

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**AUGUST 2, 2017**

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ, beginning at 7:35 pm was called to order by Mr. Rabolli, Chairman, with the reading of the opening statement followed by the flag salute.

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. DeSilva Mr. Rabolli  
Mr. Kearney Mr. Straffin  
Mr. Montroy Mr. Whiteman

Ms. E. Banyra, PP

**ABSENT:** Mr. Almeda Mr. Larson  
Mr. Dator

**ATTORNEY:** Mr. Ben R. Cascio, Esq.

**I. APPROVAL OF BILLS:**

6/7/17; 6/21/17	\$500.00	Ben R. Cascio, Esq. – Attendance Two meetings
7/5/17; 7/19/17	\$500.00	Ben R. Cascio, Esq. – Attendance Two meetings

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

**II. APPROVAL OF MINUTES:**

**A. MINUTES OF APRIL 19, 2017**

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

**B. MINUTES OF MAY 17, 2017**

A motion to approve was made by Mr. Straffin seconded by Mr. Montroy. All eligible members voted in favor.

**III. MEMORIALIZING RESOLUTIONS:**

**A. DKT.#1420-17-A – PAUL W. TEN EYCK  
20 RAE AVENUE, BLOCK 106, LOT 2.06**

Resolution granting an amendment to Condition #2 of the original Resolution to include the installation of a utility sink which will require a furnace and hot water.

A motion to approve was made by Mr. Montroy, seconded by Mr. Whiteman. A roll call vote revealed 5 aye votes by Mr. Kearney, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

**B. DKT.#1421-17 – NEIL & ELISSA SCHNELWAR  
18 HERITAGE LANE, BLOCK 109, LOT 2.06**

Resolution granting a variance for side-yard setback to install a pool and patio.

A motion to approve was made by Mr. Straffin, seconded by Mr. Whiteman. A roll call vote revealed 5 aye votes by Mr. Kearney, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

**IV. OPEN TO THE PUBLIC:**

Mr. Rabolli opened the meeting to the Public for general questions or statements. None were received.

**V. PUBLIC HEARINGS:**

*Note: Mr. Rabolli changed the order of the agenda for the public hearings as follows:*

**A. DKT.#1425-17 – ANNE KEATING  
12 WINTER STREET, BLOCK 73, LOT 7**

Appeal of the Administrative Officer's Zoning Denial with respect to lot coverage.

Mr. and Mrs. Keating approached and were both sworn in by Mr. Rabolli. There was a short discussion on notice and the application being for an appeal as compared to requesting a variance.

Mrs. Keating described her property and the size and location of the proposed deck. There was a discussion on lot coverage as compared to improved lot coverage.

There were no questions from the Board or the Public for Mr. or Mrs. Keating.

A motion was made by Mr. Whiteman seconded by Mr. Montroy to close the Public Hearing portion of the meeting and move into Work Session for this application. All voted in favor.

*Mr. Rabolli called Docket #1418-17 and moved back into the Public Hearing portion of the meeting.*

**B. DKT.#1418-17 – WJA ASSOCIATES, LLC  
185 ROUTE 17 AND 40 AVENUE A, BLOCK 53, LOTS 18, 19, 20 AND 21**

Application requesting a Use Variance, Preliminary and Final Site Plan and Minor Subdivision for a residential use in a B-40 Zone, the addition of an elevator to an existing commercial building, the subdivision of a portion of Lot 18 to be utilized as a parking lot and parking lot improvements on Lots 19, 20 and 21.

Mr. Bruce Whitaker, Esq., of McDonnell & Whitaker, LLC, approached on behalf of the Applicant. This application was originally heard on April 19, 2017. Several positive changes have been made and revised plans were submitted to the Board. Mr. Whitaker recalled Mr. Thomas Skrable, who remains under Oath.

Mr. Skrable testified to the changes made on the revised plans, which was presented on poster board. The following was marked:

Exhibit A-1      Site Plan Proposed Parking / Addition (Sheet 1 of 2) and SESC Plan Proposed Parking / Addition (Sheet 2 of 2) dated October 21, 2016, with a first revision date of February 8, 2017 and a second revision date of April 20, 2017

Mr. Skrable testified to the revised changes including a board-on-board fence designed to act as a guard rail, the installation of a flag pole, the dumpster location and enclosure, lighting, parking, directional arrows, landscaping and the fence between the business and the residential home. Ms. Banyra questioned the handicapped space being moved.

There were no questions from the Board or the Public for Mr. Skrable.

Ms. Catherine Walter, of 35 Avenue A, Mahwah, approached. Ms. Walter questioned the location of the dumpster to which Mr. Skrable pointed out the location on the poster board plans. She also questioned a stationary box truck parked on the Avenue A side of the building, which is presumed to be for storage and a loading area using a door on the side of the building. Per the owner of the property, this box truck will be moved to the far side of the building (away from Avenue A).

Mr. Whitaker recalled Mr. Alexander, the owner of the property, who remains under Oath. He presented photographs that were taken at the end of April which were marked as Exhibit A-2 a, b, c & d. The photographs depicted the condition of the neighbor's property.

There were no questions from the Board or the Public for Mr. Alexander.

Ms. Catherine Walter, of 35 Avenue A, Mahwah, re-approached to give a statement to the Board. She understands that the Applicant is a commercial business but asked that the existing residential neighbors be respected. The business is adjacent to residential homes.

Ms. Banyra was concerned that planning testimony was not offered. Mr. Whitaker commented the information in the Statement of Facts submitted with the application should suffice.

Mr. Whitaker presented his closing statement, and there were no further questions from the Board or the Public for this application.

**C. DKT.#1424-17 – LIPMAN TKD, LLC.  
190 FRANKLIN TURNPIKE, BLOCK 71, LOTS 18 & 19**

Application for a use variance to permit a Tae Kwon Do studio for martial arts instruction.

Mr. Bruce Whitaker, Esq., of McDonnell & Whitaker, LLC, approached on behalf of the Applicant. Mr. Cascio indicated all notices were in order. Mr. Whitaker presented an overview of the application. He noted the proposed use is not specifically listed as being permitted within any zone in the Township.

Mr. Whitaker cited several approved use variance applications that he previously presented to the Board which were deemed beneficial to the community. He described the inherently beneficial aspect and educational elements of these use variances. Mr. Montroy indicated he has not seen any issues with the Tae Kwon Do use.

Mr. Whitaker called Mr. Joseph Robert Lipman of 190 Franklin Turnpike, Mahwah, who is the sole owner of Lipman TKD, LLC. Mr. Lipman was sworn in by Mr. Rabolli. He presented his background indicating he began Tae Kwon Do at the age of 9 and continued progressing to becoming a manager at a Tae Kwon Do school. He would like to open up his own school.

Tae Kwon Do was described in detail. It provides character building and structure as well as reduces stress. Respect and discipline were mentioned. Hours of operations were discussed as well as the number of instructors and students.

Ms. Banyra asked if there will be locker rooms. Mr. Lipman replied there will be no locker rooms. There will be one open room with a restroom and some seating for

observing. The school will not host competitions but will travel to other facilities to participate. He anticipates to hold camps and open houses to motivate current students and promote the school. Hours of operation were discussed and 8:00 am – 8:00 pm, Monday to Saturday, was agreed to by the Applicant and the Board.

There were no further questions from the Board or the Public for Mr. Lipman.

Mr. Whitaker called Mr. Steve Lydon of Burgis Associates, 25 Westwood Avenue, Westwood, NJ. After presenting his qualifications and credentials, Mr. Lydon was accepted as a professional planner and sworn in by Mr. Rabolli. Mr. Lydon presented an analysis and planning perspective of the proposed use. He indicated there will be limited intensity of development as the building already exists, lighting already exists and there is sufficient parking. He referred to the Maser Report dated July 20, 2017. Positive justifications include:

- the site is well suited for the proposed use
- the use will fill a need in the community
- the site is a viable location near two county roads
- the property is well suited for the proposed use
- physical and emotional health benefits are implied

Negative criteria is satisfied and there is no substantial detriment to the public good and no development is required. There are no other Tae Kwon Do facilities in the area, limiting business competition.

There were no questions from the Board or the Public for Mr. Lydon.

A motion was made by Mr. Montroy seconded by Mr. Whitman to close the Public Hearing of the meeting and move into Work Session. All voted in favor.

Mr. Rabolli called a recess at 8:56 pm.

The meeting reconvened at 9:00 pm.

## **VI. WORK SESSION:**

### **A. DKT.#1425-17 – ANNE KEATING 12 WINTER STREET, BLOCK 73, LOT 7**

Appeal of the Administrative Officer's Zoning Denial with respect to lot coverage.

*Note: Work Session was held immediately after the Public Hearing for this docket.*

Mr. Rabolli summarized the appeal and the discussion held during the public hearing. There was an extended discussion on the definitions of lot coverage and improved lot coverage. Mr. Rabolli stated that the Board of Adjustment is a quasi-judicial body that

can make an interpretation that the proposed application does not fall into a variance condition. The proposed deck will be the functional equivalent of a patio. It is low to the ground and does not have any sides or rails. The Board did agree with the Administrative Officer's decision but under the unique facts and circumstances of this particular application, the Board finds the request de minimis and will permit the construction of the deck.

A motion to approve was made by Mr. Rabolli, seconded by Mr. Whiteman. A roll call vote revealed 5 aye votes by Mr. DeSilva, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman and 1 nay vote by Mr. Kearney.

**B. DKT.#1418-17 – WJA ASSOCIATES, LLC  
185 ROUTE 17 AND 40 AVENUE A, BLOCK 53, LOTS 18, 19, 20 AND 21**

Application requesting a Use Variance, Preliminary and Final Site Plan and Minor Subdivision for a residential use in a B-40 Zone, the addition of an elevator to an existing commercial building, the subdivision of a portion of Lot 18 to be utilized as a parking lot and parking lot improvements on Lots 19, 20 and 21.

Ms. Banyra reiterated her concern that planning testimony was not offered. Mr. Whiteman is satisfied with the testimony given as the application includes a minor addition for an elevator to make the building more accessible. Mr. Montroy also commented there are benefits to the elevator addition.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Straffin. A roll call vote revealed 5 aye votes by Mr. DeSilva, Mr. Kearney, Mr. Montroy, Mr. Straffin and Mr. Whiteman.

**C. DKT.#1424-17 – LIPMAN TKD, LLC.  
190 FRANKLIN TURNPIKE, BLOCK 71, LOTS 18 & 19**

Application for a use variance to permit a Tae Kwon Do studio for martial arts instruction.

Ms. Banyra commented on the inherently beneficial use terminology mentioned during the testimony given. This use is more in the area of education rather than inherently beneficial. Mr. Montroy stated the proposed use is a discipline in nature that carries a positive benefit. Mr. Kearney also noted the use is a benefit, and the site is appropriately sized for the proposed use.

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

**D. DISCUSSION**

Mr. Rabolli addressed the Board regarding recent correspondence received from Mr. John Lamb, Esq., of Beattie Padovano, who is representing the Ramapo Hunt and Polo Club Association, regarding an application submitted by the Ramapough Mountain Indians, Inc. located at 95 Halifax Road, Block 1, Lot 131. An application was submitted to the Board of Adjustment but it was deemed incomplete on June 28, 2017. Correspondence presented to the Board Members is for their information only at this time.

**VII. ADJOURNMENT:**

The meeting adjourned at 9:16 pm on a motion by Mr. Whiteman, seconded by Mr. Straffin.

These minutes were prepared by Geri Entrup, Zoning Board Recording Secretary.