

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

**Regular Meeting [Virtual]**  
December 17, 2020

**OFFICIAL MINUTES**  
**Adopted January 26, 2021**

Chairman John Tomaine called the regular meeting to order at 7:00 pm. Board Members Present were Mr. Michael Disko, PE, Board Engineer, Mr. Ted Zawislak, Mr. Todd Garran, Mr. Thomas Parker, Mr. Steve Matlin, Mr. Thomas Jakositz and Ms. Karen Dillon. Also present were Vincent K. Loughlin, Esq., 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. Victor Kostin.

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.

**APPROVAL OF MINUTES**

On motion by Mr. Zawislak, seconded by Mr. Garran, the Regular Meeting Minutes for November 23, 2020, were adopted based on the following roll call vote:

Roll Call:

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

**RESOLUTION**

CASE NO.:BA 20-20; KLEYNSHAYG  
6 HIGH POINT DRIVE  
BK: 7.01 LT: 1.05R-2 ZONE  
Approved: 11/23/20

On motion by Mr. Matlin, seconded by Mr. Zawislak, the Board memorialized the resolution based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin, Mr. Jakositz and Ms. Dillon
Nays:	
Not Eligible:	

Abstain:  
Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

**RESOLUTION**

CASE NO.: 20-21; MOSAICO

1072 ROUTE 22

BK: 7.01 LT: 12

Represented By: Vito A. Pinto, Esq.

LI ZONE

Approved: 11/23/20

On motion by Mr. Zawislak, seconded by Mr. Parker, the Board memorialized the resolution based on the following roll call vote:

Roll Call:

Ayes: Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran,  
Mr. Parker, Mr. Matlin, Mr. Jakositz and Ms. Dillon

Nays:

Not Eligible:

Abstain:

Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

**RESOLUTION**

CASE NO.: BA 20-22; MENAKER

1595 BROOKSIDE ROAD

BK: 8.02 LT: 9

R-2 ZONE

Approved: 11/23/20

On motion by Mr. Zawislak, seconded by Mr. Jakositz, the Board memorialized the resolution based on the following roll call vote:

Roll Call:

Ayes: Mr. Disko, Mr. Zawislak, Mr. Garran,  
Mr. Parker, Mr. Matlin, Mr. Jakositz and Ms. Dillon

Nays:

Not Eligible: Chairman Tomaine

Abstain:

Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

**RESOLUTION**

CASE NO.: 20-18; GMYREK

ADDRESS: 1541 COLES AVE.

BLOCK: 3.11 LOT: 13

Represented By: Stephen F. Hehl, Esq.

R-1 ZONE

Approved: 11/23/20

On motion by Mr. Zawislak, seconded by Mr. Matlin, the Board memorialized the resolution based on the following roll call vote:

Roll Call:

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

**APPLICATIONS**

**CASE NO.: 20-25; MAXWELL**

**614 SHERWOOD PARKWAY**

**BK: 21 LT: 26**

**Represented By: Joshua J. Koodray, Esq.**

**B ZONE**

**Expiration Date: 2/26/21**

Mr. Joshua Koodray, Esq. entered his appearance on behalf of the applicant. He described the home as being a modest, single-family dwelling located on the corner of an intersection. Mr. Maxwell's father built the home. The applicant was seeking variance relief to install a 390 sq. ft. elevated deck and mud room to be constructed of composite materials. This installation would also include plantings around the deck for screening. He further contended that this was a pre-existing non-conformity. The home was one of the least intense uses in the area. The applicant would have two witness to present the application.

Mr. Donald Maxwell, having an address of 614 Sherwood Parkway, was sworn in as the owner and resident of the subject property to give testimony. Mr. Maxwell is the majority owner of Maxwell Court LLC. He confirmed that he prepared the drawings of the deck. His father built the home in 1949. He opined that the purpose of the deck would be to create an outdoor space. Presently, he did not have a place to remove shoes and coats when entering the home. His plan was to eliminate the door and create a mudroom. Underneath the deck would be an 8ft. clearance where he planned to put a picnic table and chairs. He planned to screen the area under the deck with evergreens and lattice. He further opined that he would do plantings along the fence which sits 120-130 ft. away from Mountain Avenue. Mr. Maxwell stipulated to the condition to provide final drawings with plantings if the Board voted in favor of his application.

There were no questions from the Board or public.

Mr. Nicholas Graviano, having a business address of 101 Crawfords Corner Road, Holmdel, NJ, was sworn in to give testimony. He was accepted by the Board as a witness. Mr. Graviano testified that he visited the neighborhood. The lot was 50 by 200, 10,000 sq. ft. The home was located in the B Zone which did not allow single-family homes which created a need for a d(2) variance. The proposed deck was in the front yard creating a need for a C variance. He testified

that the neighborhood was an area of mixed uses. He further opined that due to the current health crisis, an outdoor space promoted the general welfare. He testified that there was no additional place to put the deck. He opined that this application did not create a detriment to the area.

Chairman Tomaine asked how the proposed application would comport with the Master Plan provision that any new construction should esthetically fit into the existing neighborhood. His opinion was that the deck was a departure esthetically from the Zone.

Mr. Graviano disagreed. He opined that there were mixed uses in that general area. It was adjacent to existing residential properties. He opined that the proposed deck was not different than a restaurant that would provide outdoor dining. He testified that the applicant would take extra steps to do landscaping around the deck.

There were no questions from Board members or the public.

Mr. Koodray summarized the application as a modest proposal for relief being sought and confirmed that the applicant would submit landscaping plans if the Board approved of the application.

Mr. Loughlin confirmed with the applicant that the deck, if approved, would not be enclosed and that the applicant would submit a landscaping plan.

On motion by Mr. Zawislak, seconded by Mr. Jakositz, the Board approved the raised deck and mudroom with conditions based on the following roll call vote:

Roll Call:

Ayes: Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran,  
Mr. Parker, Mr. Matlin, Mr. Jakositz and Ms. Dillon

Nays:

Not Eligible:

Abstain:

Absent: Mayor Mirabelli, Councilman Dierkes and Mr. Kostin

**CASE NO.: BA 20-26; MOREA**

**260 OLD TOTE ROAD**

**BK: 16.11 LT: 78**

**Represented By: Joshua J. Koodray, Esq.**

**R-2 ZONE**

**Expiration Date: 3/5/21**

Mr. Joshua Koodray, Esq. entered his appearance on behalf of the applicant. He stated that he would be calling three witnesses.

Mr. James Watson, of EKA Associates, having a business address of 328 Park Avenue, Scotch Plains, NJ was sworn in to give testimony. He confirmed his familiarity with the reports. He

displayed the plans and showed the existing patio with a stairway leading down to the basement. He testified to the planting of 15-20 ft. tall arborvitaes. He testified that the shed would be removed. The applicant was before the Board for a lot coverage variance. The existing lot coverage was 32%, and the applicant was proposing 36.3%. The applicant was proposing the demolition and construction of a deck and pool. There would be stormwater management in the front of the house. The only variance required would be for lot coverage. The area of the existing patio would be removed which was 825 sq. ft. The new patio would be 684 sq. ft. There would be a 4 by 4 mechanical pad for pool equipment in place of the shed. The shed was approximately 80 sq. ft. It would be replaced with a 16 sq. ft. pad.

Mr. Disko opined that the applicant could not comply with the 10 ft. setback. He informed the Board that the shed and rear yard patio were installed without approvals. The patio should mitigate for stormwater. He further stated that on the 2013 survey, there was no walkway on the side of the house. In 2013 the lot coverage was under 30 %.

Mr. Loughlin advised the Board that the variance must be judged on coverage based on 30% to 36%.

The applicant stipulated to an extension of the Board to act and would appear at the next meeting having to re-noticed.

**CASE NO.: BA 20-27; BOVELLA'S BAKERY CAFÉ**

**ADDRESS: 1085 RT. 22 EAST**

**BLOCK: 23.03 LOT: 15**

**Represented By: Joshua J. Koodray, Esq.**

**LI ZONE**

**Expiration Date: 2/12/21**

Mr. Joshua Koodray, Esq. entered his appearance on behalf of the applicant. He described the property as an improved lot with a café and commercial bakery. The applicant was before the Board for variance to install an 11 ft. by 18 ft. storage shed. The owners intended to keep business records in the shed. It would be located near the refuse. The applicant was seeking a d(2) variance for an expansion of a use. Outdoor storage is not permitted in the LI Zone.

Mr. James Watson, of EKA Associates, having a business address of 328 Park Avenue, Scotch Plains, NJ was sworn in to give testimony. He described the existing conditions on the property as having a main driveway entrance from Route 22. The walk-in cooler was in the rear of the building. He opined that the placement of the storage shed in the back corner of the property would be away from everyone. It would be very well screened. He testified that there would be no loss to parking. This application would be a slight expansion of use and would comply with landscaping.

On question of Mr. Matlin, Mr. Watson testified that the public purpose of this was to encourage and assist business. He further opined that although this is an expansion of a non-conforming use, the prior use was 100% non-conforming.

Mr. Watson testified that there would be no water or electricity to the shed.

On question of Mr. Zawislak about the use of the basement, Mr. Loughlin reminded the Board that there was a prior resolution which placed restrictions on the use of the basement.

On question of Mr. Zawislak, Mr. Disko said that Sec. 1003 of the Ordinance did not allow for outdoor storage.

Mr. Ralph Bencivenga, having a business address of 1085 Rt. 22, was sworn in to give testimony. Mr. Bencivenga has the role of operator of the café. He oversees onsite operations. He gave an overview of the operations on site. The hours of operation are 7 days a week from 8:00 a.m. to 8:00 p.m. They have 8 employees on site during the day and 15-20 employees throughout the week. They have deliveries 3 times a week by small box trucks. Their outgoing deliveries use vans that are parked onsite. He testified that the current use of the basement was to store cups, to go utensils and office goods. He opined that the purpose of the storage shed was to move some of the storage items from the basement into the shed to create more room in the basement. The commercial aspect of the business will use the shed. He also testified that they would store hand tools, shovels, salt and brooms in the shed. He testified that there would be no gas-powered equipment stored in the shed. There would be no water or electric to the shed. He further testified that there would not be any tables or chairs for a hangout room. He further opined that the shed would be used infrequently possibly 1x a week. No customers would have access to the shed. There would be no loss of parking spaces. He would landscape the area, and if approved, will provide a detailed landscape plan.

On question of Chairman Tomaine, Mr. Bencivenga testified that he will store business receipts in the shed as those records must be maintained for a period of seven years. The basement was being used for storage of paper goods, boxes and bags. He opined that there were bins everywhere in the basement. He wanted to spread it out by moving some of the storage of the basement to the shed.

Mr. Koodray informed the Board that the basement was currently being used for the commercial bakery. He contended that the basement should be used for the café portion of the business. The moving of the business records to the outdoor shed would open up space in the basement for the café.

On question of Ms. Dillon, Mr. Koodray explained that the “locker room” was a place for a worker to put on clothing items to work their shift. It did not mean a full locker room with showers.

On question of Mr. Disko, Mr. Bencivenga confirmed that the basement was approximately 355 sq. ft. and not heated.

There were no questions from Board members or the public.

Mr. Koodray gave his summation.

There was an affirmative motion to re-open the case.

On question of Chairman Tomaine, Mr. Koodray confirmed that the applicant was seeking relief for the shed as an accessory structure not a use variance for outdoor storage. He further confirmed that if approved, the applicant would stipulate to a landscaping plan.

Mr. Loughlin concurred that a use variance for outdoor storage would not fit.

Chairman Tomaine also agreed that a use variance for outdoor storage should not be applied.

Mr. Garran stated that this was a simple use of a shed.

Mr. Jackositz added that the shed was a temporary structure.

Mr. Zawislak concurred with fellow Board members.

Mr. Loughlin listed the conditions to approval.

The motion to approve the application with conditions was put forth by Mr. Matlin, seconded by Mr. Zawislak.

Chairman Tomaine dissented. In his dissent, he opined that the Master Plan cites that any new construction should esthetically fit into the character of the neighborhood. The uses on Route 22 most similar to this application did not have any use like this on their property. He opined that the shed was not a small structure, but a rather large structure. He opined that it did not fit in to the surrounding area. He disagreed with Mr. Watson on the positive criteria. He did not agree with Mr. Matlin's statement concerning the positive criteria for promoting business. He stated that the application represented an impairment to the Zone Plan.

The Board approved the application with conditions based on the following roll call vote:

Roll Call:

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

**CASE NO.: BA 20-24; WESSEL**  
**1354 WOOD VALLEY ROAD**  
**BK: 15.02 LT: 3**  
**Represented By: Derek W. Orth, Esq.**  
**R-2 ZONE**  
**Expiration Date: 3/12/21**

Mr. Derek Orth, Esq., entered his appearance on behalf of the applicants. In his opening statement, he contended that the application was for the approval of an addition to the existing single-family home. The applicant was seeking a d(4) variance for Floor Area Ratio (FAR)

which exceeded the permitted amount. He stated that the primary driver for the variance was due to the significantly undersized lot. He contended that the proposed improvements would bring the home in line with the other homes in the area. He had three witnesses.

Katherine and Sean Wessel, the applicants and owners, were sworn in to give testimony. Mrs. Wessel testified that they purchased the home eight years ago. They invested a lot of money and time in making improvements to the home. They had two children ages 2 and 4. The children shared a bedroom. She and Mr. Wessel worked from home, and they would continue to work from home. She testified that they needed more space. The addition would allow for a first-floor bedroom to be utilized by Mrs. Wessel's mom. The home was built in 1950, and the staircase was not up to code. She testified that they were the second occupants to the home which was located on the smallest lot in the area. She spoke with neighbors on either side of her home along with neighbors across the street. She testified that the improvements would improve both their life and safety. Mr. Wessel concurred with his wife's testimony.

Mr. Zawislak questioned the answers on the application as to the percentages for the lot.

Mr. Orth contended that the applicants completed the application to the best of their ability, and provided that the professionals would give testimony to clarify the application.

Mr. Michael DeBiasse, having a business address of 1955 Washington Valley Road, Martinsville, NJ, was sworn in to give testimony. He gave his credentials and was accepted as an expert architect. He stated that he had prepared the plans submitted to the Board. He showed the existing conditions. He explained that the applicants wanted to gain an additional bedroom which they believed was best suited to be placed on the left side of the house. They did not want to encroach on the backyard area. In order to do this addition, they would have to reconfigure the existing garage. The layout of the existing dwelling forces entry right into the living room. The stairs are steep. They proposed a mudroom, and additional back room, converted laundry room, and a master suite upstairs over the existing garage. He also testified that the applicant was proposing improvements with the installation of a front porch. He opined that the addition of the porch was in keeping with the neighborhood. There would be no rails on the front. It would be constructed of synthetic, maintenance-free columns.

On question of Mr. Matlin, Mr. DeBiasse testified that the Wessels hire an engineer to address runoff. He further testified that the water runs from the back to the front with the property being fairly level going back.

On question of Mr. Zawislak, Mr. DeBiasse testified that the existing footprint of the home was 15%. The addition would bring it to 18.7%. He also testified that the addition was deeper built behind the garage. The area of the existing bilco door was not useable space. Further to Mr. Zawislak's questions, Mr. DeBiasse testified that the existing FAR was 21.7%, the allowable was 24% and the proposed would be 31.1%.

On question of Mr. Disko, Mr. DeBiasse testified that the addition would esthetically fit in with the neighborhood.

As to the question of Mr. Disko concerning the FAR compared to other homes in the area, Mr. DeBiasse differed to the planner.

There were no questions from Board members or the public.

Mr. Philip Abramson, having a business address of 60 Union Street, Newark, NJ was sworn in to give testimony. He gave his credentials and was accepted by the Board as an expert in planning. Mr. Abramson testified that he walked the neighborhood and conducted a GIS analysis on the parcel site.

Mr. Loughlin asked Mr. Abramson to mark his photos as Exhibits. They were marked as follows:

A-1: STREET VIEW. The pictures were altered to show changes.

A-2: RECENTLY CONSTRUCTED/RENOVATED HOMES IN THE AREA. The pictures were modified to show the address of the homes.

A-3: COMPARABLE LOT SIZE MAP. This was a lot/block map to show with lots were conforming/non-conforming.

A-4: HOW DO OTHER BUILDINGS COMPARE. This was to show how other buildings compare to where the building coverage exceeds the limit.

Mr. Abramson testified that the applicant's lot was the smallest lot within 500 ft. of the property. The existing dwelling consisted of 2,100 sq. ft. The proposed addition would increase it to 3,000 sq. ft. He testified that most of the addition would over the garage. The notch in along the back of the house would be filled in with the bottom floor addition. There would be a new front porch. He testified that the proposed addition would allow for the staircase to be expanded and compliant with building code. He opined that it was necessary to build out in order to get the correct rise and run on the stairway. He testified that the d(4) variance was for a permitted use. The zone allows for single-family homes. He opined that the additional FAR would not cause a detriment to the neighborhood. He testified that the addition would make this home more future ready and promoted a modern living style. He opined that the first-floor bedroom would be a good addition for those who choose to age in place. He testified that the plan was consistent with the 2009 Master Plan Reexam which promotes improving the residential area by creating areas that esthetically fit. He opined that the addition of the porch would create "eyes on the street". He testified that the addition did not compromise the front or rear yards. He opined that homes not modernized will become obsolete over time. Further to that, he stated that the addition would be consistent with the work from home trends. He testified that FAR is a tool to control the mass of a building. His testimony was that the solids and voids while walking or driving should be considered. He opined that the lot, being the smallest in the area, presented a unique planning situation.

On question of Mr. Disko, Mr. Orth stated that only 3 out of 10 homes required FAR variance.

There were no comments from the public.

Mr. Orth summarized the application.

The meeting was opened to the public.

Mr. Joe Viglianti, 346 Briar Patch, applauded the Wessels as great neighbors. He said they took very good care of their property. They put in new sod. He was grateful that as seniors, they were willing to help him. He said that these were the kind of people that should be in town. Mr. Wessel is a soccer coach.

Tom and Helen Bottita, 340 Briar Patch, said they lived across the street from the Wessels. They said the Wessels went to great lengths to improve the property. They would hate to see the Wessels leave because they needed a bigger home.

Another neighbor on Briar Patch, was in favor of the application. She said they were beautiful plans and hoped it passed. She did raise a question about water runoff.

Mr. Loughlin informed her that drainage requirements would be through the building department.

With there being no more comments from the public, the public portion was closed.

The motion to approve the application with conditions was put forth by Mr. Garran, seconded by Mr. Matlin.

Chairman Tomaine dissented. In his dissent, he opined that the overriding issue was the FAR which was intended to control the intensity of the Borough property. He opined that there must be something to reconcile the granting variance for FAR. The proposal for FAR at 31.4% is 30% greater than what would be allowed.

Mr. Zawislak dissented. In his dissent, he opined that there should be more open space, and by allowing bigger houses to replace smaller ones, the smaller ones will go away which would create a reduced inventory of variety.

Mr. Disko dissented. In his dissent, he opined that the existing home was modest and not very tall. He opined that many lots are non-conforming. He expressed that it was difficult to assess the FAR. He did find the desire for the homeowner compelling.

This resulted in a statutory denial based on the following roll call vote:

Roll Call:

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

**ADJOURN**

The Board unanimously voted to adjourn the meeting at 11:00 p.m.

Respectfully Submitted,



Theresa Snyder  
Board Clerk