The applicant proposed a deck which would exceed the lot coverage on the property. The backyard abuts Route 22. The proposed deck would be 18' by 30'.

In response to the board's question, the applicant responded that a large amount of the existing lot coverage was because the driveway was long. It was necessary to keep the driveway long in order for it to reach the garage located in the back of the house. The applicant also testified in response to ground projections that the eaves on the house add to the total amount of ground projections.

Mr. Disko explained that the deck is calculated as part of the ground projections when it is one foot above grade.

The property sloped under the porch toward Route 22 with approximately a 4ft. drop. There is a tree line between the property and the highway.

On motion by Mr. Zawislak, seconded by Mr. Disko, the application was approved with conditions based on the following roll call vote:

Roll Call:

Ayes: Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Parker, Mr. Jakositz, and Mr. Kostin

Nays:

Not Eligible:

Abstain:

Absent: Mr. Garran, Mr. Matlin, and Ms. Dillon

ADJOURNMENT

The Board unanimously voted to adjourn the meeting at 9:10 p.m.

Respectfully Submitted,



Theresa Snyder
Board Clerk