

Township of Millburn
Minutes of the Zoning Board of Adjustment
January 25, 2016

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 25, 2016** at 7:00 PM in Millburn Town Hall.

Chairman Joseph Steinberg opened the meeting by reading Section 5 of the Open Public Meetings Act.

A roll-call indicated the following members were present:

Michael Birnberg, Alt. #2
Jessica Glatt
Mary McNett
Craig Ploetner, Alt. #1
Vanessa Scaglione
Steve Togher
Michael Parlavecchio, Vice Chairman
Joseph Steinberg, Chairman

Also present:

Gail Fraser, Board Attorney
Eric Fishman, Court Reporter
Eileen Davitt, Zoning Officer/Board Secretary

MEMORIALIZATIONS

Cal#3345, Short Hills Club, 9 Lake Shore Drive, Short Hills

A motion to approve the resolution memorializing the denial of variance relief to Short Hills Club for an expansion of a non-conforming use on the property located at 9 Lake Short Drive was made by Vanessa Scaglione, seconded by Jessica Glatt, and carried with the following roll-call vote:

Jessica Glatt – yes
Vanessa Scaglione – yes

APPLICATIONS

CAL#3333, AHAVAT TORAH, 320 WHITE OAK RIDGE ROAD, SHORT HILLS

The matter was carried to March 21, 2016.

CAL#3451, MAIN STREET LOT 17, LLC, 272 MAIN STREET, MILLBURN

Michael Sullivan, Attorney for the applicant, stated his appearance. The applicant is seeking “d” variance approval in order to demolish an existing single-family dwelling and construct a new 2-family dwelling.

Joseph Steinberg asked for testimony from Michael Sullivan that speaks to the issue of res judicata. Mr. Steinberg referenced a previous application that was heard and denied by this Board. Michael Sullivan stated that the previous application involved the merging of the lot in question along with the adjacent lot and the subsequent demolition and rebuilding of a 6-unit townhouse development. Mr. Sullivan indicated that this application involves only the subject lot, and a request to build a 2-family dwelling. In addition, the adjoining lot has since undergone interior renovations and been sold.

Joseph Steinberg asked for a motion as to whether res judicata applied in this matter. Upon a motion made by Michael Parlavecchio that res judicata did not apply, seconded by Mary McNett, and with unanimous voice vote, it was determined that res judicata did not apply and the applicant proceeded.

Thomas Baio, Architect, and Richard Keller, PE, PP, appeared and were sworn. Thomas Baio’s credentials were presented and accepted by the Board. Thomas Baio gave a brief description of the proposal. He stated that the existing dwelling is non-conforming as to the required setbacks and coverages. The proposed 2-family dwelling will conform to in all bulk requirements.

Entered as A-1: architect’s rendering of 2-family dwelling

The 2-family dwelling will contain side-by-side units. Each of the units will be 5-bedroom units with a bedroom in the basement, 2 bedrooms on the second floor and 2 bedrooms on the third floor. Each unit will also contain a first floor open area to accommodate a small office, kitchen, living room and family room.

Mary McNett asked for the dimensions of the office on the first floor. Thomas Baio stated that the office dimensions are 7’10” x 11’. Mary McNett asked if the office could be converted to bedroom space. Thomas Baio stated that there is no closet in the office and the door opens directly into the kitchen. It is not an ideal location for bedroom purposes.

Richard Keller’s credentials were presented and accepted by the Board. He gave a brief description of the proposal. The property is located on the east side of Main Street and has a lot area of approximately 10,489 square feet. It is 74.98’ wide and 140.05’ deep. The driveway of the property to the north encroaches approximately 5’ onto the subject property. The subject property also abuts the Montessori School on the south side. Mr. Keller indicated that he included the encroaching driveway area in the lot coverage calculations for the subject application.

Entered as A-2: aerial photo
Entered as A-3: photoboard #1

Richard Keller stated that the proposed 2-family dwelling would be fully conforming to the zoning bulk requirements. The site is particularly suited for the proposed 2-family residential use as this property has historically been used for residential rather than commercial use. This lot is unsuitable for the uses permitted in the CMO zone. It is too small for office use as the required parking and traffic circulation could not be provided.

Mr. Keller stated that this is significantly undersized lot in the CMO zone. The removal of the existing, dilapidated 1-family dwelling and construction of an attractive 2-family dwelling will be a benefit to the zone.

Board Attorney, Gail Fraser, asked for clarification as to the floor area ratio. Richard Keller stated that the first floor square footage is 1,737 square feet; the second floor is 1,761 square feet and the detached garage is 562 square feet. This is a total of 4,055 square feet, 38.66%, where 50% is permitted in the CMO zone.

Joseph Steinberg stated that in 2008 the Township Committee rezoned this section of the Township from the I-1 zone to the CMO zone. Despite the currently existing residential dwellings in this zone, the Township chose not to include residential units in the zone. He asked Mr. Keller if he could provide any testimony that could speak to the Township's decision to exclude residential as a permitted use when the area was re-zoned. It was Mr. Keller's testimony that the Township looked at the uses that were existing in the I-1 zone at the time, as well as other uses that received use variance approval from the Board of Adjustment. It was his testimony that the Township chose to look at the then currently existing uses and make them permitted uses in order to allow more uses in the newly created CMO zone.

Michael Birnberg asked for clarification of the attic space with regard to the floor area ratio. Thomas Baio stated that a portion of the bedroom space is under the 6'6" benchmark, therefore not included in the floor area ratio calculation.

Michael Sullivan gave a brief summary and asked that the Board vote favorably on the application.

Michael Parlavecchio stated that the character of that area is residential, despite the fact that it is in the CMO zone. The existing residential homes in that area are 2-family dwellings. The existing home has a number of nonconformities that will be eliminated with the construction of a new 2-family dwelling.

Steve Togher feels that this application is similar to the application that was presented and denied by this Board. Gail Fraser stated that one thing that is before the Board now that was not before the Board previously is that the adjacent property, which was part of the previous application, has since been renovated and sold.

Joseph Steinberg stated that he agrees with Michael Parlavecchio in that he does not see this property being developed for office space. He stated that he would rather see a conforming structure built at this location than continue to look at a non-conforming, dilapidated, vacant structure on the site.

Upon a motion made by Mary McNett, seconded by Michael Parlavecchio, and with a roll-call vote as follows:

Jessica Glatt – yes
Mary McNett – yes
Craig Ploetner – yes
Vanessa Scaglione – yes
Steve Togher – yes
Michael Parlavecchio – yes
Joseph Steinberg – yes

CAL#3452, MATTHEW & ANI STONE, 39 WINDING WAY, SHORT HILLS

*It is noted that Steve Togher recused and left the meeting room.

Matthew Stone and Danial Dubinett, Architect for the applicant, appeared and were sworn. Danial Dubinett's credentials were presented and accepted by the Board.

The applicant would like to construct a 2-story addition to the rear of the dwelling. Proposal is in violation of:

606.2e1f – Combined side yard setback
606.2e2d – FAR
607.3 – Front yard parking area

Danial Dubinett spoke to the variance relief being requested. The proposal requires variance relief from the required combined side yard setback equal to 35% of the lot width. The current structure is non-conforming at 27% and this addition will continue the non-conformity further back. The addition will also result in an increase to the floor area ratio. The zone permits 36% and the applicant is seeking relief to allow 37% (2,950 square feet). Finally, the applicant would like to expand the driveway area in order to allow space for parking a second car.

Entered as A-1a: photoboard of surrounding properties

Entered as A-1b: photoboard of surrounding properties

Entered as A-2: photoboard of proposed construction

Joseph Steinberg asked what is directly to the east of the proposed driveway expansion area. Danial Dubinett stated that the distance to the house to the east is approximately 22'. Joseph Steinberg stated that he drove around the neighborhood and saw many properties that

have the same driveway situation as the applicant does at the current time. He asked if the applicant has given any thought to an alternate location for this area.

Matthew Stone stated that they have kept the expansion to a minimum in order to be as close to conformity as possible. They need a floor area ratio that exceeds the allowable by 1%. He stated that he has 2 sons who currently share a room. He would like to construct an addition that would provide a separate bedroom for each. He stated that he felt this was the best location for the expanded driveway area.

Mary McNett stated that she could support the application with the exception of the driveway expansion area, as presented.

Joseph Steinberg stated that the floor area ratio is a relatively small deviation from the standard. The combined side yard is only being expanded by approximately 3". However, he is not in favor of the driveway area, as presented. He feels it is disruptive to the adjacent property to the left.

Daniel Dubinett stated that they would like to amend their plans to show the removal of the proposed driveway area.

Upon a motion made by Michael Parlavecchio, seconded by Mary McNett, and with a roll-call vote as follows:

Michael Birnberg – yes
Jessica Glatt – yes
Mary McNett – yes
Craig Ploether – yes
Vanessa Scaglione – yes
Michael Parlavecchio – yes
Joseph Steinberg – yes

Cal#3452, Matthew & Ani Stone, 39 Winding Way, “d” variance relief for FAR was **APPROVED**.

Upon a motion made by Michael Birnberg, seconded by Craig Ploetner, and with a roll-call vote as follows:

Michael Birnberg – yes
Jessica Glatt – yes
Mary McNett – yes
Craig Ploetner – yes
Vanessa Scaglione – yes
Michael Parlavecchio – yes
Joseph Steinberg – yes

Cal#3452, Matthew & Ani Stone, 39 Winding Way, “c” variance relief for bulk requirements was **APPROVED**.

*Steve Togher returned to the meeting room.

CAL#3453, ANDREW & DENISE SALERNO, 365 WYOMING AVENUE, MILLBURN

James Peter Kokkalis, Architect, Andrew & Denise Salerno, appeared and were sworn. The applicants would like to construct a front yard wall and parking area. Proposal is in violation of:

- 510.1 – Front yard wall height
- 607.3 – Front yard parking

James Peter Kokkalis’ credentials were presented and accepted by the Board. He stated that the driveway is very narrow and has 2 stone walls on each side. This presents difficulty entering and exiting the vehicles. The applicant would like to expand the driveway in order to allow another vehicle to park.

Entered as A-1: architect’s rendering

The applicant proposes landscaping in order to buffer the view of the parking area. The expanded area will be 9.5’ x 21’.

Entered as A-2: A-1 dated 9/28/15

Michael Birnberg asked if this parking proposal will work. He asked how this situation will be any better than the current parking situation.

Board Attorney, Gail Fraser, asked for clarification of the expanded parking area. Sheet S-1 shows a 10’ widening and the exhibit shows a 9.5’ widening. Mr. Kokkalis stated that the expanded area will be 9.5’ wide.

Jessica Glatt stated that this proposal will alleviate a safety issues on the property and she could support the application.

Michael Birnberg agreed and felt this is a busy street with limited alternatives for the applicant. There is a substantial landscape area proposed that will screen the area from street view.

Mary McNett felt she could support the application.

Upon a motion made by Jessica Glatt, seconded by Mary McNett, and with a roll-call vote as follows:

Jessica Glatt – yes
Mary McNett – yes
Craig Ploetner – yes
Vanessa Scaglione – yes
Steve Togher – yes
Michael Parlavecchio – yes
Joseph Steinberg – yes

Cal#3453, Andrew & Denise Salerno, 365 Wyoming Avenue, was **APPROVED**.

CAL#3454, ILYA SAMUYLOV, 136 SILVER SPRING ROAD, SHORT HILLS

The applicant did not appear.

CAL#3455, RALPH FERDINAND, 56 WALNUT AVENUE, MILLBURN

The application was not heard due to deficient notice.

CAL#3456, MICHAEL SEIFER, 10 BIRCHWOOD DRIVE, SHORT HILLS

*Michael Birnberg recused and left the meeting.

Nancy Dougherty, Architect, Margaret and Michael Seifer, appeared and were sworn. The applicants would like to construct a deck on the rear of their dwelling. Proposal is in violation of:

606.2e1g – Rear yard unoccupied
606.2e3a – Accessory structure side yard setback
606.2e2b – Lot coverage

Michael Seifer gave a brief description of the proposal. He indicated that they would like to construct this deck in order to allow them to exit their kitchen directly onto the deck area.

Nancy Dougherty's credentials were presented and accepted by the Board. She gave a brief description of the proposed deck. Ms. Dougherty stated that the applicants' proposal requires 3 variances. The ordinance requires a side yard setback for the deck to be 12'. The applicant is proposing a side yard setback of 8.2'. A variance is also required for lot coverage of 56.7% where the ordinance permits 45%. The subject property is currently non-conforming at 52.7%. Ms. Dougherty stated that the deck is approximately 9' above the driveway.

Steve Togher asked why the proposed deck is extending toward the side property line beyond the side of the dwelling. Nancy Dougherty stated that they were trying to locate a space that would allow for the placement of a grill and table/chairs. The applicants felt this was a plan that afforded them sufficient space without causing privacy issues for the neighboring dwelling.

Entered as A-1: photo of subject property/surrounding properties

Joseph Steinberg asked if the applicants would be willing to bring the deck in to align with the side of the existing dwelling. The applicants stated that they would be willing bring the deck in to align with the dwelling.

Eileen Davitt referenced a 15' easement that runs along the rear of the applicants' property. She asked if this deck will encroach into that easement. Ms. Dougherty indicated that they would verify the location of the easement and ensure that the deck did not encroach into that area.

Irwin Burzynski, Attorney for the objectors, Mr. & Mrs. Grossman, stated his appearance. He stated that his clients reside at 14 Birchwood Drive, directly adjacent to the subject property. Mr. Burzynski referenced the deck on exhibit A-1 and asked Ms. Dougherty how far above the ground the deck is. Ms. Dougherty stated that she does not know how far above grade that deck is.

Bette Grossman, 14 Birchwood Drive, appeared and was sworn. She stated that she lives to the right of the subject property. She indicated that she is opposed to this proposal. She feels the construction of this upper deck will impact their privacy.

Irwin Burzynski stated that this deck is not in keeping with the neighborhood. It is an upper level deck which will impact the privacy of his clients. He feels there is no hardship presented here. The applicants have a current patio area. He asked that the Board deny the applicants' request for variance relief.

Margaret Seifer indicated that her husband's health issues are the catalyst for this application. He has had hip replacement, faces many more surgeries and was recently diagnosed with spinal stenosis. She stated that outdoor access off the kitchen would be a great benefit to him and would add to his ability to enjoy his property and family.

*It is noted that Michael Parlavecchio recused and left the meeting.

Joseph Steinberg alerted the applicants to the fact that due to the recusal of 2 members, there will only be 6 voting members on this application. As such, the applicant will need 4 affirmative votes out of the 6 voting members.

Vanessa Scaglione stated that she is generally opposed to upper level decks. She sympathizes with the applicants and Mr. Seifer's health issues but cannot support the construction of this deck.

Joseph Steinberg indicated that personal reasons do not form a basis for hardship. In thinking about this case, he would not be in favor of the application with the deck protruding further than the existing dwelling. As presented here, he would not be in favor of this deck.

Craig Ploetner indicated that he would not be in favor of this application. He feels that having this deck at such a heightened elevation will be awkward

At the request of the applicants, the matter was carried to March 7, 2016.

ADJOURNMENT

A motion to adjourn was made by Michael Parlavecchio, seconded by Steve Togher, and carried with a unanimous voice vote. (10:20 PM)

Eileen Davitt
Board Secretary

Motion: MM
Second: CP
Date Adopted: 2/22/16