

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

**OFFICIAL MINUTES
Regular Meeting [Virtual]
November 23, 2020
Adopted December 17, 2020**

Chairman John Tomaine called the virtual meeting to order at 7:00 pm. Board Members Present were Mr. Michael Disko, PE, Board Engineer, Mr. Ted Zawislak, Mr. Todd Garran, Mr. Thomas Parker, Mr. Steve Matlin, Mr. Thomas Jakositz and Ms. Karen Dillon. Also present were Vincent K. Loughlin, Board Attorney, John T. Chadwick, PP, Board Planner, Theresa Snyder, Board Clerk and Matthew DeAnna, Technical Coordinator. Absent members were Mayor Paul Mirabelli, Councilman Rene Dierkes and Mr. Victor Kostin.

Chairman Tomaine read the statement indicating the meeting was being conducted according to the Sunshine Law, 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 the Board members identified themselves for the record.

RESOLUTION- Emergency Meeting Protocol

Mr. Loughlin recommend the Resolution to the Board as it was compliant with the Executive Orders signed by the Governor for emergency meeting protocol and would make provision for only live testimony to be considered during the remote meetings.

On motion by Mr. Disko, seconded by Mr. Garran, the Board memorialized the resolution based on the following roll call vote:

Roll Call:

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

RESOLUTIONCASE NO.: BA 20-15; MOUNTAINSIDE ASSOCIATES, LLC

ADDRESS: 1235 RT. 22

BLOCK: 23 LOT: 2.01

Represented By: STEPHEN HEHL, Esq.

LI ZONE

Approved 10/27/20

On motion by Mr. Zawislak, seconded by Mr. Matlin, the Board memorialized the resolution for roof-top solar based on the following roll call vote:

Roll Call:

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

On motion by Mr. Zawislak, seconded by Mr. Matlin, the Board memorialized the resolution for signs based on the following roll call vote:

Roll Call:

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

RESOLUTION

CASE NO.: BA 20-17; MOUNTAINSIDE REAL ESTATE ASSOC.

ADDRESS: 1191 RT. 22 EAST

BLOCK: 7402/7403 LOT: 19.01 19.02 5 & 10

Represented By: Stephen F. Hehl, Esq.

LI ZONE

Approved 10/27/20

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

Roll Call:

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

APPROVAL OF MINUTES

On motion by Mr. Zawislak, seconded by Mr. Garran, the Board adopted the Regular Meeting Minutes for October 27, 2020, were adopted based on the following roll call vote:

Roll Call:

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

APPLICATIONS

CASE NO.:BA 20-20; KLEYNSHAYG

6 HIGH POINT DRIVE

BK: 7.01 LT: 1.05

R-2 ZONE

Expiration Date: 1/27/21

Mr. Andrew DeCarlo represented the Kleynshaygs for their roof-top solar panel application. He gave his credentials as the contract party for the installation and was accepted by the Board as a witness. He explained that the applicant was seeking a variance to install roof-top solar panels on their home. The panels would be placed in the back of the house not visible from the neighbor’s property. The panels would be all black, and the placement of the panels would be symmetrical.

On question of Mr. Zawislak, Mr. DeCarlo stated that there would be 48 panels, 16.32 KWh. The panels would be projected to produce 18,000 KWh. The panels were designed to offset the utility of the costumer purchasing the panels.

On question of Chairman Tomaine, Mr. DeCarlo stated that he measured every roof before installation. He started the measurement 5-6 inches up from the roof line. The panels would be installed toward the peak of the roof allowing for rain and snow sheeting. He opined that snow should fall on the roof first before getting into the gutters. There would not be much space to walk around the panels. There would be 8-10 inches on the side for the installers to repair the system. His testimony was that the system would protect the roof and there would be no removal of trees.

On motion by Mr. Zawislak, seconded by Mr. Jakositz, the Board approved the roof-top solar panels with conditions based on the following roll call vote:

Roll Call:

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

Nays:

Not Eligible:

Abstain:

Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

CASE NO.: 20-21; MOSAICO

1072 ROUTE 22

BK: 7.01 LT: 12

Represented By: Vito A. Pinto, Esq.

LI ZONE

Expiration Date: 2/26/21

Mr. Vito Pinto, Esq., entered his appearance on behalf of the applicant. He presented to the Board the application for permanent outdoor dining on the site of his client’s restaurant.

Chairman Tomaine explained that this proposed application would be an expansion of a non-conforming use. There were 7 associated bulk variances. There were 4 existing variances and 3 new variances.

Mr. Rudy Carrera, having an address of 130 Shadowlong Drive, Greenbrook, NJ, was sworn in to give testimony. He was in business for 15 years. He owned the 129-seat establishment and wanted to move 30 of the seats outside. He opined that Mountainside needs an establishment that was elegant. He testified that there would be no music in the outdoor area. He further testified that the COVID-19 pandemic was damaging to his business. He said that the 3 ft. wall was already existing.

Mr. Pinto contended that Mr. Carrera was not trying to add 30 seats to his existing 129 seats. He was merely trying to space out the seating by moving 30 seats outside.

Mr. Carrera explained that he reinforced the existing wall when they were allowed to provide outdoor dining back in June. The wall was a safety measure for diners who choose to sit outside. He re-enforced it.

Mr. Pinto stated that Mr. Carrera wanted to make the temporary outdoor dining permanent to his business operations.

On question of Chairman Tomaine, Mr. Carrera responded that the outdoor dining would be seasonal. Mostly likely it would be used from June to the beginning of October.

On question of Mr. Chadwick, Mr. Carrera stated that there is no heating or cooling. During the summer, he keeps the doors open and places fans around the area.

Mr. Disko commented to the Board that this application presented no increase in the parking demand. He further explained that there was potential for shared parking from an area which seemed to be under-utilized.

On question from Chairman Tomaine, Mr. Pinto contended that there were no adverse effects on either property. The agreement was not reciprocal. The Triangle people would not be using Mosaico's lot. The agreement was that in exchange for the use of the Triangle lot, Mosaico would keep the property clean and be responsible for snow removal. Most of the Triangle employees are gone by 5 pm. They need this for employee parking.

On question of Mr. Matlin, Mr. Vito contended that it did not seem like they were approaching this as irrevocable.

Mr. Carrera stated that the architects nearby also offered their parking lot for overflow parking.

Mr. Disko stated that there was no known problem with the site. Because they comply with adding a handicap space, they lose a space. He said the shared parking seemed to work. The Triangle lot is underutilized. He did not see any detriments. He stated that the applicant could stripe the lot.

On question of Chairman Tomaine, Mr. Pinto stated that there would be no change in signage.

On question of Mr. Matlin, Mr. Carrera testified that at full capacity there was sufficient parking.

Mr. Edward Dec, having a business address of 131 N. Michigan Ave., Keniworth, NJ, was sworn in to give testimony. He gave his credentials and was accepted by the Board as a witness. He explained that the lot coverage was increasing to 94.4% from 93.4%. The parking lot had to be ADA compliant. They were not going to add additional seating. He testified that the slower season was the summer. He explained the layout of the site and showed where the dumpsters would be placed.

On question of Chairman Tomaine, Mr. Dec testified that the haulers would be instructed to place the dumpsters in a better spot. The dumpsters would be screened.

Mr. Dec showed Sheet 3 of the site plan which had the proposed conditions. There would be the addition of 3 handicap spaces. He expressed that because of COVID, the patrons needed to be separated. The wall was masonry. He addressed Mr. Disko's memo and said the landscaping plants were to be determined.

Mr. Chadwick suggested that the Fire Official look at the plans again for an emergency access route. He further stated that Sheet 2 of 3 striped a fire lane that appeared to cut into the seating area.

Mr. Disko responded that the Fire Official had been out there for inspection in May.

Gary Dean, of Dolan & Dean, having a business address of 181 West High Street, Somerville, NJ, was sworn in to give testimony. He gave his credentials and was accepted by the Board as a witness. He testified that this was a pre-existing, non-conforming use. The restaurant would remain at 129 seats. The benefits to this improvement provide for more desirable seating. Either way this restaurant would have only 129 seats. It opined that it was pleasant for patrons to have the outdoor option. This application does promote the loss of 1 parking space. He opined that the parking lot could be re-striped without losing any spaces. He showed the parking and spoke about how they could have the ability to maintain the 60 spaces. He expressed that there was the bonus of using Lot 13 which would give a net 22 spaces. He testified that there would not be a permanent roof. There is pergola and plexiglass which is removable. He testified that the plan advanced several purposes of zoning.

The meeting was open to the public. With there being no comments from the public, the public portion was closed.

On question of Mr. Loughlin, Mr. Dean testified that DOT looks at the permit based on seating. There would need to be 100 seats during peak hours for the DOT to consider it.

Mr. Loughlin listed the conditions to approval that would be included in the memorializing resolution.

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

Roll Call:

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

Nays:

Not Eligible:
Abstain:
Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

CASE NO.: BA 20-22; MENAKER
1595 BROOKSIDE ROAD
BK: 8.02 LT: 9
R-2 ZONE
Expiration Date: 3/3/21

Mrs. Susan Menaker, the owner and applicant, was sworn in to give testimony.

Chairman Tomaine introduced the application as seeking relief from the Zoning Ordinance for ground projections. The lot coverage was addressed previously.

Mr. Disko further explained that the applicant had previously been before the Board for prior approvals. This application was for the installation of a pavilion.

Mrs. Menaker testified that she had a beautiful outdoor kitchen. She opined that because they could not have people inside the house, they wanted to cover the area to allow for a better use of the outdoor space.

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

Roll Call:
Ayes: Mr. Disko, Mr. Zawislak, Mr. Garran,
Mr. Parker, Mr. Matlin, Mr. Jakositz and Ms. Dillon
Nays: Chairman Tomaine
Not Eligible:
Abstain:
Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

PLANNING BOARD
CASE NO.: 20-18; GMYREK
ADDRESS: 1541 COLES AVE.
BLOCK: 3.11 LOT: 13
Represented By: Stephen F. Hehl, Esq.
R-1 ZONE
Expiration Date: 3/11/21

Mr. Stephen Hehl, Esq., entered his appearance on behalf of the applicant. He presented that there were no variances associated with the application. The applicant was before the Board for ground disturbance.

Mr. Loughlin confirmed that Jane and Bruce Desonne were present. He informed them that there would be a time during the meeting in which they could asked questions. This was the preferred practice rather than reading their previously submitted question into the record.

Mr. Hehl presented the application as a single-family home. They would obtain approval from Somerset-Union soil district. They had reviewed Mr. Disko's memo and would have 3 witnesses.

Mr. Michael L. Jurist, having a business address of 82 Pine Street, Milburn, NJ, was sworn in to give testimony. He gave his credentials and was accepted by the Board as a witness. He testified to the property grading and stormwater management plan. He explained the position of the proposed dwelling, pool and driveway. These were conforming to the Zoning Ordinance. The plan proposed the removal of a dilapidated log cabin that did not comply with Zoning. The property maintained a 5% downward slope. The circular driveway proposed would meet the requirements. He further testified that drywells would be added in the backyard. They would be utilizing pavers for the driveway. The utilities would be marked out, and new septic system would be installed.

There were no questions for Mr. Jurist.

Mr. Jose Gennaro, having a business address of 193 New York Ave., Newark, NJ, was sworn in to give testimony. He gave his credentials and was accepted by the Board as a witness.

Mr. Gennaro testified that Sheet A-4-First Floor- showed a one-family residence. He opined that the house fits very well. It would be an open floor plan. There would be a 2-story foyer. He showed where the stairs went to the upstairs and basement. He showed the layout of the house. He then showed Sheet A-5-Second Floor- which contained 3 bedrooms, shared laundry and two additional walk-in closets. He then moved onto Sheet A-3-Basement- which boasted a gym, storage/utility area and recreation room. He further testified to Sheet A-1-Exterior- which would have a stucco finish, stone, fiberglass roofing and a lot of windows to take advantage of the view.

On question of Mr. Chadwick, Mr. Jurist testified that in order to keep stormwater runoff away from the house, they created swales on both sides. The disturbance of the trees along the perimeter would not be touched by the pool. There would be 5 trees being removed which will be replaced with 5, 15 in. diameter trees. He testified that the larger trees along the perimeter were not being touched. They would fence trees to protect them during construction which is shown on the schedule of construction. His testimony was that they planned to protect the existing vegetation.

On question of Chairman Tomaine, Mr. Jurist testified that demolition would take about a week and the foundation would take about a week. The 5% slope went from North to South. The pavers that would be installed would help immensely with run off.

Ms. Elizabeth Gmyrek, the owner and applicant was sworn in to give testimony. She testified that there would be 2 phases to this project. The first phase would be to build the home; the second phase was landscaping. She wanted to preserve as many trees on the property that she could. The trees that would be removed would be replaced with replanted trees. She also testified that the pool would be shallow and not need to be blasted. It would only be 5 ft. deep. She testified that her mother and daughter would live with her there. She had not seen them since Christmas.

Ms. Jane Kachmar-Desonne and Mr. Bruce Desonne, having an address of 1548 Deer Path, were sworn in to give testimony. Ms. Desonne opined that the property is above theirs and expressed concerns with the installation of the pool which had the potential to cause problems in the foundation. She asked for proof from the Board of site inspection for this.

Mr. Hehl contended that in this situation, it was unique that the Borough adds the layer of protection with soil-conservation and Borough approvals prior to construction. Further to that, he contended that construction plans have to be supplied. It was quite a thorough engineering plan. There would be a sub-surface detention being installed.

Ms. Desonne opined that the drywells are at the edge of the disturbance of the rock formation. Their property has tumbling rocks, and wanted to know what was done for rock formation.

Mr. Disko stated that the geo-technical information would need to be known for the construction of the basement and pool. The home will have a deeper basement, pool and dry well. The home is proposed away from the property line to allow it to meter out from the property line.

On question, Mr. Gennaro testified that a lot of this testing would be done during construction.

Mr. Hehl stated that this application was a review by the Planning Board because of a soil moving permit. The applicant stipulated to the conditions of approval.

Mr. Disko stated that it is the owner's decision when they do a geo-technical test. It would be submitted to the Building department. The results of the test might require changes to the plans. He said routinely this took place prior to obtaining building permits.

Mr. Hehl summarized the application presented to the Board.

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

Roll Call:

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

Nays:

Not Eligible:

Abstain:

Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

ADJOURN

The Board unanimously voted to adjourn the meeting at 10:03 p.m.

Respectfully Submitted,



Theresa Snyder
Board Clerk