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2. MINUTES OF JUNE 2, 2021

A motion to approve was made by Mr. Whiteman, seconded by Mr. Cannava. All eligible Members voted in favor.

III. MEMORIALIZING RESOLUTIONS:

**1. DOCKET #1490-21 – JOSEPH BARRAGATO
278 CAMPGAW ROAD, BLOCK 143, LOT 14**

Resolution of Approval of “C” Variances to construct and install an in-ground pool in a front yard and add 6 foot high fencing to the existing 6 foot high fencing in the front yard.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Jackson. A roll call vote revealed 5 aye votes by Mr. Calijone, Mr. Cannava, Mr. Jackson, Mr. Rabolli and Mr. Whiteman.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements.

Ms. Joey Burkholtzer, Hillside Avenue – If an Application is approved by the Board of Adjustment, what happens next? Is it final or does it then go before Council or the Planning Board? Is it the same procedure if denied?

Mr. Rabolli stated that if an Application is approved, a Resolution is drafted and then voted on by Members of the Board. Objectors have 45 days from the date of Publication to appeal to the Superior Court of the State of New Jersey. If denied, the Applicant would have 45 days to appeal.

V. PUBLIC HEARING(S):

**1. DOCKET #1478-20 MONARCH COMMUNITIES, LLC
EAST RAMAPO AVENUE/FRANKLIN TURNPIKE/KING STREET/
SIDING PLACE, BLOCK 82 LOTS 1, 3-17, 26, 29, 30**

Application for “C” and “D” Variances to construct a multi-level Senior Housing Facility with retail space, parking garage and other site improvements including off-street parking

and circulation, loading area, sidewalks, retaining walls, signage, landscaping and lighting, continued from June 16, 2021.

Mr. DeSilva recused himself from the hearing of this Application.

Mr. Andy Del Vecchio, Esq., Beattie Padovano, LLC, 50 Chestnut Ridge Road, Montvale, NJ representing the Applicant, stated that amended documents were to be marked into evidence, followed by the Architect's testimony regarding the square footage of the units and addressing open comments received from the Board Professionals. Mr. Del Vecchio referenced the additional properties consisting of a bank of properties located on King Street that were added to the Application at the last meeting. An amendment has been filed to include those Blocks and Lots.

- Exhibit A-23** - Amendment to Application
- Exhibit A-24** - Amended Notice of Public Hearing, Affidavit of Notice and the 200 foot listing that were supplied to the Board in advance of this meeting

Mr. Cascio stated that the Notice was in order.

Mr. Del Vecchio called his first witness; **Mr. Eric Anderson, Architect, Monarch Communities**, remaining under Oath, gave an overview of the project. Sharing his screen, Mr. Anderson displayed the Site Plan that was presented at the last meeting, stating that the entrance is being moved to off of King Street. Parking will be at the bottom of two floors.

Responding to comments in the Colliers report dated July 1, 2021 and the Boswell report dated July 19, 2021, Mr. Anderson described some of the plan changes, i.e., stoves had been removed from the plans in the Assisted Living units and square footage of each unit has been added to the plans. Unit sizes were provided for each level (i.e., Congregate Living, Assisted Living and Memory Care), broken down by type (i.e., Studio, 1 Bedroom, 2 Bedroom and 4 Bedroom) as well as amenity space (i.e., Common Areas; Lobby, Dining Room, Pub, Library, Multi-purpose room and Commercial Kitchen).

Mr. Anderson's **Slide Deck** detailing the units as stated above was marked as **Exhibit A-25** and will be submitted to the Board.

Mr. Kelly requested a set of the revised plans dated July 21, 2021.

A discussion took place pertaining to evacuation. The New Jersey Building Code, Section 1028.5; Access to a Public Way, was referenced by Mr. Anderson. Mr. Kearney expressed his concerns with exiting 200 people onto a heavily traffic main road –

Franklin Turnpike and adjoining roads. If there is a fire there is no space beyond 100 feet from the building requirement for the people to go. They cannot go between the railroad tracks and the building that will be reserved for the fire apparatus. Per Mr. Anderson, an Evacuation Plan will be created detailing what staff is required to do, where the people will go. There are various exits and parking out front. Everyone could be corralled into the same area to the sidewalk, the park across the street, or other parking areas around the building. Mr. Anderson commented that he will speak with the Consultant that provides the Evacuation Plan, and referenced the Fire Safety Plan for Roof Access – the roof hatch locations have been added to Sheet A-1.04. A roof ladder from the low roof to the high roof is also being proposed.

Many of the comments in Ms. Lawlor's Colliers Report dated July 1, 2021 were addressed and responded to by Mr. Anderson, i.e., the roof parapets up to the permitted height of 4 feet would shield the mechanical equipment; the heating and air conditioning units would be screened from public view by the parapets; air condition units will not be visible on the façade. Moving on to parking spaces, Mr. Anderson stated that there would be three handicap spaces in the garage, one van accessible space of 8 feet 2 inches, in height. The minimum clearing height for other vehicles is 7 feet. Store entrances were added to the Parking Plan. The Retail Parking Garage is specifically for Retail; 48 spaces. Three doors were added to the plan. The garage door will be secured at the opening – the owner will determine the hours. On the Terrace Floor Plan a door was added for egress from the stairwell. A door was added for deliveries. Revised Plans will be submitted.

Abbreviations for rooms and titles were described. Restricted access to the garage was discussed. Sheet A-1.01 of the first floor Plan shows the setback line; balconies are in compliance. Roof hatches were provided and are now shown on the plans. Mr. Del Vecchio referenced the offset between building jobs and stated that no more than 45 feet is permitted. Sheet A-2.03 dated June 1, 2021 indicates that one section is 50 feet where a break every 45 feet is required – the Applicant will comply. Sheet A-2.10 reflects the canopies and bays to break up the mass of the building. The garage has the same finishes as the rest of the architecture which is largely brick, and is exposed to the railroad tracks. The project will be in compliance with regulations reflected in the plans and elevations.

Referring to Mr. Kelly's Boswell Report dated July 19, 2021, Mr. Anderson stated that Sheet A-1.0P shows that striping has been added where there appeared to be an additional space, confirmed that there are 48 parking spaces and that dimensions will be added as requested. Concerning the mixed use development, the project will be in compliance as stated above. The garage is integrated with the building architecture and will be treated the same way as the rest of the building.

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Regarding the amenities and the Community Room, Mr. Del Vecchio stated that the Section of the Code lists what accessory uses are permitted in the Zone, not what is mandated. The Community Room is a permissible use in the Zone, covered by the D1 Variance. The rooftop equipment was discussed by Mr. Anderson. Access to the roof by Fire Fighters will be reviewed carefully with the Fire Department. Additional roof ladders or a staging area to get over the 4 foot parapet or modification of the design of the parapet could be provided. Mr. Del Vecchio stated the Applicant was prepared to accept this as a condition of approval. Also discussed were the materials, fire walls and sprinkler systems, which will comply with the Fire and Building Department's request/determination. The building height will be re-measured by the Civil Engineer and revised to compliance.

There being no further testimony from Mr. Anderson, Mr. Rabolli opened questioning from Members of the Board for Mr. Anderson.

Mr. Kearney inquired if the elevators would accommodate full size stretchers. Mr. Anderson's response was, yes; it is a relatively new Code requirement.

There were no further questions from Members of the Board for Mr. Anderson.

Mr. Rabolli opened the questioning to the Board Professionals for Mr. Anderson

Mr. Kelly's questions/comments included: 1) has any thought been put into accessing the retail stores directly from the parking area? Per Mr. Anderson, yes, it is the intent, access would be based on the tenants. 2) Building material types - the garage is non-combustible either steel and/or concrete; Congregate is stick built, Memory Care and Assisted Living some sort of non-combustible material? Correct, per Mr. Anderson.

There were no further questions from the Board Professionals for Mr. Anderson.

Mr. Rabolli opened questioning from members of the Public for Mr. Anderson.

Questions were received from the following residents and answered by Mr. Anderson:

Ms. Martha Steinbach, 8 Wanamaker Avenue – what is the Evacuation Plan in an emergency for these frail elderly residents; are apartments furnished; are moving trucks in the delivery area?

Buildings are not designed like a regular apartment building. They are designed non-combustible per Code for that reason. If a fire alarm goes off there is the ability to transfer people from one side of the floor to the other, to the other side of the fire rated fire wall so that not everyone has to evacuate at the same time. This method and utilizing

the NFTA-13 Sprinkler System are some of the many safety measures taken. The apartments are largely unfurnished. Moving trucks will utilize the delivery area.

Mr. Ken Porro, Esq, representing **Cilento Holdings, LLC, Mr. Donato D'Angelo, Owner of the Blue Foundry Bank, formerly Boiling Springs Savings Bank, 4 East Ramapo Avenue, Mahwah, NJ** – stated that Mr. Denato is in favor of the Application and number of units. Mr. Porro requested retaining walls surrounding the property; that any drainage be remediated, and the encroachment on East Ramapo Road be cured.

Mr. Rabolli requested that Mr. Porro send a letter to the Board with the above requests.

Ms. Audrey Gold, Miller Road – will the Pub serve liquor and will the public be allowed; size of parking spaces; height of garage ceiling; where do trucks park when unloading?

Yes, the Pub will serve liquor. Mr. Del Vecchio stated that access to the Pub will be verified with the owner, but his understanding is that the general public will not be given access to any of the facilities within the project; open only to residents and their visitors. Mr. Anderson stated that all parking spaces were 9 feet wide other than handicap. The ceiling is not officially a story, the parking is in a basement and is basically underground – it is not considered a story. Unloading will be done at the entrance near the railroad tracks (Civil Engineer Sheet 3.01), one truck at a time, no trucks are going in the garage.

At 8:51p.m. Mr. Rabolli announced that continuation of the Public Hearing for Monarch Communities, LLC is scheduled for August 18, 2021. No further Notice is required. Mr. Del Vecchio stated that the Traffic Expert and Engineering would testify at the next meeting. Mr. Rabolli requested that a Traffic Expert from Boswell Engineering participate as well.

A ten minute break was taken at 8:55 p.m.

The Public Hearing portion of the meeting resumed at 9:05 p.m.

**2. DOCKET #1487-21 - PALISADES PROPERTIES, LLC
316 FOREST ROAD, BLOCK 168, LOT 9**

Application for “D1” Use Variance for a Sober Living Home in an existing Single Family Home, continued from May 19, 2021.

Four Members of the Board recused themselves from this Application; Messrs. DeSilva, Kearney, Montroy and Straffin.

Mr. Edward Purcell, Esq., Price, Meese, Shulman & D'Arminio, P.C., 89 Headquarters Plaza North, Suite 1442, Morristown, NJ 07960, representing the Applicant, stated that he had submitted a letter to the Board requesting confirmation that that the remaining Members, Messrs. Calijone, Cannava, Jackson, Rabolli and Whiteman had attended the last two hearings or have listened to the audio. Mr. Rabolli took a roll call of the present Members, confirmed attendance at the past two hearings and stated that the five Members establish a quorum for a Use Variance.

Mr. Purcell called his first witness of the evening; **Mr. Paul Grygiel, Planner, 33-41 Newark Street, Hoboken, NJ** remaining under Oath, confirmed that **Exhibit A24 – Zoning Permit dated October 15, 2020 and A25 – The Fence Plan** had previously been submitted into evidence. Sharing his screen, Mr. Grygiel displayed the following exhibits:

- Exhibit 1 The Property Survey** - the Applicant constructed a 6 foot fence directly behind the house. The fence complies with the 6 foot height limitation.
- Exhibit 11 View of the fence from Forest Hill Road**
- Exhibit 12 Fence Constructed**
- Exhibit 13 View from within the property**

Mr. Grygiel continued, stating that the rear and side yard are shielded from view. Regarding landscaping, arborvitaes will be planted to supplement the fencing. A Plan of the plantings for Condition of Approval can be provided. This would be a beneficial change that would further enhance the proposal and positively impact the balancing test with regard to SICA Case Law and also lessen the negative impact in terms of potential over use of the site.

There being no further testimony from Mr. Grygiel, Mr. Rabolli opened the questioning to Members of the Board.

Mr. Calijone inquired about ownership of the cars parked on the street.

Mr. Jonas (the Applicant) responded that the cars did not belong to the residents of Palisades Properties. Residents park in the driveway.

There were no further questions from Members of the Board for Mr. Grygiel or Mr. Jonas.

There were no questions from the Board Professionals for Mr. Grygiel or Mr. Jonas.

Mr. Rabolli opened the questioning to members of the Public for Mr. Grygiel.

Mr. Ira Weiner, Esq., Beattie Padovano, LLC, 50 Chestnut Ridge Road, Montvale, NJ representing Mahwah Residential, comprised of several neighbors, cross-examined Mr. Grygiel. Mr. Weiner noted that the requested D1 Use Variance was due to the proposal not being permitted in the Zone and inquired if Boarding Houses were permitted; what kind of license is a Class F; the State considers Sober Living as a Rooming and Boarding House type use; is this housing for profit? Mr. Weiner referenced prior testimony where Mr. Grygiel had opinion that Mahwah has not permitted a Sober Living Facility in any of its Zones. Mr. Weiner question Mr. Grygiel and asked if it was his position that the Board cannot turn it down based on the Fair Housing Authority (FHA), the Board is obligated to grant this Variance as a required accommodation? The Board is only required to give a reasonable accommodation. The Board could make a case. If the Board feels it is disruptive to the Zoning Plan, they have discretion to deny it.

Mr. Grygiel's responses were that he did not think Boarding Houses were permitted. The State regulates different kinds of licenses in different ways. This is a place where people that happen to have a handicap live just like other family units. Testifying as a Planner; the Use is regulated by the State. Mr. Jonas previously testified that it is for profit. Approval or disapproval will be determined by Mr. Cascio and the Board.

A lengthy discussion took place regarding other cases. Referencing an Oxford House type use, Mr. Weiner questioned the maximum number of residents and the maximum length of stay. Mr. Jonas stated that 10 residents is the maximum – average between 6 and 8. The average stay is 60-90 days; 120 might be the maximum. There is no set number.

Additional questions from Mr. Weiner included: written rules; SICA Test – Public interest; is this Use considered to be as compelling or weighty as other situations? Mr. Weiner listed other disability and/or handicap situations as comparisons. Sober Housing is not automatically permitted but requires a Use Variance.

Per Mr. Grygiel, there are written rules; facts and figures from the SICA test were provided to the Board; needs for this type of facility were looked into. There are many uses that require a Use Variance.

Mr. Weiner cited State Law NJSA and stated that the Board could take into account that this Use is not automatically granted. The program could have a constant turnover, almost transient.

Mr. Grygiel argued that this comparison is a bit misleading. Residential does not typically regulate the length of time someone stays. Yes, the Board could impose reasonable conditions.

A discussion between Mr. Weiner and Mr. Grygiel took place regarding proximity to Treatment Facilities.

There were no further questions from Mr. Weiner for Mr. Grygiel.

There were no questions from members of the Public for Mr. Grygiel.

In Re-direct, Mr. Purcell posed several questions to Mr. Grygiel. Does the Federal Government allow individuals with a drug and/or alcohol handicap? What is not permitted? Residential consists of people living, eating and sleeping there; similar to Air B&B's? From Federal level to State level....is there a New Jersey case that indicates Sober Living Facility is inherently beneficial.

Per Mr. Grygiel; yes, permitted by the Federal Government; commercial, factory, commercial, anything out of character is not permitted – this is a single family home. Similar to an Air B&B in terms of turnover. A New Jersey case would be Hersak vs. Estelle Manor; A-2729-15D2. It is a rehab with no restriction on turnover.

Mr. Purcell called his next witness; **Mr. Jay Jonas, Head of Operations, Palisades Properties**, still under Oath stated that that the New Jersey Recovery Center is located in Fair Lawn, NJ off Route 208 – about 20 minutes from the residence.

Mr. Weiner called his witness; **Mr. Peter Steck, 80 Maplewood Avenue, Maplewood, NJ**, gave his credentials and was sworn in by Mr. Rabolli as a Professional Planner. Mr. Steck stated that he was hired by Mahwah Residential to do a Planning review and hearings of March 17th, May 19th and has heard the supplemental testimony of Mr. Grygiel this evening. The exhibits on the Municipal website, the Application and photos and transcript of Messrs. Grygiel and Jonas were reviewed by Mr. Steck as well. The corner lot is in a fully developed residential single family home area. The Applicant's license is for Co-operative Senior Living Residence (CSLR). The State of New Jersey doesn't license single family homes. There is a State license. Testimony given never referenced Boarding House. The State looks at it as a Boarding House, Class F which does refer to Sober Living Houses – that there is a distinction from a single family home, and acknowledges that it is a different classification. Mahwah's new Ordinance specifically says it does not allow Boarding Houses. The fact that a D1 Variance is required and there is a detriment, indicates that this is closer to an institutional type use.

Mr. Steck continued, giving the comparisons between a Boarding House and a Single Family Home. Giving his opinion, Mr. Steck stated that there is a rational basis to make a distinction, and conceded that there are handicapped persons covered by the FHA and an inherent beneficial use. The first step of the SICA Test is to magnify the benefit of the use, i.e., disabled, abused spouses, etc. This is simply a shelter for a short period of time.

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What is the Public benefit? The treatment facility is 9 ½ miles away from the residence on a major highway; it is not proximate, not close to mass transit or stores. This is a profit making entity. Detriments - it is not a household where people relate and share together. Negative consequences – just shelter for unrelated individuals. It is an inherently beneficial use but many that are much more crucial, i.e., developmentally disabled could live there the rest of their life. In Mr. Steck's opinion, the Applicant has not met the Burden of Proof.

Mr. Rabolli announced that the next hearing date would be determined at the August 4, 2021 meeting.

A motion to adjourn was made by Mr. Cannava, seconded by Mr. Whiteman. All voted in favor. The meeting adjourned at 10:39 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on September 10, 2021 for approval at the Regular Meeting to be held on September 15, 2021.