

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

**OFFICIAL MINUTES
Regular Meeting [Virtual]
October 27, 2020
Adopted November 23, 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. Steve Matlin, Mr. Thomas Jakositz, Ms. Karen Dillon and Mr. Victor Kostin. 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. Tom Parker.

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.

Chairman Tomaine explained the procedure for members of the public asking questions after witnesses testify. Members of the public were instructed to direct their questions to Mr. DeAnna. At the conclusion of an applicant's case, the public would be allowed to ask questions.

Mr. Loughlin advised the Board that he was aware of the concerns and confusion as a result of remote meetings under the guidance from the DCA and Executive Orders signed by the Governor. The Board adapted well under the new state regulations. Because of the extension of the pandemic, the DCA recently made recommendations that "Public Bodies" adopt a resolution using specific language and procedures for the public to participate in virtual meetings. The recommendations included how the public would make comments prior to the meeting and how members of the public should conduct themselves during a meeting. He warned of potential problems to receive comments in advance of the meeting from members of the public on major applications. The Board will only receive live testimony with the party being visible on screen. He adapted the proposed regulations into a resolution as it is important for the Board to comply as much as possible. He recommended the procedural resolution be discussed and memorialized at the next month's meeting.

**RESOLUTION
RESOLUTION; SCHUBERT
CASE NO.: BA 20-14; SCHUBERT
1064 PROSPECT AVE.
BK: 6.02 LT: 6
R-2 ZONE
Approved 9/22/20**

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

**RESOLUTION; PATRICCO
CASE NO.: BA 20-16; PATRICCO
248 EVERGREEN COURT
BK: 15.09 LT: 13
R-2 ZONE**

**Represented By: Stephen F. Hehl, Esq.
Approved 9/22/20**

On motion by Mr. Garran, seconded by Mr. Kostin, 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

APPROVAL OF MINUTES

On motion by Mr. Garran, seconded by Mr. Kostin, the Board adopted the September 22, 2020 regular meeting minutes 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

APPLICATIONS

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

ADDRESS: 1235 RT. 22

BLOCK: 23 LOT: 2.01

LI ZONE

Mr. Stephen F. Hehl, Esq., entered his appearance on behalf of the applicant. He presented the application as bifurcated. The first part of the application would be for the installation of rooftop solar panels which are not specifically permitted under the LUO. The proposed rooftop panel would be below the roof peak. The applicant would provide testimony that this would justify the variance. The second part of the application would be for the proposed signage. He acknowledged that Mr. Disko's report covered the requirements quite well. Further to this, he contended that the proposed 13 ft. wall sign on the front of the building was the appropriate size. The Ordinance permits wall signs up to 4 ft. He indicated that the placement of the logo above the wording on the sign pushes the variance. The applicant was also proposing a ground sign where the Ordinance provides for free standing signs on the Route 22 corridor. He further contended that if the ground sign was mounted on posts, it would eliminate the need for a variance.

Mr. Disko cited that at the time of the application, the ground sign was fully compliant.

Mr. Hehl informed the Board that he would be calling four witnesses.

Mr. Laurence Murphy, P.E., having a business address of 526 Rt. 206, Trenton, NJ 08610, was sworn in to give testimony. He gave his credentials and was accepted by the Board as a professional. Mr. Murphy referred to Sheet 1 of 1, "Solar Plan", dated 9/3/20. This was submitted as part of the original application packet. The previously approved plans show the building and proposed landscaping. The original plan is substantially complete. He visited the site and took photos. The solar panels would be mounted on the southwest side of the roof. The modules are proposed to be a black panel with aluminum framing in addition to the white hardware. The panels will be placed below the roof peak. They would not increase the height of the structure. The panels would be minimally visible from two properties located across the street. Most likely those properties would only see the profile of the panels. There will be no glare on the adjacent properties. The flat roof is well suited for solar. The panels reduce the demand on fossil fuels. In response to Mr. Disko's review letter, Mr. Murphy presented testimony that the panels would be mounted with metal clamps, and the panels will allow for snow to melt and drain into the roof leaders placed on either side of the roof. The run off will drain in to the detention system.

On question by Mr. Zawislak, Mr. Murphy said that the position of the panels would not hinder access to the roof.

The meeting was opened to the public for questions. With there being no questions from the public, the public portion was closed.

Mr. Kamel Assad, having a business address of 610 Garibaldi Avenue, South Plainfield, NJ 07080, was sworn in to give testimony. He gave his credentials in commercial signs and was accepted by the Board as a witness. He opined that the size of the sign on front of the building was appropriate because the setback and length of the building. Although the position of the logo above the name would increase the size, it would still be within 10% of the facade. The sign would be made of aluminum lettering with LED lighting. In his experience, he said this would be the right size sign for the location. The ground sign was proposed to be 70 in. by 102 in. It would be within the square footage allowable. The ground sign would be slanted due to the slope of the property. He recommended that the applicant include a mulch or flower bed around the base of the sign to keep lawn equipment from touching it. He showed the day and night appearances of the sign. He also showed an alternate version of the wall sign where the logo was placed to the side of the name.

Mr. Disko challenged the height of the 13 ft. proposed sign. He did not see any other sign on Route 22 that large.

Mr. Assad responded that he had not driven down Route 22. He referenced the sign on the Western Pest building. He opined that this sign appeared large because of the placement of the building being close to the road. The proposed Peak Fitness sign would be seen more on the westbound side of Route 22 due to the angle of the building. He stated that the length of the building is 135 ft.

The meeting was opened to the public for questions. With there being no questions from the public, the public portion was closed.

Mr. John McGuire, having a business address of 1235 Route 22, Mountainside, NJ, was sworn in to give testimony. He testified as one of the owners. He opined that solar is environmentally friendly. He worked hard to design the company to make it look appealing. He had extra steel added to the roof to support the solar panels. He doubled the drainage needed to compensate for the snow melt from the roof top panels. He agreed to be compliant with the building codes, rules and regulations. He then testified to the proposed signage. He opined that the rear sign would not be illuminated. He also testified that the ground sign was compliant. His testimony was that the wall sign in the front meets the square footage. He wanted a bigger sign in the front because of the building setback.

On question by Chairman Tomaine, Mr. McGuire said the building would be opened from 8 am till 10 pm. The staff usually leaves the parking lot by 10:30 pm. Mr. Assad added that the wall sign in the front of the building would be illuminated and could be placed on a timer. The illumination would create a halo effect and reflects back onto the building.

Chairman Tomaine confirmed with the owner that he planned to have the wall sign stay lit overnight and the ground sign go dim at 10:30 pm.

Mr. Disko added that the minutes from the original meeting recorded that all lights would be turned off by 10:30 pm. He stated that anything in the back should be off. The L-I Zone is not typical retail.

Mr. Zawislak suggested that the sign lights should go out when the parking lot goes out.

Mr. Loughlin stated that the Resolution requires all lights to be off at 10:30 pm.

On question by Ms. Dillon, Mr. Disko responded that the light from the wall sign would reach the houses across the street.

On question of Chairman Tomaine, Mr. McGuire testified that there would be no other signage including directional signs placed on the property.

Mr. Kostin recommended that the ground sign remain lit throughout the night and the wall sign go dim at 10:30 pm.

Mr. Hehl added that at the time of the original resolution, there was no signage proposed. This is a new business that should be afforded some advertisement.

The meeting was opened to the public for questions. With there being no questions from the public, the public portion was closed.

Mr. Nicholas Graviano, P.P., having a business address of 101 Crawfords Corner Road, Homdel, NJ 07733, was sworn in to give testimony. He gave his credential as a Professional Planner; his license was in good standing. He was accepted by the Board to give testimony.

Mr. Graviano testified that the Board gave approval for this property in 2019. He represented the applicant for an amendment to the approval. He opined that the solar panel installation required a (d) variance and the signage on the wall required a (c) variance for the height. He opined that the installation of the solar panels was an inherently beneficial use. They promote the use of clean energy, and because of the pitch of the roof, they would not present a nuisance. He further testified that the L-I Zone permitted recreational uses. In keeping with the Master Plan, this facility preserves the tax base of the community. He testified that the solar panels presented no substantial detriment to the Master Plan or the community.

Mr. Graviano opined that the size of the proposed wall sign is for safety along Route 22. He stated that the purposes of Municipal Land Use Law would be advanced.

Mr. Disko challenged the size of the 13 ½ ft. sign as being much taller in perspective to the highway where most other signs conform to the 3 ft. height requirement.

Mr. Graviano did not find 13 ft. signs along Route 22; however, he did find freestanding signs that were in excess of 13 ft. The proposed wall sign was within 20% of building size.

On question of Chairman Tomaine, Mr. Disko stated that the frontage of the property was 72 ft. whereas 50 ft. is the requirement. Further to this, he added that most buildings were not setback as far as the one on this property.

Ms. Joyce Pickett, having an address of 1137 Saddlebrook Road, represented Executive Suites located on Route 22. She referred to the sign on the Route 22 Storage as being quite large, and she could not imagine how large the proposed sign on this property would be.

Mr. Garran requested to see both versions of the wall sign.

Mr. Hehl explained the difference of the two versions of the sign. One had the logo to the side of the words. This version would be 6' by 8" in size compared to the 13' by 7" sign which boasts the logo on top of the word "Peak". He requested feedback from the Board to determine which version of the sign would be used. He asked the Board to express their preference. The applicant preferred the sign with the logo on top of the word "Peak". Either version would require a variance.

The meeting was opened to the public for questions. With there being no questions from the public, the public portion was closed.

Mr. Hehl gave his summation of the application as being two separate requests, one for solar panels and one for signs. He asked that the Board look favorably on the application, as it is a great project for Mountainside.

Chairman Tomaine reiterated to the Board that this was a bifurcated application requesting 2 variances, a (d) variance for solar panels and a (c) variance for signs.

Mr. Zawislak opined that the application was well presented. He gave his opinion that he found the logo on top of the wording more esthetically pleasing. He suggested that because of the setback of the building, there could be a traffic hazard if the sign is not large enough, but he did agree that the lights should go off at 10:30 pm.

Chairman Tomaine discussed the height of the 13.7 ft. wall sign. He stated that the Sign Ordinance was established in order to create a particular perception. The primary concern of the Zoning Ordinance is aesthetics. He opined that the intension of the Governing Body was to create a low-key, uncluttered look. As proposed, the 13.7 ft. sign would be more than 3x what is allowed. He did not agree that permitting a sign that high would benefit the L.U.O.

Mr. Loughlin informed the Board that the applicant was offering an alternative plan to the sign, and the Board was authorized to make a choice between the two proposed versions. The applicant stipulated to the condition that they would accept either of the versions that the Board decided to grant.

Each Board member gave their opinion as to which sign they liked better based on the following poll:

Mr. Disko liked the logo over the word "Peak"; however, he would like a smaller version of it.

Mr. Zawislak preferred the original plan with the 13.7 ft. sign

Chairman Tomaine preferred the alternate plan.

Mr. Garran preferred the alternate plan.

Mr. Matlin preferred the original plan.

Ms. Dillon preferred the original plan.

Mr. Kostin preferred the original plan and allowing the ground sign to stay illuminated for emergency purposes.

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:

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

The motion was to approve the 13.7 ft. version of the wall sign. The wall sign would be turned off by 10:30 pm and the ground sign would stay illuminated all night.

On motion by Mr. Zawislak, seconded by Mr. Matlin, the Board approved the application for the installation of three (3) signs with the conditions based on the following roll call vote:

Roll Call:

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

**CASE NO.: BA 20-17; MOUNTAINSIDE REAL ESTATE ASSOC.
ADDRESS: 1191 RT. 22 EAST
BLOCK: 7402/7403 LOT: 19.01 19.02 5 & 10
LI ZONE**

Mr. Hehl, Esq. entered his appearance on behalf of the applicant. He introduced the application as receiving prior approval in 2016 for the Mountainside Racquet Club to construct a fabric building. One of the conditions to approval by emergency services was the inclusion of an emergency driveway access in the rear of the property. The driveway was not paved, but was

made of stone. This presented a challenge during the winter season with plowing. The applicant decided to pave a portion of it, and later painted track lines on the driveway. The paved driveway is quite isolated. Mr. Hehl expressed that the applicant was seeking a (d) variance for an outdoor recreational use not permitted in the zone. He contended that the track was very seasonal and limited to the members who already attended the racquet club. He represented that his client was not aware that these improvements on the driveway would trigger a variance.

Mr. Peter Korzen, P.E., having a business address of 26 Berkshire Street, Whippany, NJ 07981, was sworn in to give testimony. He gave his credentials. His license was in good standing, and he was accepted by the Board as a professional.

Mr. Korzen testified that the building was setback far from Route 22. He showed a layout of the site plan. The front of the property is a mixture of the Elks and residential. The back of the property is Echo Lake Park. There is a covered walkway from the back of the building to the asphalt track. The walkway is less than 30 Ft. to the track. The stipulation to the emergency circulation has not changed. The change is that it is now asphalt not gravel. The applicant was seeking a Use Variance. He testified that the impervious coverage reduced from 72.9% to 72.7%. This is accounted for in the portion of the stone driveway that was not covered over with asphalt. He testified that there would be no other improvements to the area such as lighting or parking.

On question of Ms. Dillon, Mr. Korzen opined that there could not be an accurate test for stormwater because of the compacted gravel.

The meeting was opened to the public for questions. With there being no questions from the public, the public portion was closed.

Mr. Steve Ondish, having a business address of 1191 Route 22 East, Mountainside, NJ, was sworn in to give testimony. He is the owner and managing partner of the racquet club. He testified that in 2016 they installed 2 play tennis courts enclosed in a fabric structure. He was required to provide emergency vehicle access to the property which could only be located on the eastern side. The access driveway was approved as a stone driveway. He encountered issues with plowing the driveway during snow storms because of the slope. Although he intended it for emergency access, he opined that it was impossible for emergency vehicles to use it during a snow event. He forgot that the condition to approval was for a gravel driveway. He had it paved. He testified that the children in the tennis programs began using the driveway for running. They approached him to paint lines on it. He had not intension of using it for track meets. He found it to be useful during COVID because it allowed the kids to be outside. The track is not used by anyone other than those enrolled in the tennis programs. There is no equipment out there. He assessed that the track is only used approximately 30 minutes throughout the day. There is an ingress/egress in the back of the building. The addition of the track does not change the hours of operation.

On question by Mr. Chadwick, Mr. Ondish explained that they provide clients with private lessons, semi-private lessons and clinics in group settings. There is a total of eight courts. There

are groups of no more than four per court. Based on the four people per court ratio, the facility can house 32 clients at one time.

Further to Mr. Chadwick's questions, Mr. Ondish testified that the students enrolled in his programs are very highly ranked in the country. They use the track for conditioning and sprinting drills.

On question of Mr. Jackositz, Mr. Ondish testified that boys and girls ages 12-18 years of age are allowed to use the track. There are only four or five students at a time using the track.

On question of Mr. Disko, Mr. Ondish confirmed that he took the photos of the property.

On question of Mr. Tomaine, Mr. Ondish testified that he had no safety issues with the utility pole or the tree. He further opined that his clients who utilize the track are athletes. The track is the same surface as the tennis courts. The control they have as athletes is something, they have to do every day. The tree is to the east of the track and a few feet away. Because of the starting point for their sprints, they have ten yards of slow down before they reach the gravel.

Mr. Zawislak opined that Mr. Ondish cared about the safety of the children and most likely had insurance to cover accidents.

On question of Mr. Disko, Mr. Ondish testified that he hired someone to pave part of the gravel driveway to keep costs down. The gravel on the eastern side kind of migrated there.

On question of Mr. Chadwick, Mr. Ondish answered that there was 150 ft. of gravel that he could not plow.

The meeting was opened to the public for questions. With there being no questions from the public, the public portion was closed.

Mr. Nicholas Graviano, P.P., having a business address of 101 Crawford's Corner Road, Homdel, NJ 07733, was sworn in to give testimony. He gave his credential as a Professional Planner; his license was in good standing. He was accepted by the Board to give testimony.

Mr. Graviano testified that the recreational facility was located in the L-I Zoning District. The access way for snow removal was also being repurposed as a track. It opined that it was a great component to work into the programs offered at the facility. He opined that due to the suitability of the track, it makes it viable as an accessory use to the indoor use. The track is located at the rear of the structure. The site is suited for the track. It promotes the purposes of the zoning to provide physical exercise. He testified that there is sufficient space. It is a more efficient use of the land. He opined that it would be a very minimal accessory use because it is isolated and next to the park. The track is set back 17.4 ft. from the rear. He opined that the variances being proposed can be granted under the (c)2 criteria. His testimony was that the benefits outweigh the detriments.

The meeting was opened to the public for questions. With there being no questions from the public, the public portion was closed.

On question of Mr. Chadwick, Mr. Graviano gave testimony that the track was an accessory use to the principle use. The main use of the facility is tennis.

The meeting was opened to the public.

Ms. Joyce Pickett, having an address of 1137 Saddlebrook Road, represented Executive Suites located on Route 22. She claimed that every action taken has an effect on the surrounding properties. She opined that by paving the driveway, the owners created less impervious surfaces which created more run off on the adjoining properties.

Mr. Loughlin raised the concern that in the Resolution of prior approval, there was mention of a deed restriction. The Borough does not have a copy of it.

Mr. Hehl stipulated to the condition to provide the required deed restriction.

In summation, Mr. Hehl contended that the area was paved. The amount of impervious actually decreased. The paved area set back has been justified. There is no other use in that area. The east of the property is fairly narrow. He explained why the pavement began at the east. There was concern for the snow falling from the roof. The paved area ran along the length of the building. He affirmed that the applicant would stipulate to a condition that would require an extension to the asphalt driveway, and he would address any run-off. Mr. Hehl contended that there was justification for the (c) 2 variance. He stated that it was clearly an accessory to the main function of the facility for the students who wanted to take advantage of the nice weather and be outside. He contended that safety was paramount to Mr. Ondish, and affirmed that the applicant would stipulate to a condition to wrap the utility pole with padding. This track is an isolated situation.

Mr. Disko commented that he was comfortable believing that the track was an accessory use. He reminded the Board that in 2016, the Police Chief was concerned with access.

Mr. Kostin confirmed that a fire truck could access the back of the building. He opined that the driveway being paved is better for the fire truck.

Chairman Tomaine said that the site was suited for the use as it had been explained. The original idea was to design a suitable space for emergency vehicles. The type of activity is duplicative of the training indoors. There are unique characteristics of the site that make it inappropriate for this use. The use is restricted to those who are members. He did not believe the application advanced the general welfare.

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

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

Roll Call:

Borough of Mountainside Planning Board
Regular Meeting
October 27, 2020

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

**CASE NO.: 20-19; YUROCHKO
229 EVERGREEN COURT
BK: 15.11 LT: 3
R-2 ZONE
Expiration Date: 1/22/21**

Mr. Robert and Mrs. Patricia Yurochko were sworn in to give testimony. Mrs. Yurochko testified that their air conditioner condenser needed to be replaced after 20 years. When their contractor came to install the unit, he suggested it should be moved further down the side of the house to allow for new utility installation.

Mr. Craig John Gurski of Service Professionals, having a business address of 923 Rahway Avenue, Union, NJ 07083, was sworn in to give testimony. He gave his credentials in HVAC and was accepted by the Board as a witness.

Mr. Gurski explained that the existing condensing unit was directly in front of the electric meter. He needed to move it away from that to meet the code. He moved it 8 feet back along the same side of the house and placed it closer to the house.

Mr. Yurochko added that it was placed on the right side of the house, and informed the Board that her lot was non-conforming.

Mr. Gurski demonstrated where the unit was placed and why he moved it back.

Mr. Disko challenged why the unit was installed without zoning approvals. It was not placed within the side yard setback, and was closer to the neighbor's house.

Mrs. Yurochko testified that to the best of her knowledge, there was a permit to place the condenser. She also explained that there is an existing window well towards the front of the house.

Mr. Matlin suggested it be moved to the back of the house.

Mrs. Yurochko informed the Board that there is a generator in the back of the home.

The meeting was opened to the public.

Mr. Erwin Lieberman, having an address of 233 Evergreen Court, made comments relating to his property line and the placement of the air conditioner condenser. He opined that the unit was closer to his bedroom window creating a lot of noise.

Mr. Gurski apologized, and said he did not mean to install it in a place that would disturb him.

Chairman Tomaine suggested an alternative site on the property either the front or back.

Mr. Gurski said he would have to look into it. He would have to keep the condenser away from the generator.

On question of the Board, Mr. Lieberman said his side yard was 25 Ft. from the property line.

Board members discussed moving it either to the front or the back of the property. Either location had challenges and would have to consider those challenges before placement.

Because the Board did not enter the discussion portion of this application, the applicant was given the opportunity to ask the Board to vote on the application as presented with no other alternative placement, withdraw her application or revise her application and be heard at the next meeting date.

The applicant did not want a vote on the application. They were going to have Mr. Gurski come to their house to look at alternatives.

ADJOURN

The Board unanimously voted to adjourn the meeting at 11:20 p.m.

Respectfully Submitted,



Theresa Snyder
Board Clerk