

Township of Millburn
Minutes of the Zoning Board of Adjustment
May 16, 2016

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, May 16, 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
Matthew Brett
Ellen Nimaroff Hirsch, Alt. #1
Mary McNett
Craig Ploetner
Vanessa Scaglione
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#3454, Ilya Samuylov, 136 Silver Spring Road, Short Hills

A motion to approve the resolution memorializing the granting of variance relief to Ilya Samuylov to construct a front yard wall on the property located at 136 Silver Spring Road was made by Mary McNett seconded by Matthew Brett, and carried with the following roll-call vote:

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Vanessa Scaglione – yes
Joseph Steinberg – yes

*It is noted that Ellen Nimaroff Hirsch arrived at this time. (7:06 PM)

Cal#3473, Robert Chin/Janet Chen, 76 Jefferson Avenue, Short Hills

A motion to approve the resolution memorializing the granting of variance relief to Robert Chin/Janet Chen to construct an addition on the property located at 76 Jefferson Avenue was made by Michael Birnberg, seconded by Matthew Brett, and carried with the following roll-call vote:

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Craig Ploetner – yes
Vanessa Scaglione – yes
Joseph Steinberg – yes

Cal#3474, Julie & Stephen Winer, 47 Woodland Raod, Short Hills

A motion to approve the resolution memorializing the granting of variance relief to Julie & Stephen Winer to construct an addition on the property located at 47 Woodland Road 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
Vanessa Scaglione – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3484, Steven & Lauren Hollander, 12 Troy Lane, Short Hills

A motion to approve the resolution memorializing the granting of variance relief to Steven & Lauren Hollander to install a pool and patio on the property located at 12 Troy Lane was made by Jessica Glatt, seconded by Craig Ploetner, and carried with the following roll-call vote:

Matthew Brett – yes
Ellen Nimaroff Hirsch – yes
Craig Ploetner – yes
Jessida Glatt – yes

APPLICATIONS

CAL#3439, ZHONGHAN FENG, 300 GLEN AVENUE, MILLBURN

Zhonghan Feng, Richard Schomer, P. P., P. E. and Gary Junkroft, Architect, appeared and were sworn. Richard Schomer’s credentials were presented and accepted by the Board. Mr.

Schomer indicated that he was retained by the applicant to address the Board's concerns regarding drainage and Riparian issues.

Chairman Joseph Steinberg stated that the Board requested a memo from the Township Engineer with regard to the Township's Riparian Zone ordinance and how this property may be affected by it.

Richard Schomer stated that this is an undersized lot. There is a small stream behind the applicant's property, requiring a 50 foot Riparian buffer. This is an area that is regulated by the DEP as well as the Township. Based on a memo provided by Tom Watkinson, Township Engineer, it was determined that the proposed construction area is an area that was previously disturbed, thereby qualifying as redevelopment. Section 706.4h6 classifies the area as exempt from the regulation. Mr. Schomer stated that he spoke to Mr. Watkinson in order to address storm-water management, as well. A lot grading plan will be prepared and submitted to the Township Engineering department that will address the proposed dry well.

Chairman Joseph Steinberg asked Mr. Schomer if the entire surface under the existing deck is impervious surface. Mr. Schomer stated that the majority of area under the deck is impervious surface but there is a small portion that is not impervious.

Vickie Sanborn, 303 Glen Avenue, questioned the basement that is proposed to go under the deck. Gary Junkroft stated that it will be a walk-out basement. There is a modest amount of excavating that will be done.

Vanessa Scaglione felt the addition should be included in the FAR calculation since a large portion of the basement is above grade. Eileen Davitt, Zoning Officer, was sworn. She indicated that the Township ordinance defines FAR calculations as the area of the 1st and 2nd floor. Vanessa Scaglione stated that she is in favor of the front addition.

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

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Craig Ploetner – yes
Vanessa Scaglione – no
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3439, Zhonghan Feng, 300 Glen Avenue, “d” variance relief for FAR was **APPROVED**.

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

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Craig Ploetner – yes
Vanessa Scaglione – no
Jessica Glatt – yes
Joseph Steinberg – no

Cal#3439, Zhonghan Feng, 300 Glen Avenue, “c” variance relief for front yard setback, building coverage, lot coverage, rear yard unoccupied, rear yard setback and riparian buffer was **APPROVED**.

CAL#3480, DOUGLAS & BETH MILLER, 35 BROOKSIDE DRIVE, MILLBURN

Alan Vinegrad stated that he received his notice about this matter on Friday evening, May 13. He lives directly behind the subject property and was vocal in the applicant’s previous appearance before the Board. He respectfully requests the matter be adjourned to a future date so that his attorney would be able to attend.

Board Attorney, Gail Fraser, stated that it is the applicant’s responsibility to send the notices via certified mail a minimum of 10 days prior to the meeting date. The applicant has submitted an affidavit of service to the Board secretary who has verified that service was satisfactory.

Robert Simon, applicant’s attorney, indicated that they have adequately served notice to the property owners within 200’. He asked that the Board attorney address the legal aspects of this particular matter.

Gail Fraser stated that the applicant appeared before this Board from November 2013 through May 2014 proposing to construct a new dwelling on the site. Variance approval was granted by this Board and subsequently appealed by Mr. Vinegrad. The Courts upheld the Board’s approval. In the process of the sale of the property to the Millers, a survey and title search revealed that a small 314 square foot portion of the property in the front yard area, was actually Township property, not the applicant’s property. As a result, the actual square footage of the applicant’s property is 314 square feet smaller than the originally indicated lot area. This results in greater percentages of variance relief required than was approved by the Board.

Chairman Joseph Steinberg indicated that there are 4 members currently on the Board who voted in favor of the original application. This is a request to amend a previous decision by the Board. Board Attorney Gail Fraser stated that cleanest way to handle this matter is to have the members of the Board who voted affirmatively on the original application be the members to hear and vote on this amendment request.

Applicant’s attorney, Robert Simon, indicated that he has had communications with Mr. Vinegrad’s attorney with regard to how this matter was going to proceed. In addition, he

forwarded copies of these plans to the applicant's attorney, who was well-aware of the applicant's appearance before the Board tonight. Upon conferring with his clients, Mr. Simon agreed to an adjournment in order for objector's counsel to be present.

The matter was carried to June 27, 2016 with no further notice required.

CAL#3485, DAVID & ERIN SCHONBRAUN, 30 LAKE ROAD, SHORT HILLS

The matter was carried to June 6, 2016 with no further notice required.

CAL#3486, FC DELBARTON, 25 DELBARTON DRIVE, SHORT HILLS

Anthony Cerciello, Attorney for the applicant, announced his appearance. The applicant seeks variance relief to install a pool/patio/pool equipment and AC condenser units. Alternatively, the applicant is seeking a certificate of non-conformity for an existing pool/patio/fence and pool equipment. Proposal is in violation of:

- 501.4 – AC unit location
- 501.5 – Pool equipment
- 505 – Accessory structure front setback
- 510.1 – Front yard fences are prohibited

Frank Cohen appeared and was sworn. He stated the he purchased the property in 2015 and subsequently demolished the house that existed on the site. The pool/patio/fence and pool equipment remained on the site.

Christopher Karach, Landscape Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the proposed landscape plan.

Entered as A-1: colored rendering of schematic landscape plan

Mr. Karach stated that the objective of the plan was to provide an aesthetic planting plan for the subject property. He spoke to the area around the proposed pool and patio area. He stated that there are flowering and perennials proposed as well as evergreen hedges at a 10-12 foot height at installation. The proposed landscaping will also screen the 4 foot black aluminum, estate style fence. The current fence is a wooden stockade fence.

Madhura Chacko, 38 Kenilworth Drive, asked if the screening proposed will afford her privacy from the applicant's proposed pool. Mr. Karach stated that the landscaping proposed along the common property line will provide a substantial buffer and afford both property owners adequate privacy.

Vanessa Scaglione questioned what side of the fence the landscaping will be on the common property line. Mr. Karach stated the plantings are on the inside of the fence.

Richard Keller, P.E., P.P., appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the plans proposed as well as the variance relief being sought. The property is a 44,013 square foot lot in the R-3 zone. The property has frontage on Oaklawn Road, Delbarton Drive and Kenilworth Drive.

Entered as A-2: survey of property (pool/patio highlighted) 3/19/14

The pool is proposed to be 39.79 feet off the Kenilworth Drive front property line, where 80 feet is required. The proposed pool equipment is proposed to be 35 feet off the front property line, where the current equipment is 5.8 feet from the property line. A 4 foot black aluminum estate style fence is proposed to be installed in the same location as the existing stockade fence. Mr. Keller feels the shape of the property and its frontage on 3 sides renders it a unique property with undue hardship. There is no substantial detriment to the public good. The accessory structures are being moved further back than the existing.

Entered as A-3: photoboard #1

Overall, Board members felt the plan presented was attractive and would be an aesthetic improvement to the property as well as the neighborhood.

Chairman Joseph Steinberg and Vanessa Scaglione felt the fence could be pulled in further and additional landscaping planted.

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

Michael Birnberg – yes
Mattew Brett – yes
Mary McNett – yes
Craig Ploetner – yes
Vanessa Scaglione – no
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3486, FC Delbarton, 25 Delbarton Drive, was **APPROVED**.

CAL#3488, EDWARD TALIA, 29 DELWICK LANE, SHORT HILLS

Bartholomew Sheehan, Attorney for the applicants, announced his appearance. The applicants would like to construct a new house. Proposal is in violation of:

608.5 – Steep slope disturbance in excess of 1000 square feet
608.71 – Distance between retaining walls

Mr. Sheehan gave a brief description of the proposal. He stated that the proposed single family home with associated outdoor improvements is consistent with the character of homes in the area. The subject property contains approximately 7,778 square feet of regulated steep slopes. The proposal will involve the disturbance of 6,813 square feet of steep slope area. In addition, tiered retaining walls are proposed to be constructed with a distance of 3 feet between walls, where the ordinance requires the distance between walls to be equal to the highest wall, which in this proposal is 6 feet.

Richard Keller, P.E., P.P. appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief summary of the proposal and the variance relief required. He stated that the property slopes upward from 99 feet in the southeast corner of the property to approximately 124 feet in the northwest portion of the property. The lot also cuts in 30 feet on the northwest side of the property which causes an odd shaped lot.

- Entered as A-1: photoboard #1
- Entered as A-2: photoboard #2
- Entered as A-3: photoboard #3
- Entered as A-4: aerial photo – north
- Entered as A-5: aerial topographic survey

The proposal is designed to be aesthetically pleasing and is in keeping with the standards of the neighborhood. The proposed construction is consistent with the character of the surrounding community. The topography and shape of the lot present an exceptional situation that imposes practical difficulty and undue hardship to the applicants. The improvements proposed advance the purpose of zoning in that they create an enhancement to the established area, advance the general welfare, promote a desirable visual environment and provide adequate air, light and open space. The benefits that result from the proposed improvements substantially outweigh the detriments.

Dr. Herbert Goldfarb, 35 Delwick Lane, asked when the submitted survey was done. Richard Keller stated that the survey was done February 25, 2016. Dr. Goldfarb asked if a study was done in order to determine the age of the trees. Mr. Keller indicated that he did not perform such a study.

Dr. Herbert Goldfarb, 35 Delwick Lane, appeared and was sworn. He stated that he is concerned with the number of trees proposed to be demolished. He is also concerned that the integrity of his driveway and tennis courts will be undermined.

- Entered as O-1 through O-6: photos of trees along common property line

Dr. Goldfarb stated that he would like to see many of these trees preserved. He is concerned that he will be losing his privacy.

Eric Tavel, 27 Delwick Lane, appeared and was sworn. He stated that he is concerned with stormwater management. Chairman Steinberg indicated that the applicant is required to present a stormwater management plan to the Township Engineering department for their review and approval prior to the issuance of any building permit.

Beverly Goldfarb, 35 Delwick Lane, appeared and was sworn. She stated that the character of the neighborhood is being drastically altered by the construction taking place on all the properties. She referred to the tree removal ordinance and indicated that it should be followed accordingly.

Board Attorney, Gail Fraser, stated that the preamble that Ms. Goldfarb read spells out the Governing Body's requirements as far as tree removal is concerned. The tree removal ordinance will have to be followed if this Board grants variance relief. This Board is not charged with enforcing the tree removal ordinance. Any approvals granted can be conditioned on the applicant receiving approval from the Township Forester.

Bartholomew Sheehan gave a brief summary of the application. He indicated that the subject property is the last property in the area with steep slope constraints. He stated that any trees removed will be replaced in accordance with the Township ordinance. The improvement to the stormwater management with the development of this site will result in a benefit to the area.

Chairman Joseph Steinberg stated that this Board's jurisdiction is to determine if the steep slopes on this site have value such that variance relief to disturb in excess of 1000 square feet should not be granted. He believes that is not the case here. He stated that he supports the application.

Michael Birnberg stated that the character of this area has been changing over the years. He stated that he is in favor of the proposal.

Matthew Brett stated that he will not support the application. He has not heard a plan that speaks to replacement trees. He feels this application will have a considerable visual impact on the neighborhood.

Several Board members were equally concerned with the number of trees proposed to be taken down.

A motion to approve was made by Michael Birnberg. With no second, the motion failed.

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

Michael Birnberg – no
Matthew Brett – yes
Mary McNett – yes
Craig Ploetner – yes

Vanessa Scaglione – yes
Jessica Glatt – yes
Joseph Steinberg – no

Cal#3488, Edward Talia, 29 Delwick Lane, was **DENIED**.

CAL#3489, DERRICK & KATIUSKA CARLO, 70 MEADOWBROOK ROAD, SHORT HILLS

Derrick Carlo and Danial Dubinett, Architect, 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 and expand an existing patio. Proposal is in violation of:

606.2e3a – Accessory structure side yard setback
606.2e1e1a – Side yard setback
606.2e1e1b – Addt'l side yard setback
606.2e1f – Combined side yard setback

Danial Dubinett gave a brief summary of the proposal. All variances being requested are extensions of existing non-conforming conditions.

Entered as A-1: photo of subject dwelling

The proposal is to raise the ridge line of the roof in order to afford more usable space on the second floor. The increase in the ridge height will not cause substantial negative impact on the adjoining properties.

Overall, Board members felt the proposal was well-designed.

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
Vanessa Scaglione –yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3489, Derrick & Katiuska Carlo, 70 Meadowbrook Road, was **APPROVED**.

ADJOURNMENT

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

Eileen Davitt
Board Secretary

Motion: MBI
Second: CP
Date Adopted: 6/27/16