

**TOWNSHIP OF MAHWAHEMUL
BOARD OF ADJUSTMENT**

MINUTES

FEBRUARY 3, 2021

The combined public/work session meeting of the Board of Adjustment of the Township of Mahwah held via Remote Zoom Conference was called to order at 7:30 p.m. by Mr. Rabolli, with the reading of the opening statement followed by the flag salute and a reminder that Board of Adjustment meetings are being videotaped and broadcast live. It was noted that adequate notice of the meeting was provided specifying that this meeting would be held remotely and that electronic notice of both general access instructions and specific meeting invitations were posted to the Township Website.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT:

Mr. Calijone	Mr. Montroy (In at 7:45 p.m.)
Mr. Cannava (In at 7:45 p.m.)	Mr. Rabolli
Mr. DeSilva	Mr. Straffin
Mr. Jackson	Mr. Whiteman
Mr. Kearney	

ATTORNEY: Mr. Ben R. Cascio, Esq.

PROFESSIONALS: Mr. Michael J. Kelly, PE, Boswell Engineering
Ms. Deb Lawlor, FAICP, PP,
Colliers Engineering & Design, Inc.
Ms. Darlene Green, Affordable Housing,
Colliers Engineering & Design, Inc.
Ms. Geraldine Entrup, Administrative Officer

I. APPROVAL OF BILLS:

None to present.

11. APPROVAL OF MINUTES:

1. MINUTES OF JANUARY 13, 2021 REORGANIZATION

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

2. MINUTES OF JANUARY 20, 2021

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

III. MEMORIALIZING RESOLUTIONS:

**1. DOCKET #1171-05S-A (2020) BASKK, INC.
1 MIDVALE MOUNTAN ROAD, BLOCK 1, LOT 157**

Resolution of Approval to build a Single Family Home on an unapproved street that was Previously approved in 2005.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Calijone. A roll call vote revealed 6 aye votes by Mr. Calijone, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Straffin and Mr. Whiteman.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. No members of the Public participated on the Zoom call or wrote in comments.

V. PUBLIC HEARING(S):

**1. DOCKET #1486-20 – PEGGY AND MICHAEL GROSS
40 FRANKLIN STREET, BLOCK 178, LOT 8**

Application for a “C” Variance for exceeding lot coverage to construct a circular driveway in front of the home.

Mr. Cascio stated that the Notice was in order.

Mr. Rabolli summarized this Application, stating that the current lot coverage is just under the permitted 40%; adding the circular driveway would bring it to 48%.

Mrs. Peggy Gross, homeowner at 40 Franklin Street, was sworn in by Mr. Rabolli. and stated that she and her family moved to this home a couple of years ago. They have a 36 year old son that suffers from rheumatoid arthritis and a lot of joint damage, a 76 year old sister with advanced Parkinson’s, and her sister’s husband uses a walker. It is very

difficult to climb the 7 steep steps from the driveway to the front door. Also, the driveway is on an angle, making it very difficult and challenging to back out onto the street.

Mr. Rabolli opened questioning to Members of the Board for Mrs. Gross.

In response to questions from Mr. Kearney, Mrs. Gross stated that the property is unique compared to others, there is a drop off with garages underneath, and other homes in the area have circular driveways.

A discussion took place regarding the steps, a ramp, the Zoning Code and the fact that other driveways were street level. Mrs. Gross commented that there was no plan to put in a ramp. Mr. Kelly commented that the Applicant is requesting a variance to create an impervious lot area of 48.5% in the Zone where 40% is permitted. The coverage is currently at 38.5%; the proposed increase of impervious area 1,000 square feet, which would be 850 square feet over what is permitted. Mr. Kelly added for the record that the width of the driveway is 10' which is the minimum standard or you would be stepping off the driveway onto the grass area.

The downslope of the driveway, the retaining wall, drainage, the backyard area with a deck, and the lot size were discussed between Mrs. Gross, Mr. Kelly and Members of the Board.

There were no further questions for Mrs. Gross from Members of the Board or from members of the Public.

A motion to move into Work Session was made by Mr. Whiteman, seconded by Mr. Kearney. All voted in favor.

Note: Work Session immediately followed the Public Hearing for this Docket.

**2. DOCKET #148-20 – 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.

Mr. Cascio stated that the Notice is in order.

Mr. DeSilva recused himself from the hearing.

Mr. William Dator, former owner of the property joined the Zoom meeting based on his interest in what is happening with the property.

Mr. Andy Del Vecchio, Beattie Padovano, LLC, 50 Chestnut Ridge Road, Montvale, NJ representing the Applicant, gave an overview of the property stating that the property is fairly unique in that it is located on four street frontages; East Ramapo Avenue, Franklin Turnpike, King Street and Siding Place – a paper street. The property is designated on the Tax Map as Block 82, Lots 1, 3-17, 26, 29 and 30. The properties identified take into account the entire block on the streets indicated, with the exception of the Bank on the corner of East Ramapo Avenue and Franklin Turnpike and an intervening property that is comprised of several blocks and lots with various commercial uses and structures that are not part of this application. The properties identified are approximately 3.46 acres, a little less than 151,000 square feet, located in the B-10 Zone.

The property is overlaid with the MUD-1 Overlay District.

The Application is for the approval of a 175 unit multi-level Senior Housing project with different levels of care broken down as:

- 97 Congregate Care Apartments
- 48 Assisted Living Units
- 30 Memory Care Units

Additionally, 7,900 square feet of retail space on the ground floor facing East Ramapo Avenue is being proposed in order to remain consistent with and adhere to the goals of the MUD-1 Zoning District.

The Application is for Preliminary and Final Site Plan Approval, a Soil Movement Permit, two Use Variances:

1) D1 Use Variance to allow multi-level senior housing where only multi-family residential is permitted.

2) D5 Density Variance where the zone calls out for 14 units an acre and the Planning report sets forth a Variance of 50.6 units an acre being proposed. Comparing apples and oranges; a multi-family unit density that normally would be 2,000 square feet in size is very different from a multi-level senior housing unit which is typically a fraction of the size. It is difficult to compare the densities in the context being presented, but unfortunately is the only barometer available given that the Code does not permit Assisted Living or multi-level Senior Housing.

There are several Bulk Variances, some of which will be eliminated moving forward with revisions to the Plan. Likely remaining will be the height variance where 3 stories at 38 feet is permitted, and 4 stories at 37.67 feet is proposed. There is a significant grade differential from East Ramapo Avenue back to the railroad tracks that run parallel to Siding Place. Because of the grade differential and the way a story is measured under the Township Code, it is technically 4 stories but under the maximum height dimension.

Mr. Del Vecchio provided the names and positions of experts that would be presenting for this Application:

Michael Glynn, Monarch Communities, LLC - to explain what Monarch is, what they do and how they do it, and why they are so much different from their competitors.

Steve Lennon, HTG - Needs Analysis Consultant

Eric Anderson, JAL – Project Architect

Steve Swartz, Dynamic Engineering – Professional Engineer

Corey Chase, Dynamic Engineering – Traffic Consultant

John Brody – Valuation Expert

Richard Price – Planner, Affordable Housing Expert

Mr. Del Vecchio highlighted five important factors that need to be considered:

1. MUD-1 Zone – created as a result of a settlement that was reached between the Township and Fair Share Housing Center as a mechanism to address the Township’s unmet need in the context of its affordable housing obligation.
2. The Township has previously declared that the entire block qualified as an Area In Need of Redevelopment, with condemnation. Monarch is looking to accomplish this in a manner they believe is consistent with the goals of the MUD-1 District.
3. Multi-level Senior Housing Assistant Living is an inherently beneficial use under the MLUL and is entitled to special treatment as such. The Board will be required at some point to apply the SICA Balancing Test in reviewing and determining whether or not this Application should be approved.
4. This project proposes to produce a substantial amount of affordable housing. The original settlement envisioned that 10 units might come from this property. The Applicant is proposing to provide a 20% set aside. Differences and refinement indicated in the reports will be worked through. If done, the project will produce 35 units of affordable housing credits, more than tripling the yield from the site as originally envisioned in the settlement.
5. Treatment and impacts caused by the Township’s exercise of its Land Use powers, whether by Ordinance, Variance or Planning review are all subject to review under the Federal Constitution and Federal Law, including provisions of the Equal Protection Act, the Americans with Disability Act, and the Fair Housing Act. Assisted Living and the treatment of seniors who live in Assisted Living as compared to non-seniors, non-aged residents need to be treated fairly as other residents in the

community and the Federal Statutes and Federal Legislations are applicable to the Township's exercise of its Land Use powers with regard to inherently beneficial treatment, as the MLUL requires this type of use to be viewed under.

Mr. Del Vecchio commented that density is a big consideration during the course of these proceedings. When talking about density in the MUD-1 District, that is an 'apple'. When talking about density in the context of an Assisted Living bed, that is an orange. There is a volume of building mass that was predetermined to be appropriate for this site based on zoning standards.

Regarding sewer, drainage, electrical, etc., Mr. Kelly stated that it is the Applicant's responsibility to demonstrate and provide a design to be reviewed by the office of Boswell Engineering to make sure that the surrounding infrastructure is capable of handling the build out of the site. It will be a main part of the Application.

A discussion took place regarding the ADA, FHA, and Equal Protection Act 42USC, 1983. Senior Housing is defined by age. Assisted Living and Memory Care are based on physical or mental disability. Mr. Del Vecchio state that the exercise of the Board of Adjustment Zoning power cannot prevent or treat, through disparate impact or otherwise, senior housing different from non-senior housing. Mr. Del Vecchio added that this particular property allows for multi-family housing but does not allow for senior housing or assisted living, which could be seen in a disparate way since all are residential. The disparate impact is caused by the Township, not by Zoning Board Ordinance, but it could be argued that the Zoning Board participated in the disparate impact if a variance were to be denied, and relief will be sought through the variance process.

Referring to point #3, being inherently beneficial and requiring the SICA Test, which implies medical of some type, Mr. Kearney questioned if the facility was considered to be a medical facility or a private community. Mr. Del Vecchio commented that assisted living is deemed inherently beneficial regardless whether public or private under the case law. If inherently beneficial, the Board needs to identify what the detrimental impacts are. If they are substantial, the Board then must propose conditions to ameliorate them rather than outright denying the application.

Retail is not an inherently beneficial use, but is permitted by the Zone. The other uses are the Applicant being very transparent and very specific in identifying the level of care for each of the three levels; a multi-level of care for Senior Housing, Assisted Living and Memory Care. The level of care for Senior Housing is less than Assisted Living and less than Memory Care. The Applicant believes that Senior Housing, the lowest level of care, is considered inherently beneficial as it is an acronym for Assisted Living.

Mr. Rabolli called Ms. Darlene Green to testify.

Ms. Darlene Green Affordable Housing, Colliers Engineering & Design, Inc., was sworn in by Mr. Rabolli, provided her education, licensing and experience and was recognized as an expert in Affordable Housing Planning. Ms. Green summarized, stating that a Declaratory Judgement Action was filed for Mahwah in the summer of 2015 in response to the March of 2015 Supreme Court ruling that stripped COAH of their powers to review housing plans for constitutional compliance and returned the powers of evaluation of affordable housing back to the Courts. A lot of litigation took place across the State regarding obligations. A settlement agreement was made after three years of working with an intervenor and was executed in 2018. The settlement agreement stated that the Township was going to re-zone the block and lots that are subject of this application that would allow for mixed use; a commercial component along with a multi-family component of 14 units to the acre. The 14 units to the acre was opposed by an objector at the presentation hearing before Judge Farrington. After a lot of testimony, the Judge upheld the 14 units to the acre and issued an order in July approving the settlement agreement as reasonable and fair as to protect the class of affordable housing residents, and directed the Township to move forward in adopting all the implemented ordinances; one of which is the MUD-1 Overlay along with several other Ordinances to satisfy the 3 part obligation. The MUD-1 Overlay was adopted in June of 2019. It requires a 20% set aside. The final judgement of compliance was received from the Court in December of 2020.

Mr. Rabolli opened the questioning to Members of the Board for Ms. Green.

Q: Mr. Whiteman – 14 units per acre are traditionally described as a living room, bedroom, kitchen, bathroom?

A: Envisioned by the Governing Body as a condo or apartment.

Q: Mr. Whiteman – what we are talking about here is a bedroom, a private bath, maybe a sitting area, maybe not, a communal living room, communal dining room and a communal kitchen? So the increase in density from 14 units to the acre to 30 is because of the different style of housing?

A: Apples and oranges, but still fruits. It will be part of the analysis that the Board is weighing.

Q: Mr. Kearney – do you believe that this will address in affordable housing or all of the other elements because of the nature of the facilities and differences of what was discussed with the Judge in the planned zone compared to what would be approved by this Board, does it equal what was set out?

A: The Settlement Agreement stipulates 10 credits. There is no obligation to achieve more, but having extra to carry forward is always a positive for a community. The review letter from Maser (Colliers Engineering & Design) questions the credit worthy of some of the units and testimony on that is expected.

Q: Mr. Montroy – if the Judge said 14 units to an acre was appropriate and 30 units to an acre inappropriate, how is it that some units are 2 bedrooms with den?

A: The Judge did not support it. It was shown that this was the standard used by Mahwah. The beauty of the MLUL is that anyone can request relief from the Zoning Board once testimony is heard.

Q: Mr. Del Vecchio – when is Mahwah’s midpoint review?

A: It was done and a report submitted. Filed in the summer of 2020, prepared June 26, 2020. Judgement of proposal December of 2020.

There were no further questions for Ms. Green.

Mr. Del Vecchio called his first witness: **Mr. Michael Glynn, 162 Carlton Avenue, Brooklyn, NY** was sworn in by Mr. Rabolli.

Mr. Del Vecchio entered **Exhibits A-1 through A 16** into evidence.

- Exhibit A1 - Affidavit of Notice
- Exhibit A2 - Site Plans by Dynamic, December 21, 2020
- Exhibit A3 - Architectural Plans by JAL, December 22, 2020
- Exhibit A4 - Typical Unit Plan by Procon, August 4, 2020
- Exhibit A5 - Environmental Impact Statement by Dynamic, December 20, 2020
- Exhibit A6 - Traffic Report by Dynamic, July 23, 2020
- Exhibit A7 - Storm Water Report by Dynamic, July 2020
- Exhibit A8 - Storm Water Maintenance & Operations, July 2020
- Exhibit A9 - Community Needs Analysis by HTG Consultants, December 23, 2020
- Exhibit A10 - Valuation Report by Appraisal Consultants, January 24, 2021
- Exhibit A11 - Site Photos by Dynamic, 8 Pages
- Exhibit A12 - Fire Hydrant Flow Test – Allstate Fire, April 20, 2020
- Exhibit A13 - Soil Moving Calculations by Dynamic
- Exhibit A14 - Sanitary Sewer and Water Flow Analysis, December 16, 2020
- Exhibit A15 - Parking Assessment by Dynamic, December 21, 2020
- Exhibit A16 - Comment Reply Letter by Dynamic, December 21, 2020

Mr. Glynn gave his qualifications and experience and stated that he is a Founding Partner at Monarch Communities. Providing a project overview, Mr. Glynn stated that a modern, yet mixed use designed is proposed. He indicated what makes Monarch unique, such as Vertical Integration (Partner Companies) and Community Wellness.

Mr. Glynn continued, stating that the site selection was based on a strong demand and need. Why the center of town? Elders have earned the right to remain at the center of action. Monarch does not believe in hiding its elders, it believes in celebrating them.

Building and operations – 175 units; three with 2 bedrooms. The majority are studios and 1 bedroom. Some will have multiple occupancy. One hundred and eighty-six residents are anticipated.

Amenities are designed to accommodate residents and staff; multiple dining, pub, library, living rooms, interior court yard, art room, all purpose room, salon and spa.

Services include; meals, transportation (vans), activities Director, conciers service, medical waste picked up once per month, and wellness. Three shifts with 35-40 staff at peak hours, 25 in the afternoon and early evening, 5 overnight. Parking is mostly for staff. About 25% of seniors. Emergency Services – typically 2-3 visits per week – mostly non-emergency.

The facility is for residential use along with 8,000 square feet of retail.

Mr. Glynn introduced Architectural Slides presented as **Exhibit A-17**.

Large deliveries will arrive 2-3 times per week; 2-3 fresh food per week, 1-2 supplies per week. The drop-off will be on Franklin Turnpike. The area will be heavily landscaped with an interior court yard and rain gardens. The design is specific to the location; not cookie cutter to Brand.

Mr. Rabolli opened the questioning to Members of the Board for Mr. Glynn.

Q: Mr. Kearney – type of retail envisioned - residents or community? Formula? Open retail?

A: Yes, open retail. Complimentary uses – open to ideas.

Q: Mr. Whiteman to Mr. Del Vecchio – is parking sufficient for retail? Siding Place is a paper street. Is it being vacated?

A: The Plan does not touch Siding Place – it does not go all the way to East Ramapo. It will not be connected.

Q: Mr. Cannava – What are Monarch’s prior projects and overall experience? What can we expect and where are those projects?

A: Monarch is a new Brand. The employees have worked together for a long time. Similar projects were done in Boston; cafés restaurants, Municipal Buildings, lake, park.

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Q: Mr. Cannava – Is Monarch the Landlord and responsible for leases in the retail space?

A: Yes.

Q: Mr. Jackson – How many other projects?

A: One in Boston, one in New Jersey – Monarch launched in 2019. Monarch took over from another company.

Q: Mr. Calijone – What is the visitor policy?

A: It is encouraged. Make it a fun place.

Q: Mr. Califone - Meals are part of the rent. Can residents order if they don't like what is on the menu?

A: Yes.

Q: Mr. Calijone – Have you given any thought to safeguarding residents from pandemics?

A: It will likely be a different world 2 years from now. The Architect will cover this. God forbid another outbreak. As a leader in technology, preparation will be done; smart TV's – family members.

Q: Mr. Whiteman – Any other projects in the process of being approved?

A: Yes, in Maryland, Connecticut, Massachusetts, New Rochelle, NY, Montvale, NJ; awaiting Public Hearing on 5 or 6 more.

Q: Mr. Whiteman - At what point will it become a Nursing Home?

A: Monarch does not do skilled nursing. If or when that level of care is needed, the resident will be transitioned to a Nursing Home.

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

Mr. Rabolli opened the questioning to the Professionals for Mr. Glynn.

Mr. Kelly commented that more testimony was needed on the different levels of care; what each level consists of, how they are differentiated, how transitioning to a Nursing Home is handled. Mr. Kelly requested that the breakdown of units, levels, number of parking spaces at the Jackson, New Rochelle and other facilities, and the similarity to this property be addressed. Mr. Kelly asked if the employees are relatively new with construction and management.

Mr. Glynn stated that of the 175 units, three are 2 bedroom with dens, 25% are 2 bedroom. There may be a misconception on experience. The experience comes from

prior work experiences such as Pro-Con Partner, Well Tower and S&P 500 that carry over to Monarch. Answers and additional data will be provided to give a comfort level.

Ms. Lawlor requested examples from the other Brands in the areas of parking – number of employees, different types of care by level, visitor parking. Congregate care – 25% have cars. Do residents have to be retired? Is being allowed to have a car regulated? There is no available street parking; how it will work on the site?

Mr. Glynn stated that there are different levels; congregate – typically 80 years old, a single family is no longer good due to health issues, the death of a spouse, etc. Monarch offers services, socialization, a health and wellness program, transportation, and activities. Memory care, memory loss has extra oversight, access to outdoors with limited ways. Parking is discouraged, but some residents have a vehicle as a comfort. Staff – peak 35 people, some car pool or take public transportation. There may be 20 visitors on weekend mornings.

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

Ms. Sandy Meyers, Daughter of Mr. Arnold Tanowitz, Owner of 37 & 39 Siding Place state that she was concerned that their truck deliveries will disturb the residents and asked how this facility would be different from Brandy Wine and the Lantern.

Mr. Del Vecchio commented that Ms. Meyers was not a resident and had no authority to speak on behalf of the business.

Mr. Rabolli informed Ms. Meyer that she could ask questions to each witness, and when it is her turn to testify on behalf of the company, represented by an attorney, she can state her case. He also informed her that the Traffic Report was available on the Township's Website.

Mr. Arnold Tanowitz, 37-39 Siding Place, Owner of Real Estate and the business. stated that Sandy is his daughter. His questions were, how will the residents be impacted? Is some other access going to be down Siding Place?

Mr. Del Vecchio stated that the question is for the Engineer.

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

Mr. Rabolli stated that the Application is being carried to March 3, 2021. No further Notice is required.

The Application filed October 16, 2020 deemed complete. Mr. Del Vecchio agreed to the extension of time.

VI. WORK SESSION

1. DOCKET #1486-20 – PEGGY AND MICHAEL GROSS 40 FRANKLIN STREET, BLOCK 178, LOT 8

Application for a “C” Variance for exceeding lot coverage to construct a circular driveway in front of the home.

Mr. Rabolli summarized the Application, stating that 40% impervious lot coverage is permitted, 48.5% is proposed. The witness has testified that she has an incapacitated son living in the home and a sister that is incapacitated that visits the home. The circular driveway would allow for driving that car out facing the road rather than backing out onto the roadway to resolve the safety issue.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Straffin. A roll call vote revealed 9 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

Mr. Rabolli explained the process and informed the Applicant that objectors would have 45 days to appeal and that she could proceed at her own peril.

2. OLD BUSINESS 2020 BOARD OF ADJUSTMENT ANNUAL REPORT

Mr. Rabolli stated that the 2020 Board of Adjustment Annual Report is being carried to the February 17, 2020 meeting.

A motion to move out of Work Session, and adjourn, was made by Mr. Kearney, seconded by Mr. Whiteman. All voted in favor.

The meeting adjourned at 10:03 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on March 12, 2021 for approval at the Regular Meeting to be held on March 17, 2021.