

**BOROUGH OF NEW PROVIDENCE  
BOARD OF ADJUSTMENT  
MEETING MINUTES – MONDAY, AUGUST 16, 2021 – 8:00 p.m.**

**VIRTUAL MEETING**

Present: Ms. Ananthakrishnan, Mr. Ammitzboll, Mr. Dunscombe, Mr. Grob, Mr. Kogan, Mr. Morgan, Mr. Sorochoen and Chairman Nadelberg. Also present: McKinley Mertz, Borough Planner; Kevin Boyer, Borough Engineer; Keith Lynch, Director of Planning and Development; Phil Morin, Board Attorney; and Margaret Koontz, Secretary.

Absent: Mr. Ping

**A. CALL TO ORDER**

Chairman Nadelberg called the meeting to order at 8:02 p.m.

**B. RESOLUTIONS**

**Amended Resolution for:**

Lorcan McCabe

[Application #2021-20](#)

305 Runnymede Parkway, Block 30, Lot 10, R-z Zone, New Providence, NJ 07974

Chapter 310, Article V, Section 310-32B for permission to erect a fence. The proposed 6 feet high fence in the secondary front yard along Springfield Avenue does not meet the permitted 50% open 4 feet high fence.

This resolution was amended to reflect that it will be a brown fence not a brown wood fence as stated in the Condition 2 of original resolution.

**Mr. Grob moved this and Ms. Ananthakrishnan seconded same. Members voting in favor of the amended resolution: Ms. Ananthakrishnan, Mr. Ammitzboll, Mr. Grob, Mr. Morgan, Mr. Kogan and Chairman Nadelberg.**

Michael Calandrillo

[Application #2021-15](#)

77 Commonwealth Avenue, Block 74 Lot 3. R-2 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The proposed side-yard setback to the left side of the addition is 14 feet and 17.8 feet on the right side whereas 18.6 feet is the minimum required.

**Mr. Sorochoen moved this and Mr. Kogan seconded same: Members voting in favor: Mr. Morgan, Mr. Sorochoen and Mr. Kogan**

**C. PUBLIC HEARINGS SCHEDULED FOR AUGUST 16, 2021**

David and Jacque Hasenkopf

[Application #2021-13](#)

38 Woodbine Circle, Block 82, Lot 13, R-2 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedules II & III for permission to construct an addition. The proposed front-yard setback to the addition is 38.9 feet whereas 40 feet is the minimum required. The proposed side-yard setback to the addition is 9.166 feet

whereas 12 feet is the minimum required. The proposed building coverage is 2,690 square feet whereas 2,225 square feet is the maximum permitted.  
39 Woodbine Circle.

This application was originally heard on June 7, 2021, and carried to July 16, 2021. The applicant did not submit revised plans. The Board carried the hearing to November 1, 2021. The applicant will have to re-notice if the Board resumes in-person meetings.

Murray Hill Hospitality, LLC

[Application #2021-19](#)

535 Central and 195 South Street, TBI-II Zone, New Providence, NJ 07974

Amended site plan approval to allow for the installation of a plywood roof atop the previously approved deck to provide the restaurant's patrons with some shelter from the elements. The structure will otherwise remain open to the elements and will, therefore, only be utilized as a seasonal amenity.

Stephen Hehl of Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sininis, attorney for the applicant introduced the application for the addition of a wood roof over the deck at Moe's Bistro at the Murray Hill Inn. Moe's Bistro is an important business in New Providence and previously came to the Board for approval of the deck. The addition of the roof over the deck is in keeping with the spirit of the resolution approving the deck which is open on the sides and back. Nothing else will change on the site. There is no music or outdoor entertainment. The purpose of the roof is strictly for outdoor dining on the deck to provide coverage for diners. The footprint of the deck remains the same and no new variances are required. The roof is tastefully done and is a service to the clientele of Moe's Bistro to enhance their open air, seasonal dining experience. The applicant constructed a roof over the deck because the prior variance approval does not permit awnings.

Chairman Nadelberg asked the applicant if it had considered applying to the Building Department for a permit or for variance approval before it constructed the roof over the deck since this is the second time the applicant is before the Board to ask for approval for work already completed. Mr. Hehl responded that the applicant didn't understand that it needed approval for the roof and hopes that the Board will find it a nice improvement. Chairman Nadelberg commented that the applicant also claimed that it didn't understand that it needed approval before constructing the deck several years ago.

Mohamed Elghettey, residing at 128 Gales Drive in New Providence, owner of Moe's Bistro, was sworn in. He opened Moe's Bistro six years ago. For a year and a half before that, the Murray Hill Inn didn't have a restaurant. He put Moe's Bistro on the map especially after obtaining a liquor license. Mr. Elghettey thanked the Board for its prior approval of the deck for outdoor dining and testified that he wants to add a roof over the pergola on the deck. Outdoor dining has become very popular and bailed him out during Covid when indoor dining was not allowed. The addition of the roof doesn't change anything. The operating hours of the restaurant and size of the deck remain the same. Addition of the roof is important to provide protection from the rain for diners on the deck. Rain turns away business and moving inside to finish a meal is not an option for many because of Covid. It's a bit dark at the front of the deck and Mr. Elghettey would like to add lights for the safety of his patrons. The deck is for seasonal use only. There are no heaters or fans on the deck. Outdoor dining on the deck complies with Ordinance 2011-11. Mr. Elghettey stated that his business will be negatively impacted without the roof over the deck. The business struggled during Covid and it's a miracle it survived. Many patrons call and ask to be seated outside: 80% to 90% of his business comes from

outdoor dining.

Chairman Nadelberg asked for clarification on the definition of seasonal use. Mr. Elghetty responded that the deck is used whenever the weather permits outdoor dining which is usually from May through October. Chairman Nadelberg noted that the deck is used year-round as long as the weather permits so it's not really seasonal. Mr. Elghetty agreed that it can be used any time during the year, but he will not serve on the deck if it's too hot because it's dangerous for his staff. Generally, if it's 65° or more, he will serve food on the deck. Mr. Elghetty agreed that use of the deck year-round weather permitting is a better description for its use than seasonal.

Mr. Grob asked if the application includes a request for lights. The Board approved the deck application with two flood lights on the building. Mr. Elghetty responded that he would like more lights for safety. Mr. Grob responded that he needs to be more specific about what kind of lights so the Board knows what it's voting on. Mr. Hehl stated that lights on the deck are not part of the application, but the applicant would like to amend the application to include lights. The Board asked about the lights requested. Mr. Elghetty added solar lights around the deck railings and steps, but they are not enough, and he would like to add downward facing lights to the beams of the pergola. Chairman Nadelberg asked about the curtains on the deck. The curtains are all-weather sunset blinds on the beams. They aren't permanent. They're removable and are just there to block the sun. Mr. Elghetty added them on all three sides of the deck for aesthetics. He doesn't plan to close them on cooler nights. The deck doesn't have heaters. If it's too cold, patrons have to eat inside.

**The Board had no further questions for Mr. Elghetty. The hearing was opened to questions from the public.**

There were no questions from the public.

Emmanuel Kavrakis, Emmanuel Kavrakis Architects, LLC, 440 Market Street, Elmwood Park, NJ, was sworn in and presented his credentials as a licensed professional architect. The Board accepted him as such. The applicant augmented the existing pergola structure over the deck with ¾" plywood and a rubber roofing membrane attached to the plywood to shelter patrons from inclement weather. It was an oversight that the applicant didn't include the roof with the original deck application. Mr. Kavrakis described the roof referencing Sheet A-300.02, Final Elevation, submitted as part of the application. The roofing rafter is sloped with hurricane ties on each side of the rafters, solid wood blocking at the eaves between the rafters and diagonal braces at the columns. The plywood interlocks. The roof is attached to the pergola posts that go all the way down to the foundation and are braced to the deck. Mr. Kavrakis is confident that the roof is strong and is quite secure. The deck has two existing lights. Mr. Kavrakis recommended four downward directed lights at the bottom of the beams to provide perimeter light. He believes four lights, 11' on center, are enough because of the low level of the roof.

Mr. Ammitzboll asked if four lights are enough given that the section of the deck closest to the restaurant is wider. Mr. Kavrakis responded that there are two existing lights, but the number could be increased from four to five so there's one for the stairs with the exit sign and emergency backup light. The lights throw about 20'. The deck is a wide-open space with no obstructions so a sixth light could be added for safety. The lights can be dimmable. The lights will be LEDs. The Board asked about the usual illumination level

for the dining room for a restaurant. Mr. Kavrakis said it depends on the mood wanted but 20 and 25 footcandles is conducive for dining. He proposed downward facing high hats so the light won't spill. Dimmers will allow the lighting to be adjusted at will. No more than six lights are required.

Mr. Grob asked about water from the roof. There is a single slope to the front and there's a small overhang plus space between the deck railings and the tables which provides some protection from sheet flow off the roof. The roof doesn't have gutters. Patrons most likely won't dine on the deck if there's a hard rain. The roof is not intended to be a heavy duty covering. Mr. Kavrakis checked the roof for uplift and snow and snow load. He doubled what's required for a hurricane.

Mr. Hehl asked the Borough's professionals if the testimony presented addressed the issues in their review letters particularly item 6 in the Borough Engineer's review letter, dated August 3, 2021, and item #3 in the Borough Planner's review letter dated July 22, 2021. Mr. Boyer, Borough Engineer, was satisfied that the testimony addressed conformance of the as-built roof to the cross section and details presented in the revised architectural drawings. Mr. Kavrakis provided testimony clarifying the size of the deck as the plans show that the deck is 735 SF whereas the previous application was for a 722 SF deck. Mr. Kavrakis confirmed that the deck is 735 SF which is what was approved in the previous application. The discrepancy in the size of the deck is attributable to removal of the ADA ramp when the deck was raised to be flush with the restaurant as a condition of approval of the previous application. The deck will remain 735 SF. Ms. McKinley asked that the correct size of the deck be included in the resolution should the application be approved.

Chairman Nadelberg stated that an applicant usually contacts an architect about work to be done and then applies for permits for the work. He then asked if this happened with the roof. Mr. Kavrakis responded that he got a call from the applicant after the Building Department contacted the applicant about the roof that was under construction. The applicant wasn't aware that the plywood roof required Board approval. Mr. Kavrakis went to the site and work on the roof was stopped. Occupancy of the deck was also suspended. Mr. Kavrakis then prepared and submitted drawings to the Building Department for review. He couldn't advise the applicant that it needed to come before the Board as he normally would because he wasn't called until the roof was under construction. Chairman Nadelberg commented that someone dropped the ball. It upsets him when someone takes advantage of the Board and its members. Mr. Kavrakis agreed that the applicant should have applied for a permit and added that the roof should have been included as part of the original application for the deck.

Chairman Nadelberg had questions about Exhibit A-1 consisting of two photographs of either side of the deck. The exhibit was previously marked. The deck has a roof not curtains. There are solar lights on the columns.

**The Board had no further questions for Mr. Kavrakis. The hearing was opened to questions from the public.**

There were no questions from the public.

Kathryn Gregory, Gregory Associates, LLC, was sworn in and presented her credentials as a licensed professional planner and was accepted as such. Ms. Gregory represented

the applicant on the original application for the deck. The current application for the roof over the deck doesn't require additional variances. The roof is covered under the expansion of a non-conforming use. The applicant is not expanding anything and is making the space better creating a higher quality element on the site. The roof over the deck will help ensure the economic viability of the restaurant especially as restaurants struggle to stay open because of Covid and the new variants. The Board needs to consider the impact Covid has had on the economy. This application helps strengthen the economy. The application meets the positive and negative criteria for a d(2) variance. The roof over the deck promotes public health and safety. It's a desirable visual element and is well built and attractive. The roof over the deck provides light, air and open space for outdoor diners. The closest property is 95' away. The application represents no substantial detriment to the public good or to the intent of the zone plan and zoning ordinance. The roof provides a public benefit.

**The Board had no questions for Ms. Gregory. The hearing was opened to questions from the public.**

There were no questions from the public.

Mr. Elghetty was recalled to answer additional questions from the Board regarding Exhibit A-1. The small black objects on the columns for the roof are small 2" by 2" solar lights. The lanterns on top of the deck posts are not candles. On the wall by the door into the restaurant there are oscillating fans to push the hot air out. These are not ceiling fans.

Mr. Sorothen commented that the deck is beautiful. The applicant has testified that the roof will provide protection for the rain, the curtains will provide protection from the sun and there are existing oscillating fans. Mr. Sorothen asked Mr. Elghetty to be sure that he has testified to everything that's there already so that he doesn't have to come back to the Board to ask for additional approvals as he has had to do with this application. Mr. Elghetty responded that he was grateful that the Board seems to be willing to approve the roof and the additional lights, but ceiling fans would make for a better dining experience and would keep the bugs away. Mr. Elghetty reiterated that the oscillating fans are not ceiling fans. Chairman Nadelberg asked how many ceiling fans he would like to have and if they would have lights on them. Mr. Elghetty would like to have four ceiling fans, but they would not have lights. Mr. Ammitzboll pointed out that the ceiling fans would create a strobe effect if the lights are in the ceiling above the fans. Mr. Kavrakis responded that the applicant can chose ceiling fans with lights but the lights by the stairs and corner of the deck would remain as proposed. Mr. Hehl summarized the lighting. There will be four ceiling fans with lights and two additional lights in the ceiling by the stairs and the far corner of the deck.

Mr. Ammitzboll noted that Mr. Elghetty previously testified that there wouldn't be any outdoor entertainment/music on the deck, but he has experienced this while dining there. Mr. Elghetty responded that there are no bands. The piano player is inside the restaurant or maybe half way out on the deck. Mr. Ammitzboll disagreed. The keyboardist is on the deck all the time, and if Mr. Elghetty would like to have outdoor music, he should ask for approval for it now instead of violating a previous condition of approval. Mr. Elghetty responded that he didn't want to ask for too much, but it would be nice to have a musician on the deck until 9:30 p.m.

Mr. Hehl apologized that the lights, fans and musician were not included as part of the

application submitted and asked that the application for the roof be amended for four ceiling fans with lights, two additional lights and limited light entertainment by a single musician until 9:30 p.m.

The Board asked if there was anything else such as use of the curtains to shelter for rain. Mr. Elghettey does not plan to use the curtains to shelter patrons from rain. He will only use the curtains on two sides to provide protection from the sun. Mr. Kogan asked if he's sure that he doesn't want heaters to allow outdoor dining on cooler evenings especially if Covid and its variants continue. He doesn't want heaters. If the food is served when it's cold outside, it gets cold right after it's served, and he won't compromise the quality of the food. Mr. Dunscombe asked if he's sure he doesn't want heaters to allow patrons to finish their meals if it gets cool on the deck. Mr. Elghettey doesn't know what kind of heaters would be best. Chairman Nadelberg stated that Mr. Elghettey testified that he doesn't want heaters.

**The Board had no further questions of the applicant or his professionals. The hearing was again opened to questions from the public**

There were no questions from the public.

**The hearing was opened to comments from the public.**

There were no comments from the public.

**The hearing was closed.**

Mr. Hehl thanked the Board for its patience and apologized that the application was a moving target; however, it's now a better application.

Mr. Grob noted that the applicant didn't address all the comments in the professional reviews. Mr. Hehl confirmed that the deck was raised and the parking lot has been paved and re-stripped.

Discussion: Mr. Ammitzboll wasn't thrilled that the applicant was back for the second time to beg for forgiveness for work that has been done and that the work was started without getting a permit. He understands that lay people may not understand the process but doesn't understand how this happened again. He likes what's being proposed for the fans, lights and live entertainment but cautioned the applicant not to do anything else without checking first to see if a permit or variance is required. The roof, fans, lights and entertainment are good for the town, restaurant and patrons. Mr. Grob described the application as "like watching sausage being made." He's all for supporting local businesses even though this application was done backwards. He was insulted that this is the second time the applicant has done work without obtaining permits and Board approval.

Mr. Ammitzboll moved to approve the application as testified for the already constructed roof over the deck and as amended to include: 1) Four ceiling fans with lights, 3) two additional downward directed lights, one by the stairs and one on the other corner of the deck, 4) one exit sign with a battery backup, and 5) light entertainment by one performer until 9:30 p.m. The deck can be used year-round as the weather permits; however, there will be no external heat sources on the deck and the curtains will be used only on two

sides to shade patrons from the sun. Mr. Sorothen seconded the motion. A resolution will be memorialized at the next meeting. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Morgan, Mr. Sorothen, and Chairman Nadelberg. Those opposed: None.

#### D. PUBLIC HEARINGS SCHEDULED FOR SEPTEMBER 13, 2021

Erin Grace Skotarczak [Application #2021-22](#)  
59 Glenbrook Road, Block 134, Lot 7, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedules II & III for permission to construct a front porch addition. The proposed front-yard setback to the front porch is 35.8 feet whereas 40 feet is the minimum required. The proposed building coverage is 2,339 square feet whereas 2,234 square feet is the maximum allowed. The existing curb cut is 20 feet.

**Carried from June 28 and August 2, 2021. No testimony heard on August 2, 2021.**

Raymond Francis Baldwin [Application #2021-14](#)  
79 Livingston Avenue, Block 153, Lot 11, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedules II & III for permission to construct an addition and deck. The proposed side-yard setback is 2.4 feet to the addition whereas 15.3 feet is the minimum required. The proposed building coverage is 1,647 square feet whereas 1,194 square feet is the maximum allowed. The proposed impervious coverage is 60.92% whereas 40% is the maximum allowed. The existing rear yard is 2.9 feet. The existing porch is 8.9 feet from the property line. There is an existing chimney that is 1.1 feet from the property line and on the proposed plans it is shown that it will be removed. The existing driveway abuts the property line. There is a second driveway that exits through the Borough property and the plan indicates that the driveway and curb will be removed. There appears that there is a retaining wall and shrub line that was installed on the neighbor's property.

**Carried from August 2, 2021**

Vishnu and Shashi Mittal [Application #2021-21](#)  
2 Pearl Street, Block 197, Lot 1, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section II for permission to construct a deck. The proposed rear-yard to the deck is 35 feet whereas 40 feet is the minimum required. The proposed setback between the deck and the garage is 10 feet whereas 12 feet is the minimum required. The existing front-yard setback along Shelly Drive is 22.71 feet. The existing side yard is 7.85 feet. The existing driveway abuts the property line.

#### E. COMMUNICATION ITEMS

No communication items.

#### F. MISCELLANEOUS BUSINESS

Mr. Lynch asked the Board about its interest in resuming in-person meetings. One Board member cannot attend an in-person meeting and another does not want to attend an in-person meeting if masks are required which they are in the Municipal Center. The Board agreed to continue remote meetings through the October 4<sup>th</sup> meeting and will discuss this again at the September 13<sup>th</sup> meeting.

G MINUTES FROM August 2, 2021

The minutes from August 2, 2021, were approved as submitted.

H. ADJOURNMENT

The meeting was adjourned at 10:07 p.m.