

BOROUGH OF MOUNTAINSIDE

Planning Board Meeting

MINUTES

June 23, 2020

CALL TO ORDER

The virtual meeting was called to order at 6:38 p.m. using Zoom. Chairman Tomaine read the Open Public Meetings statement in accordance with the law.

ROLL CALL & FLAG SALUTE

Present

Mr. Disko
Mr. Tomaine
Mayor Mirabelli*
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

Councilman Dierkes

Chairman Tomaine announced that there would be no new testimony after 11pm and that the Minutes would be tabled. He also announced that the Griggs application would be adjourned to July 28 (subject to proof of Notice) due to a Notice deficiency.

RESOLUTIONS

Caruso

Motion by Mr. Zawislak, **seconded** by Mr. Jakositz 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:

PLANNING BOARD

APPLICATION

Morris Ave. Endoscopy

Block 7.13 Lot 29 (200 Sheffield Street)

Susan Rubright, Esq. entered her appearance on behalf of the applicant. She provided an overview of the application as it relates to placement of a generator on a commercial property. She spoke specifically to several design and checklist waivers.

Dr. Ricardo E. Rodriguez [318 E. Westfield Ave. Roselle Park] was sworn in and provided his credentials as founder of the Endoscopy Center. He spoke about the history of the business, licensing, operations and reasons for moving the facility from Kenilworth to Mountainside. Dr. Rodriguez testified that there would be 25-28 people on site at full capacity, [including medical and non medical personnel such as radiologists, anesthesiologists, nurses, technicians and secretaries]. He testified that the average [outpatient] procedure takes 2 hours and that the center hours would be 6am to 6pm. He advised that there would be a patient transportation service and spoke at length about COVID related safety measures mandated by the CDC and Health Department.

The Chairman polled the Board for questions at 6:57.

Dr. Rodriguez responded to questions from Mr. Zawislak about medical waste and parking of the transport van [when not in use]. He responded to a question from the Chairman about storage of medical waste and a question from Mr. Disko as to the type of vehicle used for transport.

Dr. Rodriguez advised that the Center averages +/- 45 procedures daily in response to a question from Mr. Garran. He testified that the space would be divided into 5 pre-op areas, 6 post op areas, 3 procedure rooms and a reception area. In response to a question from Mr. Matlin, he testified that the majority of the people on site are staff.

Dr. Rodriguez provided testimony on the waiting room and how capacity has been affected by COVID protocol. He confirmed that patients are seen by appointment only.

Dr. Rodriguez explained that the generator ensures for completion of procedures and that the air handler serves to maintain certain temperatures in the procedure rooms in order to keep equipment functioning properly. He testified that the Center would have a contract with a private ambulance service and an arrangement with Overlook for unexpected occurrences requiring patient transport.

Chairman Tomaine opened the floor to questions of the witness at 7:17. There were none.

Christopher Nusser, P.E., P.P. [140 West Main St., High Bridge] was sworn and qualified. Referencing page 2 of 6 in the plan set [existing conditions survey], Mr. Nusser oriented everyone to the site. He identified the access points and provided dimensional and topographical data. Mr. Nusser testified that there was no stormwater management plan associated with the existing drainage.

Referencing page 3 of 6, Mr. Nusser identified the air handler location and proposed modifications to striping for ADA access. He testified that parking was adequate despite a deficiency created by the ordinance standard. .

Mr. Nusser provided the dimensions for the concrete pads where the HVAC equipment would be placed and identified the emergency access route. He testified that the paved areas around the generator (parking stalls) would be removed and replaced with mulch in order to maintain a permeable surface/not increase impervious coverage. He also provided testimony on utilities and lighting.

Mr. Nusser responded to a question from Chairman Tomaine regarding placement of the equipment. Ms. Rubright deferred to anticipated architectural testimony.

The Chairman polled the Board for questions at 7:40.

Ms. Rubright deferred a question about the size of the generator to anticipated architectural testimony. Mr. Nusser spoke about the use of bollards with respect to protection from motor vehicle strikes in response to a question about same.

Howard Alexander [128 Briar Hill Circle] asked whether any studies on sound attenuation [as it relates to the adjacent residential area] were done. Mr. Nusser testified that the proposal would meet the standards for state and local Code. He testified that the distance from the generator to the nearest residential property line is 625.' Ms. Rubright deferred to anticipated architectural testimony for further on this.

Chairman Tomaine confirmed there were no other questions from the public. Mr. Disko commented on placement of the units with respect to noise, safety and aesthetics.

John DeBrito of RSC Architects [3 University Plaza Drive, Hackensack] was sworn and qualified. Mr. DeBrito provided testimony on the purpose of the air handler and its components. He explained how they chose the proposed location and testified that the roof structure could not support a unit. The need to have the unit in close proximity to the procedure rooms was discussed. Thermal efficiency, noise attenuation and screening were discussed.

Mr. DeBrito testified that the generator would meet state and local Code for sound. He provided details on [monthly] testing of the unit and explained why the generator and air handler were being kept together as it relates to both screening and noise. He testified that the height of the air handler is 6.5' in response to a question from Mr. Disko and responded to questions about capacity from Mr. Zawislak.

Alternative locations were discussed at length. Mr. DeBrito reiterated why the system could not be placed on the roof and provided additional testimony with regard to same. The ductwork was discussed in response to questions/comments from Mr. Kostin. Mr. Chadwick suggested burying the equipment. Mr. DeBrito testified that this was not an option because of maintenance and excavation. He spoke about proposed landscaping in response to a question about same confirmed the height again.

Mr. DeBrito testified that the unit would run on diesel fuel. Run time, capacity and engine components [fuel types] were discussed at length in response to questions and comments from Ms. Dillon, Mr. Zawislak and Mr. Kostin.

Ms. Rubright consented to a condition providing for the unit to be tested on Saturdays rather than weekdays.

Mr. DeBrito spoke about functionality with respect to placement in response to a comment from Mr. Jakositz about relocation of the air handler. Further discussion ensued about alternatives for placement. Mr. DeBrito spoke about the deficiencies he found in each of the alternative locations [blocked windows, site line issues, safety issues, impacts to parking lot, etc.].

The Chairman opened the floor to questions of the witness at 8:13.

Mr. DeBrito responded to questions from Ms. Dillon about state/air permitting. He related that it would meet sound requirements even though it is exempt from the noise ordinance because it operates under emergency room conditions. He responded to a question from Mr. Garran about placing the generator on the roof [not feasible because of the potential for a diesel fuel spill].

The Chairman polled the Board for questions at 8:22. He asked whether the proposal met EPA emission standards. Ms. Rubright offered that the air permit would be a condition of approval and Mr. DeBrito confirmed that it does meet recommended EPA standards.

Mr. Disko reviewed the items in his review letter relevant to the architect's testimony. Mr. Nusser spoke to the various improvements being made on the site, with respect to ADA access and an emergency exit on the south side in particular.

Mayor Mirabelli lost his connection at 8:27 and returned at 8:29. Ms. Rubright lost her connection at 8:28 and returned at 8:29.

The Chairman opened the floor to questions of the public at 8:30. There were none.

Mr. Nusser provided planning testimony in support of the application. He addressed parking, loading spaces, stall size and visibility as they related to items 11, 16 19 and 20 of Mr. Disko's report.

Exhibit A-1 [Colorized Exhibit of Site dated 6/16/20], prepared by Mr. Nusser was marked into testimony and discussed. Landscaping/screening was discussed at length and the applicant consented to provide a revised plan for Mr. Disko and Mr. Chadwick's approval. Mr. Nusser testified that the storage pod on site belongs to the owner and that replacement of the sidewalks would be done to the satisfaction of Mr. Disko. The existing nonconforming conditions as well as proposed non conformities were discussed. At the behest of Chairman Tomaine, Mr. Disko and Mr. Chadwick confirmed that they were satisfied that there was no issue with the use. Mr. Chadwick provided additional comments.

The Chairman opened the floor to questions of the witness at 8:58. There were none.

Ms. Rubright provided a summation which included support for grant of the variance relief under the c2 criteria.

The Board deliberated. **Motion** by Mr. Zawislak, **seconded** by Chairman Tomaine to grant the relief as requested, with conditions as enumerated by the Board Attorney.

Roll Call:

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

The Board recessed at 9:10. *Mayor Mirabelli recused himself in anticipation of the upcoming Papparatto application. The meeting resumed at 9:19.

APPLICATION

Vincent Papparatto Realty Co., Inc.

Block 7.02, Lots 14.01-14.04 (1024, 1020, 1016 & 1012 Mary Allen Lane)

Mr. Loughlin provided an overview of the application, including its extensive history. Mr. Chadwick spoke about a related easement. Mr. Loughlin explained that in addition to the variance case and modification of the original subdivision, the Board had delegation of authority from the Mayor/Council to consider a change in easement area/language. He suggested that it would be appropriate to vote on all matters under one motion.

Steven Hehl, Esq. entered his appearance on behalf of the applicant. Mr. Hehl explained that one of the conditions of the [+/-20 year old] subdivision was that a conservation easement intended to provide buffering and additional landscaping/enhancements was to be recorded; however, it never was. He explained that the applicant was proposing to eliminate or modify the conservation easement and re-title it in order to remove DEP oversight.

Mr. Hehl spoke about enhanced buffering which the conservation easement was meant to provide. He spoke about the history of the application, explaining how Mr. Chadwick's review prompted a referral of the matter to the governing body because of the easement. At the behest of Mr. Loughlin, Mr. Hehl confirmed that he received two memos from Mr. Chadwick, dated 9/20 and 5/26 and provided a witness list.

Mr. Loughlin asked the Chairman whether he wanted to postpone the Board of Adjustment matters given the extensive witness list for the instant matter. Chairman Tomaine advised that there was only one matter to be heard since the Griggs application was adjourned.

Edward Dec, P.E. (131 No. Michigan Ave., Kenilworth) was sworn and qualified. He advised that he was not involved in the original subdivision.

Referencing the displayed "Site Plan for 1012-1024 Mary Allen Lane," which he referred to as "dated February 14, 2019, last revised January 9, 2019," Mr. Dec provided an overview of the plan. He identified the 4 lots in the subdivision and explained how they were affected by the easement. He explained that lot 14.04 would need a variance for coverage/coverage in the front yard and that lot 14.01 would require a variance for the fence in the front yard setback. Mr. Loughlin mentioned a variance for total impervious surface which Mr. Dec acknowledged as well.

Mr. Dec advised that the driveway shown on lot 14.04 scales as 24' wide but is actually only 13.5' wide. Mr. Loughlin acknowledged his request to have this entered into testimony. Mr. Dec indicated that he took a picture which he would make available to Mr. Disko and explained that this would eliminate the front yard coverage variance while reducing the amount of relief needed for the total lot coverage variance.

Mr. Dec related that traffic at the intersection affected placement of the fence, intended to have positive impacts as a buffer on lot 14.01.

Mr. Dec provided testimony regarding the conservation easement. He offered that the site has changed with the ensuing development of each lot and explained that trees were removed from the conservation easement due to acts of nature and for safety reasons/maintenance purposes.

Pictures contained in Mr. Disko's _____ report were displayed. Referencing Photographs 1, 2, 3, 5 & 6 in particular, Mr. Dec suggested that the removal of scrub/brush improves the site for stormwater runoff. He offered testimony in support of the proposed buffer agreement in lieu of a conservation easement.

Mr. Dec confirmed that the subsurface detention on 14.04 is adequate to handle what he referred to as a slight increase in impervious coverage. He also confirmed the easement was being realigned for the full 25' width with respect to the storm sewer. Mr. Hehl offered that they would submit a metes & bounds description for review prior to recording.

Mr. Dec provided dimensions for the conservation easement at the behest of Mr. Hehl. Modification of the drainage easement was discussed at length. Mr. Chadwick recommended that the storm sewer easements be eliminated altogether. Mr. Chadwick, Mr. Disko and Mr. Loughlin concurred that it should be a private easement between homeowners and not a Borough easement.

Mr. Hehl and Mr. Chadwick discussed the future of a 20' wide access easement on the northeast corner of the property. Mr. Hehl indicated that this was to the benefit of the house behind it.

Mr. Dec testified that the fence running parallel to Summit Road runs 24' beyond the front setback line in response to a question from Chairman Tomaine.

The Chairman polled the Board and opened the floor to questions from the public at 9:57. Mr. Deanna confirmed there were none.

Mr. Chadwick asked about the presence of what appeared to be a plastic fence running along the front yard setback line of lot 14.01. An extensive discussion ensued regarding relocation of the fence. Mr. Hehl deferred to anticipated testimony from the landscape architect as well as the Planner.

Linda Gumeny, Landscape Architect (18905 Riverwalk Dr., Wilton, DE) was sworn and qualified.

Ms. Gumeny provided testimony on the existing and proposed vegetation as well as the adequacy of the buffers.

A Planting Plan entitled "L1" was displayed. Ms. Gumeny made reference to various photographs on the screen which she testified were taken in April and October of last year. She provided testimony with respect to the vegetation on Lot 14.01 in particular and explained that an evergreen tree line would supplement the existing buffer. She described other proposed plantings and testified that once added, they would create an adequate and improved quality landscape buffer.

Ms. Gumeny provided testimony on the fence which she related was in place during her site visit. She suggested that it makes sense for privacy [from the road] and to mitigate noise impacts without any negative impacts. Ms. Gumeny provided testimony on the benefits of eliminating the conservation easement and implementing a buffering plan that calls for maintenance instead. She suggested that it was uncommon to have such a wide buffer/easement between residential properties in the same zone and offered that it would enhance the existing buffer while benefiting both neighbors [privacy] as well as being beneficial to wildlife.

Ms. Gumeny responded to questions from Mr. Zawislak about the lack of new plantings on lot 14.02.

The Chairman polled the Board and opened the floor to questions of the witness at 10:15. There were none.

Nicholas Graviano, P.P. (101 Crawforts Corner Rd., Holmdel) was sworn and qualified. Mr. Graviano provided planning testimony in support of the bulk variances. He testified that it was an extremely rare situation to have such a heavily landscaped conservation buffer between "like uses" adjacent to one other. He offered that the proposed landscaping goes "above and beyond" for screening between neighbors in a residential context. And opined that removal of the conservation easement would not create a detriment because the applicant is still providing quality screening for neighbors.

Mr. Graviano provided testimony in support of the variance for the fence citing safety. He offered that relief could be granted under the c2 criteria as certain purposes of the MLUL would be advanced without causing a detriment to the neighborhood/ community or any impairment to the zone plan. He acknowledged the portion of the fence extending into the front yard on Maryallen Lane in response to a question about same from Mr. Chadwick. He confirmed that he had seen it while visiting the site and held that it would not cause any substantial impairment to the zone plan given the setback from the road and surrounding vegetation.

With respect to the coverage variance on lot 14.04, Mr. Graviano offered that relief could be granted under the c1 criteria.

The fence location as it relates to being in the side yard vs. front yard was discussed. Mr. Chadwick suggested that for purposes of considering relief, the Board should focus on whether the fence is characteristic of the neighborhood rather than it's location.

Mr. Chadwick offered that the conservation easement should be replaced with a landscape buffer and tree preservation easement since it would be recordable and enforceable while eliminating DEP oversight. He asked where the boundary line would be drawn which prompted an extensive discussion about same.

Mr. Loughlin explained how the amended plat would look. Mr. Chadwick suggested how the new easement should run. Mr. Zawislak spoke to the intent and purpose of the conservation area with respect to runoff at the time it was dedicated. Maintenance of the fence was discussed. Mr. Chadwick explained that the responsibility for the homeowner would be the same with respect to maintenance but that they would be restricted from cutting all the trees down.

Mr. Disko offered that the fence should truncate at the front of the house but then deferred to John Chadwick's earlier comments about whether others exist in the neighborhood.

The Chairman polled the Board and opened the floor to questions of the witness at 10:32. There were none.

Mr. Hehl confirmed that direct testimony was concluded. The Chairman opened the floor to questions/comments about the application at 10:33. There were none. Mr. Hehl proffered a closing statement.

Mr. Tomaine and Mr. Loughlin discussed bifurcating the vote. **Motion** by Chairman Tomaine, **seconded** by Mr. Zawislak to vote on the relief in three separate motions.

Roll Call:

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

Nay:

Abstain:

The Board deliberated on the Landscape Buffer & Tree Preservation Easement.

Motion by Mr. Zawislak, **seconded** by Mr. Disko to replace the conservation easement with a landscape buffer and tree preservation easement, [as discussed], with conditions as enumerated by Mr. Loughlin.

Roll Call:

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

Nay:

Abstain: *Ms. Dillon was not present for the vote at 10:50

The Board deliberated on the Variance for the fence on Lot 14.01. During deliberations, Mr. Hehl offered that the applicant would agree to cut fence back to the front yard of Maryallen Lane.

Motion by Mr. Zawislak to allow the fence to go from the front of the house to the back property but not to extend from the front of the house down to Maryallen Lane. Mr. Disko asked Mr. Garran to clarify a statement he made earlier. Mr. Zawislak obliged a request from the Chairman to re-state his motion which he did, adding to it the stipulation that Mr. Hehl put forth on behalf of the applicant.
Motion failed for lack of second.

New Motion by Chairman Tomaine, **seconded** by Mr. Garran to deny the request for a variance on Lot 14.01. Mr. Loughlin clarified that a vote in the affirmative was a vote to DENY.

Roll Call:

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

The Board deliberated on the Variance for lot coverage on 14.04. Mr. Loughlin clarified that the front yard coverage had been eliminated.

Motion by Mr. Zawislak, **seconded** by Mr. Disko to approve the variance for lot coverage on Lot 14.04 with conditions as enumerated by Mr. Loughlin.

Roll Call:

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

BOARD OF ADJUSTMENT

APPLICATIONS

Nicole Tyburski

Block 15.09, Lot 28 (1337 Birch Hill Road)

Chairman Tomaine explained that the Board was beyond the point of hearing new testimony because of the time. Ms. Tyburski confirmed that she was in agreement with adjourning the matter to July and agreed to an extension of time. She was assured that that the matter would be given priority on the next agenda.

The Board had a brief discussion about whether the July meeting would be virtual and decided that it would be. There was a brief discussion about the possibility of hearing the Tyburski application prior to any Planning Board matters.

ADJOURNMENT

BOARD OF ADJUSTMENT

APPLICATIONS

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ADJOURNMENT

Motion by Chairman Tomaine, seconded by Mr. Zawislak to adjourn the meeting at 11:12.

Respectfully submitted,



Nancy Probst, Interim Board Secretary

APPROVED _____