

<u>REGULAR MEETING OF THE MONTVALE PLANNING BOARD</u>
<u>Minutes -Remote Public Meeting</u>
<u>Tuesday, December 1, 2020</u>
<u>Council Chambers,12 Mercedes Drive, Montvale, NJ</u>
Please note: A curfew of 11:15 PM is strictly adhered to by the Board. No new matter involving an applicant will be started after 10:30 PM. At 10PM the Chairman will make a determination and advise applicants whether they will be heard. If an applicant cannot be heard because of the lateness of the hour, the matter will be carried over to the next regularly scheduled meeting. HTTPS listed below are the documents for each application that you can view on line.

PLEASE TAKE NOTICE that due to the current New Jersey State of Emergency and Public Health Emergency declared by Governor Phil Murphy, and in an effort to prevent further spread of COVID-19 and to protect the health and safety of residents Montvale Planning Board Meetings shall be held virtually on Zoom Live Streaming in accordance with the Division of Local Government Services remote Meeting Protocol for Local Public Bodies During Declared Emergency New Rules N.J.A.C. 5:39. All meetings will commence at 7:30pm Division of Local Governmental Services. During this time, the Montvale Planning Board will meet using Zoom. The public is welcome **to log in using the number shown** in the information.

Zoom webinar.

When: Dec 1, 2020 07:30 PM Eastern Time (US and Canada)

Topic: Planning Board Meeting December 1st, 2020

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82492318302?pwd=YUtdVkvT1RZMnlhNXEvclJGNVZTZz09>

Passcode: 537380

Or iPhone one-tap :

US: +13017158592,,82492318302#,,,,,0#,,537380# or +13126266799,,82492318302#,,,,,0#,,537380#

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Webinar ID: 824 9231 8302

Passcode: 537380

International numbers available: <https://us02web.zoom.us/u/k7wLKmoPF>

OPENING PUBLIC MEETINGS STATEMENT: Chairman DePinto opened the meeting at 7:30 PM and read the Open Public Meetings Act Statement.

ROLL CALL:

PRESENT: Theresa Cudequest, John Culhane, Christopher Gruber, Mayor Ghassali, Javid Huseynov, William Lintner, Maggie O'Neill, Frank Stefanelli, Dante Teagno, Robert Zitelli, Chairman DePinto

ALSO PRESENT: Robert Regan, Board Attorney; Andrew Hipolit, Borough Engineer; Darlene Green, Borough Planner; Lorraine Hutter, Land Use Administrator, and Erica Davenport, Assistant to the Land Use Administrator

ABSENT: Councilmember Curry

MISC. MATTERS RAISED BY BOARD MEMBERS/BOARD ATTORNEY/BOROUGH ENGINEER: Mayor Ghassali stated that there are about 45 residents that have tested positive for COVID and are in quarantine. To date, there are about 150 COVID positives. Zoom will be our format for a while to keep things safe.

ZONING REPORT: Mr. Gruber – 110 Summit is starting to get their roughs on electric/framing/fire inspections. The Toll Brothers project is getting inspections on footings. Mr. Gruber has been getting some complaints from residents regarding the bright lighting from Montvale Market. It looks like they installed some LED lighting on top of polls. Mr. Hipolit confirmed that they did in fact install that lighting and did not get any approval from us nor was it on their site plan. Mr. Gruber will be issuing some violations for that lighting. Also, regarding tents, the majority of restaurants have taken their tents down other than Bellissimo Restaurant and Hearth & Tap Company.

ENVIRONMENTAL COMMISSION LIAISON REPORT: Mr. Zitelli- The last meeting he had was on November 16th and discussed was the path down by Memorial. Work is in progress and a fence is being put in. They will be putting out a bid on dredging on Huff Pond. There will also be some excavation for the path that is in process.

SITE PLAN COMMITTEE REPORT: Mr. Stefanelli- There was no meeting this evening so there is no report.

CORRESPONDENCE: Available online and the public can also contact the Board Secretary, Lorraine Hutter.

APPROVAL OF MINUTES: October 6, 2020 – carried to the next meeting. The November 17th, 2020 minutes was motioned to approve by Ms. Cudequest and seconded by Mr. Stefanelli. There was no discussion on the motion. A roll call vote was taken with all members stating aye. Mayor Ghassali, Mr. Zitelli and Ms. O’Neill abstained.

DISCUSSION: Calendar 2021 – Motion to approve was made by Mr. Teagno and seconded by Mr. Zitelli. A roll call vote was taken with all members stating aye.

USE PERMITS:

Block 1601 Lot 17-Crystal Clean Pools, Inc.-8 Railroad Avenue (600 sq. ft.)

Frank Uzzi is the attorney representing the applicant. The applicant, George Lamarca, was sworn in by Mr. Regan. Chairman DePinto read the application aloud. Attached to the application is the required Montvale Police Department form. Chairman DePinto asked Mr. Uzzi for his client to give a brief overview of the nature of his business and what operations are intended in this place of business. Mr. Lamarca stated that he is using this space as office space and for people of the community to make purchases if needed and for service calls. Chairman DePinto questioned the parking. Mr. Lamarca arranged parking of company vehicles at a different location off site and he believes there are tandem parking spaces on site but was never told which ones. The Chairman wants to continue with the application but when he occupies the space, he will need to contact Mr. Gruber to confirm that there are tandem parking spaces on site. We will need some clarification and a follow up letter from Mr. Uzzi to show specifically where these tandem spaces will be. Chairman DePinto also brought up the fact of neon window signs are in fact prohibited. Mr. Lamarca stated that this was not a problem. Mr. Huseynov questioned the location of these tandem parking spots. Will they be in front or on the side? Mr. Uzzi stated that he will articulate that in writing to the Board once he finds out from the landlord. Mr. Huseynov also questioned the

signs that he will be displaying. Chairman DePinto stated that by code, signs are permitted and there is currently one sign in front of the building. Mr. Gruber stated that he believes the percentage of the size of the sign is about 30% but he will double check that. Chairman DePinto stated that the only display of signs on that building is only in the front and in the windows, not on the side. Mr. Lintner questioned if he had another location that is a warehouse facility. Mr. Lamarca confirmed. There were no other questions raised by the Board. Mr. Gruber stated that they will need to pull all of the correct permits since they plan on doing some work to this location. Mr. Uzzi will provide a letter and a sketch to the Board Secretary stating where the tandem parking spaces will be as reflected in the tenant's lease/agreement with the property owner. A motion to approve was made by Ms. O'Neill and seconded by Mr. Huseynov. There was no discussion on the motion. A roll call vote was taken with all members stating aye.

Block 1902 Lot 5-Montvale Health Associates, LLC-305 West Grand Avenue, Suite 800 (1,900 sq. ft.) – This use permit has been withdrawn until further notice.

PUBLIC HEARINGS (NEW): None

PUBLIC HEARINGS (CONT):

1. **Block 2002 Lot 3-Mobius Solar 1, LLC-5 Paragon Drive**-Amended Preliminary and Final Site Plan Application with a Major Soil Movement Application

<https://drive.google.com/drive/folders/1khxBkx56QwqFBzXovoLsk83fB6nAsdGq>

This application will be carried to January 5, 2021

2. **Block 1002 Lot 7- Waypoint Residential Services, LLC -127 Summit Avenue** -Application for Preliminary and Final Site Plan and Bulk Variance Approval and Soil Movement- click below link for documents to view

<https://www.dropbox.com/sh/3wpdvdnuuypl6l/AADMHQKfrPI-jfJZs9Z7cOY3a?dl=0>

https://drive.google.com/drive/folders/1qNHGWalyWhFQKjckE4JzltxV_cdJbTy1?usp=sharing

<https://drive.google.com/drive/folders/1484vkWTkSafi5nUb9rEJemFjV7EuOCBQ?usp=sharing>

Peter Wolfson is representing the applicant. Mr. Wolfson has brought experts that he would like to have testify; Patricia Ruskin, Project Engineer; Dan King, Architect; Corey Chase, Traffic Engineer; Richard Preiss, Planner. Chairman DePinto discussed a letter dated November 3, 2020 by Peter Kurshan. Mr. Kurshan is submitting this letter on behalf of the Board of the Summit Ridge Condominium Association of which he is a member. The entirety of the Board has approved this letter. In Mr. Kurshan's letter he refers to the possibility of bringing in his own experts and he is seeking to have them participate at a future date. Chairman DePinto stated that there may be a difference of opinion regarding who can participate in this hearing. If D-Variations are associated with this application, then Mayor Ghassali is not eligible to participate. Mr. Kurshan identified himself, residing at 106 Gelnow Lane. The condominium association believes that a D-Variance is needed due to the number of dwelling units since 12 is permitted and 157 are proposed as well as the maximum building height being well beyond 35 feet. The first level/garage is not being utilized as a garage since there is a storage area and fire/water facilities in that area. The rendering also shows that it will be a four-story building and the mid roof line is somewhere in excess of 47 feet which would fall under a D-variance. Mr. Kurshan also brought up the fact that since so many units are on each floor, there would be no chance of having cross ventilation in each unit which is required. He also brought up concerns of having this building being immediately placed adjacent to the Eastern boundaries of the Summit Ridge Condominium Association. He feels that the applicant accused Summit Ridge in making a false statement and wants to state that there has been nothing false as to what they have submitted. Mr. Wolfson asked Mr. Preiss if he was in agreement with any of the concerns that Mr. Kurshan raised and Mr. Preiss stated that he did not believe these concerns fell under the category of needing a D-variance. The applicant has acknowledged that it does require variance relief from Chapter 400-40 but in this case only bulk variance or C-variances and design waivers are required. The applicant's proposal is to build an apartment building within a residential development and that use is permitted in the AH6 zone. In Mr. Preiss's opinion, a D-variance is not required nor is a C-variance required for height.

Chairman DePinto asked Ms. Green regarding the D-variance what she thought after Mr. Preiss's testimony. Ms. Green stated that there have been changes made over the course of

this submission. At one point there was space on the garage level that has been removed in response to one of her letters and after that was removed it did comply with 400-40D2G concerning maximum building height. The garage level is excluded from the height. Ms. Green agrees with Mr. Preiss's testimony regarding that issue. She hasn't had a chance to review the Summit Ridge letter and the response letter from Mr. Wolfson however, her intention would be to issue a revised letter touching on all the points if that's what the board would want her to do. Chairman DePinto would like a technical review letter from Ms. Green. However, based on Mr. Preiss's testimony, Ms. Green agrees that there are no D-variances associated with this application. Chairman DePinto asked Mr. Hipolit if he also agrees that there are no D-variances needed and Mr. Hipolit agreed.

Mr. Regan commented that after hearing the argument set forth by Summit Ridge, the testimony of the applicant's planner, and the board professional's comments, he believes that a D-variance is not needed. Mr. Regan continues with stating that a D1 use variance implicates a proposal for a use or structure in a zone in which that use or structure is not permitted. In our code, section 400-40A, permitted uses are town houses, town house duplex combination and apartment buildings. Its clear to Mr. Regan that this proposal is for an apartment building that's a permitted use and a D1 use variance should not be required. It seems like Summit Ridge's approach to this is that if any of the multiple standards governing plan developments does not comply, then it triggers a D-variance for the entire project which does not fall under the D-variance definition. With respect to the D6 height variance issue, the height must exceed the permitted height by 10% and he is relying on the borough planner and engineer on those calculations.

Mr. Regan swore Dan King into the record. Mr. King, architect, reviewed the Summit Ridge correspondence and he explained that half of the lower level falls below the elevation and when a story is below the average level of the adjoining ground it's referred to as a cellar. This is why that level is excluded; therefore, it is a 3-story building. Measuring the first floor to the overall height of the building gives you 35 feet and that's how they came up with that calculation. Mr. Hipolit agrees with how Mr. King came to the conclusion of the height of the building. Mr. Kurshan heard the testimony of all applicants and continued with asking

follow-up questions pertaining to the height of the building. Mr. Kurshan asked if the garage will be used for parking and storage for the residents and Mr. King responded yes. Mr. Kurshan asked if he saw four stories from the South side, Mr. King responded yes, you see the garage and 3 levels of residence. More of the building is seen on the Eastern side of the building because the grade level goes down on a slope. From the Western side you do not see the garage level since it is fully covered. The ground level of the building is 88,000 sq. ft. (around 2 acres), and would be completely accessible to residents. The applicant is seeking to still build a pyramid hip roof but is much lower and no more than 47 feet above grade.

Mr. Kurshan then asked Mr. Preiss some questions pertaining to AH6 zoning. The building length in this case would be a deviation under section 400-40 which is a C-variance relating to bulk. Mr. Kurshan brought up that there are 157 dwelling units being proposed and is a gross deviation of a standard of 12 dwelling units. Mr. Preiss stated that it is a C-variance and how this Board determined a similar application from the Reserve at Montvale. Mr. Kurshan tried to compare the Reserve at Montvale to this building application and Mr. Wiess stated that there is no comparison as this is a completely different project.

Mr. Regan stated that if they are going to get involved in what this board did in a prior resolution, then it would only be fair to have that resolution be in front of the board rather than have questions from Mr. Kurshan to Mr. Preiss. The Reserve at Montvale was an application that occurred back in 2012. Mr. Wolfson stated that he believes each application should stand on its own and have its own particular facts. Chairman DePinto stated that they are still trying to determine eligibility of members because of the question of whether or not there are D-variances. Chairman DePinto stated that his experts have offered their opinions that their interpretation would lead them to state that no D-variances are required in terms of this application. Mr. Wolfson agreed. With respect to the Board professionals, they agreed that there are no D-variances needed. Mr. Regan stated that it is clear to him that there is no D1 variance required. With regard to the height variance, he is relying on Mr. Hipolit and Ms. Green. The board professionals stated that they have not had the time due to the late receipt of Mr. Kurshan's letter. They are basing this decision on testimony but have not had time to do a technical review.

Mr. Regan then stated that these questions should have been raised at the initial public hearing (March 3, 2020) since this is a threshold issue. If D-variances are being put in question, the Mayor and the councilmember are unable to participate. This application cannot go much further until this issue is resolved. Frankly, this question should have been raised back in March or April when this application started, not 8 months later. The board has already had 5 public hearings. Mr. Regan asked why these issues are being raised now? Mr. Kurshan stated that these issues just came to mind.

Chairman DePinto wants to mark into evidence (SR1) Summit Ridge letter dated November 23, 2020, signed by Peter J. Kurshan. Also, Mr. Wolfson's response letter will be marked into evidence as A26.

Mr. Kurshan would like the opportunity to bring his professionals in. Chairman DePinto doesn't know how to move forward with this application if they cannot come to a conclusion if there are any D-variances relative to this application. If it is a D-variance, the Mayor cannot participate. Chairman DePinto thought it was discourteous as to the timing of all of these items being brought up in question. The next regularly scheduled meeting is January 5, 2021 and Mr. Kurshan couldn't give a commitment to this date to address this issue. Chairman DePinto polled the Board to see if they were in agreement to carry the matter to the first meeting in January, allowing Mr. Kurshan to produce witnesses. If Mr. Kurshan is not prepared for that evening, the Board will make a decision to move forward with the D-variance issue. Mr. Regan advised that we reach a final determination and his recommendation is to carry for January 5, 2021. Mr. Hipolit stated that he needs his reports by December 16, 2020 since there are holidays during that period. Mr. Kurshan could not commit to having his reports ready by then. Mr. Wolfson thought Mr. Hipolit's recommendation was appropriate.

Mr. Hipolit expects his reports to be ready for review by December 23, 2020 respective of anything else submitted.

Ms. Green can have a letter out within two weeks covering the points in the two letters that they just received this past week. However, if they receive something else then she can do a follow up letter covering any additional information received.

A roll call vote was taken for this application to be carried to January 5, 2021. All members stated aye. Mr. Wolfson then requested a special meeting in addition to the January 5th meeting. He will need to contact Lorraine Hutter to find a date that works for everyone.

A 5-minute break was taken at 9:31 PM.

RESOLUTIONS:

Block 1902 Lot 3-RESOLUTION GRANTING AMENDED SITE PLAN APPROVAL AND VARIANCE RELIEF TO 140 HOPPER AVENUE ASSOCIATES, LLC FOR PREMISES DESIGNATED AS BLOCK 1902, LOT 3

A motion to introduce the resolution was made by Mr. Lintner and seconded by Ms. Cudequest. Mr. Regan stated some changes that needed to be made. The first was on page 8, paragraph 9, the 6th and 7th line reference the word “encroachment”. He would like to delete that and substitute that word “setback” in each of those sentences. The only other change is on page 11, paragraph 14, where it discusses the mansard roof. Mr. Regan would like that sentence to be read as follows, the architect testified that portions of the mansard roof as depicted on the elevations will be removed and replaced with stucco finish, flat facade and flat roof. Chairman DePinto stated that during that meeting there were a number of changes that were made. He asked if those changes were submitted reflecting those changes? Assemblywoman Holly Schepisi did in fact submit revised changes to Mr. Hipolit and Ms. Green. Mr. Hipolit found those revised plans to be consistent with what the Board had been expecting. Ms. Green spoke with their architect and he is making some final tweaks to wrap up those plans. Specifically, the monument side along the road frontages. They will be more modern looking and to comply with the sign size. The sign will be consistent with code regarding square footage and lighting. No other questions arose from board members. A roll call vote was taken, Mayor Ghassali abstained and all other members stated aye.

Block 1102, Lot 4-108 Montvale Realty, LLC-106-108 Spring Valley Road-Variance Application-Signage and Parking. Will be memorialized in January.

Block 108 Lot 6-Thomas J. Caleca- 110 Upper Saddle River Road-Zoning Variance Application-

A new 4 car Attached Garage requiring a rear yard setback will be memorialized in January.

OTHER BUSINESS: None

OPEN MEETING TO THE PUBLIC: No one from the public was present.

ADJOURNMENT: A motion to adjourn was made by Ms. Cudequest and seconded Mr. Zitelli with all members stating aye.

Next Scheduled Meeting Reorganizational and Regular: January 5, 2021

Respectfully Submitted,

Erica Davenport
Assistant to the Land Use Administrator