

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
March 21, 2016

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, March 21, 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  
Matthew Brett  
Mary McNett  
Craig Ploetner  
Steve Togher  
Jessica Glatt, Vice Chairwoman  
Joseph Steinberg, Chairman

Also present:

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

**MEMORIALIZATIONS**

**Cal#3457, Adam & Karen Scheck, 221 Long Hill Drive, Short Hills**

A motion to approve the resolution memorializing the granting of variance relief to Adam & Karen Scheck to construct an addition on the property located at 221 Long Hill Drive was made by Matthew Brett, seconded by Mary McNett, and carried with the following roll-call vote:

Matthew Brett -- yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Joseph Steinberg – yes

**Cal#3458, Edward & Lily Maguire, 109 Sagamore Road, Millburn**

A motion to approve the resolution memorializing the granting of variance relief to Edward & Lily Maguire to construct an addition on the property located at 109 Sagamore Road

was made by Steve Togher, seconded by Craig Ploetner , and carried with the following roll-call vote:

Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

**Cal#3462, Jeff & Kristin Uttz, 301 White Oak Ridge Road, Short Hills**

A motion to approve the resolution memorializing the granting of variance relief to Jeff & Kristin Uttz to construct an addition on the property located at 301 White Oak Ridge Road was made by Jessica Glatt, seconded by Matthew Brett, and carried with the following roll-call vote:

Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

**APPLICATIONS**

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

The application was withdrawn by the applicant.

**CAL#3464, LESLIE & DEAN SHULMAN, 10 BODWELL TERRACE, MILLBURN**

\*It is noted that Michael Birnberg recused and left the meeting room.

Timothy Klesse, Architect for the applicant, appeared and remains sworn from his appearance on this matter. He stated that the applicants revised their plans in response to several of the comments made by the Board at the last hearing. Due to the elimination of the patio and the reduced size of the addition, the applicant has eliminated the need for variance relief from the side yard setback above 18' in height, the rear yard unoccupied and the accessory structure side yard setback. Variance relief is still required for a front yard setback in order to increase the width of the dormer on the front of the house. A floor area ratio variance is also required but has been decreased by 4.1% or 223 square feet. Side yard combined is a pre-existing non-conforming condition and is not be encroached on further. Building coverage variance relief is still required for 27.9% where the ordinance permits 23%.

Richard Keller, PP, appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as A-3: photoboard #1 of neighborhood streetscape  
Entered as A-4: photoboard #2 aerial photo of neighborhood

Richard Keller stated that the proposed addition will have little or no effect on the neighborhood streetscape. The house will be no closer to the street than currently exists.

Entered as A-5: BC/FAR comparables

Richard Keller indicated that this is an undersized lot by approximately 9% of the minimum required lot size of 6,000 square feet. Based on data collected from property data records obtained through the Township of Millburn Tax Assessor's office, it appears as though the proposed FAR and building coverage for the subject site are similar to the majority of the houses in the neighborhood district. The house, after construction, will not be out of character for the neighborhood. Richard Keller stated that Tim Klesse has integrated the mass so that it does not feel as though it overwhelms the neighborhood.

Richard Keller spoke to the variances required. Front yard setback variance relief is required to permit a setback of 30.9' where the ordinance requires 40'. The existing dwelling has a 27' setback. Combined side yard setback variance relief is required to permit 29% of the lot width where the ordinance requires 35%. The existing house is presently non-conforming at 25.6%. Building coverage variance relief is required to allow 27.9% where the ordinance permits 23%. Finally, floor area ratio variance relief is required to allow 43.2% (2,364 square feet) where the ordinance permits 36% (1,971 square feet).

Joseph Steinberg stated that he was not in favor of the originally proposed application. He was pleased that the applicant eliminated the proposed patio, which he felt was offensive. He feels the reduction in the floor area ratio puts this proposal in the middle of the neighboring properties. Although the building coverage is a little on the high side, he has been persuaded by the testimony of Mr. Keller with regard to the minimal impact this proposal will have on the neighboring property.

Overall, Board members were pleased with the revisions made to the plans.

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

Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3464, Leslie & Dean Shulman, 10 Bodwell Terrace, “d” variance relief for floor area ratio, was **APPROVED**.

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

Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3464, Leslie & Dean Shulman, 10 Bodwell Terrace, “c” variance relief for front yard setback, combined side yard setback and building coverage, was **APPROVED**.

\*It is noted that Michael Birnberg returned to the meeting room.

**CAL#3460, ELLIOT ROGOFF, 101 MILLBURN AVENUE, MILLBURN**

John Buchholz, Architect for the applicant, appeared and was sworn. His credentials were presented and accepted by the Board. The applicant would like to convert existing 1<sup>st</sup> floor office space to residential space. Proposal is in violation of:

606.11b – Not a permitted use  
516.11e – Front yard coverage  
606.11e1 – Off street parking in side and rear yard only

Dr. Elliot Rogoff appeared and was sworn. He stated that he wishes to alter the first floor into a second residential apartment. He indicated that he has tried to lease the 1<sup>st</sup> floor medical space for over 1 year with no success.

John Buchholz indicated that the medical profession has changed over the years and most medical professionals now prefer to be in large office-type settings with their peers rather than home office settings. The property is located in the R-O zone which does not permit 2-family dwellings, which is what this application proposes. The medical offices on the first floor are residential in appearance from the exterior. There is a residential garage and the entire building’s appearance is nearly identical to a typical house. The impact on the neighborhood would be minimal and traffic flow would be less than that generated by a medical office. The building footprint will remain the same. The apartment proposed is not a large apartment. All modifications will be interior, only.

Richard Keller, PP, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the proposal. He stated that the property in question is located at the corner of Millburn Avenue and Norwood Terrace.

Entered as A-1: aerial photo -- north

Entered as A-2: photoboard of surrounding properties

Entered as A-3: photoboard of surrounding properties

Richard Keller stated that there is no change proposed to the exterior of the building. When this zone was created, the CMO zone did not exist in Millburn Township. When the CMO zone was created, it afforded doctors the ability to move to bigger spaces as a permitted use. This application advances the general welfare in that it allows the property to be used rather than remain vacant. This space is particularly suited for a 2-family dwelling. The easement that runs behind the building makes it unattractive for a single-family dwelling. In addition to the use variance being sought, the applicant is also seeking variance relief for existing front yard parking as well as front yard coverage.

Mary McNett asked what the square footage of the first floor was. John Buchholz indicated that the first floor is approximately 1500 square feet.

Steve Togher asked what school district this property would fall into. Richard Keller believed that the property falls into the Wyoming school district.

Joseph Steinberg felt that the testimony presented here was that medical use is no longer appropriate for the district. He stated that he is inclined to deny the variance request and encourage the applicant to go before the Township Committee and make the argument that the permitted uses should be changed to reflect the testimony. He does not feel the argument has been made that this property is particularly suited for a 2-family dwelling.

Mary McNett feels it is burdensome to make the applicant go to the Township Committee when they have gone to great lengths to make the argument before the Zoning Board. She feels testimony has shown that this is a suitable use for the building and the zone in question. She stated that this is, perhaps, an issue that the Zoning Board should refer to the Township Committee for a potential change in permitted uses.

Jessica Glatt agreed with Mary McNett and feels the site is particularly suited for this proposed 2-family dwelling. There is no change proposed to the exterior of the building, which currently looks like a residential dwelling. She is in favor of the proposal.

Matthew Brett stated that he is undecided at the moment. He feels that enough testimony has not been provided as to why the applicant did not propose a single-family dwelling.

John Buchholz requested that the matter be carried to a further date.

The matter was carried to May 2, 2016 with no further notice required.

**CAL#3469, KEVIN & KRISTIN STERLING, 15 CAYUGA WAY, SHORT HILLS**

John James, Architect, and Kristin Sterling, appeared and was sworn. John James' credentials were presented and accepted by the Board. Proposal is in violation of:

606.2e1e2b – 2<sup>nd</sup> floor side yard setback

Kristin Sterling stated that they are proposing to make improvements to the master bedroom level of their split level home. The dwelling is a smaller, split level house that has not been updated to the character of many of the homes in the neighborhood. The proposal will result in an aesthetic improvement to the dwelling and streetscape.

Entered as A-1: 8-page handout of subject dwelling

John James gave a brief description of the proposed construction. He stated that the existing house location on the lot is non-conforming with respect to the side yard setback. Currently the dwelling is set back 14' where 15' is required. It is not possible to renovate the house on the master bedroom level without triggering some type of variance relief for side yard setback. There are no changes proposed to the first floor. The neighbor to the left side, most affected by this proposal, has a much larger, newer home, with a 16'3" setback. In addition, the lot lines are well-screened with mature evergreens. The dramatic slope of Cayuga Way further increases the privacy.

Joseph Steinberg asked if the house to the left extends further to the rear than the subject dwelling. John Buchholz indicated that the house to the left extends approximately 12' further than the subject dwelling.

Board members felt the proposal was modest and could be granted without negative impact to the surrounding properties.

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

Michael Birnberg – yes  
Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3469, Kevin & Kristin Sterling, 15 Cayuga Way, was **APPROVED**.

**CAL#3470, TRANG & NU (VARUTH) SUWANKOSAI, 22 BERKELEY ROAD, MILLBURN**

\*It is noted that Matthew Brett recused and left the meeting room.

Timothy Klesse, Architect, and Varuth Suwankosai appeared and were sworn. Timothy Klesse's credentials were presented and accepted by the Board. The applicant would like to construct an addition to the dwelling. Proposal is in violation of:

606.2e1f – Combined side yard setback

The applicant would like to add to the rear of the dwelling to create a family room and expand the kitchen and mudroom. The site is narrow and therefore the side yard setback requirement becomes problematic. The area proposed will continue the right side yard setback and will not further encroach.

Timothy Klesse stated that the lot has an undersized lot width of 58' where the R-6 requires a minimum width of 60'. The existing colonial dwelling has a pre-existing non-conforming combined side yard setback. The applicants propose to remove an existing deck and replace it with a one-story addition at the rear of the dwelling. The existing dwelling on the lot is not parallel to the side property lines and, as a result, the proposed addition will require variance relief for the combined side yard requirement.

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

Michael Birnberg – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3470, Trang & Nu Suwankosai, 22 Berkeley Road, was **APPROVED**.

\*Matthew Brett returned to the meeting room

**CAL#3471, RICHARD & SACHI LUCAS, 23 MEADOWBROOK ROAD, SHORT HILLS**

Danial Dubinett, Architect, and Richard Lucas appeared and were sworn. Danial Dubinett's credentials were presented and accepted by the Board. The applicant would like to construct an addition to the dwelling. Proposal is in violation of:

606.2e1d – Front yard setback  
606.2e1e1a – Side yard setback

606.2e1e1b – Additional side yard setback  
606.2e1f – Combined side yard setback  
606.2e2d – FAR

Entered as A-1: photo of subject dwelling

Danial Dubinett gave a brief description of the proposal. He indicated that the subject dwelling is a small colonial in the R-6 zone district with an unusual first floor plan, consisting of a living room, dining room, kitchen and 1-car garage directly behind the kitchen. This unusual layout completely blocks any view of the back yard from the kitchen area. The proposal is to construct a 2-story addition to the right side of the dwelling to allow an attached 1-car garage and mudroom on the first floor. The 2<sup>nd</sup> floor addition will allow for a master bedroom and master bath. The addition has been set back 2' from the existing dwelling. The required front yard setback is 40' and the proposal will result in a front yard setback of 27.2'. The side yard setback required in the R-6 zone is 8' on the first floor and the proposal will result in a setback of 7.6'. The 2<sup>nd</sup> floor setback is required to be 9.5' and the proposal will result in a setback of 7.6'. Combined side yard setback variance relief is required in order to allow 25% where 35% is required. Finally, floor area ratio variance is required to allow 39% where 36% is permitted.

Ellen Hirsch, 25 Meadowbrook Road, appeared and was sworn. She stated that she spoke to the applicants and they agreed to remove the 2 windows on the right side of the proposal. Danial Dubinett indicated that the applicants are agreeable to that accommodation.

Matthew Brett feels that the removal of the right side 2<sup>nd</sup> floor windows is a wise accommodation and he can support the proposal.

Jessica Glatt stated that she is concerned with the variances being requested on this oversized lot. She stated that the architect indicated he could trim off some spaces but she heard no testimony as to what could be removed.

Craig Ploetner stated that he feels a big canyon is being created between the subject dwelling and the neighbor's dwelling to the right.

Michael Birnberg feels that the addition will not look out of place from the street. However, he does agree that having two 2-story structures close together does create a canyon effect.

Joseph Steinberg questioned the need for side yard setback variance relief. The applicant is seeking variance relief for .4' which is the equivalent of 3".

Danial Dubinett stated that he spoke with his clients and they have decided to eliminate 2 of the variances originally requested. They have brought the 2-story addition in .4', thereby eliminating the need for side yard setback variance relief and have lowered the height of the addition to 18', thereby eliminating the need for height to side yard setback variance relief. The

revision has also resulted in a decrease to the floor area ratio 38.4%, from the originally requested 39%. Combined side yard setback will be 25.3%.

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

Michael Birnberg – yes  
Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3471, Richard & Sachi Lucas, 23 Meadowbrook Road, “d” variance relief for floor area ratio, was **APPROVED** with the condition that revised plans be submitted to the Board secretary showing the reduction in floor area ratio.

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

Michael Birnberg – yes  
Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3471, Richard & Sachi Lucas, 23 Meadowbrook Road, “c” variance relief for front yard setback and combined side yard setback, was **APPROVED** with the condition that revised plans be submitted to the Board secretary.

**CAL#3472, RUSSELL REICH, 132 GREENWOOD DRIVE, MILLBURN**

Russell Reich appeared and was sworn. He stated that he would like to construct a front porch to his dwelling. Proposal is in violation of:

606.2e1d – Front yard setback  
606.2e2a – Building coverage  
606.2e1f – Combined side yard setback

Mr. Reich stated that he would like to construct a front porch in order to allow protection from the elements as well as to allow for the enjoyment of the front yard area. The current masonry steps are in disrepair and are in need of replacement.

Irwin Berzynski, Attorney for Judith Gentile-Walters, stated his appearance. Ms. Walters stated that she opposes the proposed front porch. She lives to the left of the subject property. She feels it will be intrusive and it will be out of character for the area. There are no other properties in the area with front porches such as proposed. In addition, the survey does not include a play set which was erected approximately 2' off her property line. She indicated that the plans do not seem professionally prepared and drainage has not been addressed.

Entered as O-1: photo

Entered as O-2: photo

Irwin Berzynski feels the application does not meet the positive and negative criteria and there is no hardship. This dwelling is already deficient in front yard setback and this porch will bring the structure even closer to the front yard property line. He indicated that the shadow study should be discounted as it was done by the applicant who has no professional background in this area.

Jeremy Sokop, 134 Greenwood Drive, appeared and was sworn. He stated that he lives to the right of the subject property and he is in favor of the application. He feels the addition of the porch will add to the charm and character of the neighborhood.

Russel Reich indicated that he would be willing to reduce the proposed 8' depth of the porch if that would make the neighbors more comfortable. In addition, he stated that the shadow study was done through a Google program which allows one to input the north direction and an algorithm produces the shadow study.

Several Board members thought the applicant could simply build a stoop and the ordinance would permit a roof 4' in depth to be built over it without the need for variance relief.

Joseph Steinberg stated that this proposal is disruptive to the streetscape and would be detrimental to the character of the neighborhood. There are no houses in the immediate area that have anything of this nature.

Steve Togher feels sufficient evidence was not provided that speaks to any type of hardship.

Michael Birnberg agreed with Mr. Togher and feels a new landing and steps could be rebuilt.

Matthew Brett feels this type of porch is consistent with the South Mountain neighborhood. He is in favor of the proposal.

Upon a motion to deny made by Craig Ploetner, seconded by Steve Togher, and with a roll-call vote as follows:

Michael Birnberg – no  
Matthew Brett – no  
Mary McNett – no  
Craig Ploetner – yes  
Steve Togher – yes  
Jessica Glatt – no  
Joseph Steinberg – yes

Motion failed to carry.

Upon a motion to approve made by Matthew Brett, seconded by Mary McNett, and with a roll-call vote as follows:

Michael Birnberg – no  
Matthew Brett – yes  
Mary McNett – yes  
Craig Ploetner – no  
Steve Togher – no  
Jessica Glatt – no  
Joseph Steinberg – no

Cal#3472, Russell Reich, 132 Greenwood Drive, was **DENIED**.

### **ADJOURNMENT**

A motion to adjourn was made by Craig Ploetner, seconded by Matthew Brett, and carried with a unanimous voice vote. (11:00 PM)

Eileen Davitt  
Board Secretary

Motion: MBI  
Second: MM  
Date Adopted: 5/2/16