

Township of Millburn
Minutes of the Zoning Board of Adjustment
January 9, 2017

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 9, 2017** at 7:00 PM in Millburn Town Hall.

Eileen Davitt opened the meeting by reading Section 5 of the Open Public Meetings Act.

The oaths of office were administered to Mary McNett, Michael Birnberg and Ellen Nimaroff Hirsch.

A roll-call indicated the following members were present:

Michael Birnberg
Matthew Brett
Jessica Glatt
Mary McNett
Ellen Nimaroff Hirsch
Joseph Steinberg
Steve Togher

Also present:

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

ORGANIZATION OF THE BOARD

Eileen Davitt asked for a nomination for Chairman of the Zoning Board.

A motion to nominate Joseph Steinberg for Chairman was made by Mary McNett, seconded by Steve Togher, and carried with a roll-call vote as follows:

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Ellen Nimaroff Hirsch – yes
Steve Togher – yes
Jessica Glatt -- yes

The meeting was turned over to Chairman Joseph Steinberg who asked for a nomination for Vice Chairman of the Zoning Board. A motion to nominate Jessica Glatt for Vice

Chairwoman was made by Matthew Brett, seconded by Michael Birnberg, and carried with a roll-call vote as follows:

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Ellen Nimaroff Hirsch – yes
Steve Togher – yes
Joseph Steinberg – yes

A motion to appoint Gail Fraser as Board Attorney was made by Jessica Glatt, seconded by Mary McNett, and carried with the following roll-call vote:

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Ellen Nimaroff Hirsch – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

A motion to appoint Eileen Davitt as Board Secretary was made by Ellen Nimaroff Hirsch, seconded by Matthew Brett, and carried with the following roll-call vote:

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Ellen Nimaroff Hirsch – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

MEMORIALIZATIONS

Cal#3517, John Chrin, 26 Northern Drive, Short Hills

A motion to approve the resolution memorializing the granting of variance relief to John Chrin to construct an addition/adjust a lot line on the property located at 26 Northern Drive was made by Michael Birnberg, seconded by Steve Togher, and carried with the following roll-call vote:

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Steve Togher – yes

Joseph Steinberg – yes

Cal#3520, Anish Khanna, 5 E. Hartshorn Drive, Short Hills

A motion to approve the resolution memorializing the granting in part and denial in part of variance relief to Anish Khanna to install a fence on the property located at 5 E. Hartshorn Drive, was made by Steve Togher, seconded by Matthew Brett, and carried with a roll-call vote as follows:

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

Cal#3523, Jonathan delFiero, 190 Main Street, Millburn

A motion to approve the resolution memorializing the granting of variance relief to Jonathan del Fiero to construct an addition on the property located at 190 Main Street was made by Matthew Brett, seconded by Mary McNett, and carried with the following roll-call vote:

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

Cal#3525, Joshua Scharf, 11 Hawthorne Road, Short Hills

A motion to approve the resolution memorializing the granting of variance relief to Joshua Scharf to construct an addition on the property located at 11 Hawthorne Road was made by Mary McNett, seconded by Matthew Brett, and carried with the following roll-call vote:

Matthew Brett – yes
Mary McNett – yes
Jessica Glatt – yes
Joseph Steinberg – yes

APPLICATIONS

CAL#3519, TAYLOR PARTNERS, LLC, 25 TAYLOR STREET, MILLBURN

The matter was carried to March 6, 2017 with no further notice required.

CAL#3532, LING LAI LAM, 15 WINDERMERE TERRACE, SHORT HILLS

Danial Dubinett appeared and remains sworn. He stated that they listened to the Board's comments from the last hearing and revised the plans considerably. They have reduced the number of variances needed to 3. The application no longer requires an FAR variance. In addition, they have eliminated an originally proposed circular driveway and no longer need a variance for lot coverage. Variance relief is required for combined side yard setback, 2nd floor side yard setback and building coverage.

Entered A-2: sheet V-1 of the plans

Danial Dubinett indicated that the proposal requires a variance for building coverage in order to permit coverage of 15.4% where the ordinance allows 14%. The proposed front porch contributes to the need for building coverage variance relief. Mr. Dubinett feels the addition of the front porch gives the house a much needed balance.

Entered as A-3: highlighted zoning sheet

Entered as A-4: photos of subject property

Mr. Dubinett spoke to the adjoining neighbor's concerns regarding the potential damage to the root system of the neighbor's trees. He indicated that the proposed excavation will be far enough from the property line and the trees in question so he feels there will be no negative impact to the neighbor's trees.

Chairman Joseph Steinberg asked how many square feet are involved in the 2nd floor side yard setback. Danial Dubinett indicated the area requiring variance relief on the second floor is 108 square feet.

Danial Dubinett said he worked with the applicant to make use of existing space in the house and reduce the number of variances required. He feels the proposal will be an improvement to the streetscape and the neighborhood and will have no negative impact on the adjoining properties.

Mary McNett asked what the existing first floor office will become. Mr. Dubinett stated that the first floor office will remain as an office. Ms. McNett asked what would be required to eliminate the building coverage variance. Mr. Dubinett stated that the porch would have to be removed and an additional 116 square feet would have to be removed from the proposal in order to be compliant with the allowable building coverage.

David Kerr, 9 Windermere Terrace, asked for clarification as to the variance relief needed on the second floor. Mr. Dubinett stated that the second floor area requiring variance relief is 108 square feet.

Mr. Kerr asked how the new proposed attic space will be utilized. Mr. Dubinett indicated that it will remain unfinished.

David Kerr, 9 Windermere Terrace, appeared and was sworn. He feels the applicant has not made enough revisions to the plans. The side yard setback variance required has only been reduced by 1 foot. He feels his trees will be impacted and his privacy will be compromised. He feels the existing 3rd floor can be better utilized in order to alleviate the need for variance relief.

Mary McNett feels the dwelling will be huge. She feels the interior could be reconfigured. She feels the proposal is over-reaching for the size of the property.

Matthew Brett indicated that he was pleased to see that the FAR variance was removed. However, he feels as though the proposal is still overwhelming. He is concerned with the size of the building and the impact the second floor will have on the neighbor to the left.

Chairman Joseph Steinberg stated that this Board sits to make rulings on land use issues, not personal issues being faced by homeowners. He stated that he is uncomfortable with the over building that is being proposed by the applicant.

Danial Dubinett indicated that he will revisit the proposal and return to the Board at a later date.

The matter was carried to March 20, 2017.

CAL#3530, KENJI & HUBIKI FUJITA, 54 GREENWOOD DRIVE, MILLBURN

Kenji Fujita and John James, Architect, appeared and were sworn. The applicants would like to construct an addition. Proposal is in violation of:

- 606.2e1d – Front yard setback
- 606.2e1e1a – Side yard setback
- 606.2e1f – Combined side yard setback
- 606.2e1g – Rear yard unoccupied
- 609.1b – Accessory structures shall be in rear yard only

John James' credentials were presented and accepted by the Board.

Entered as A-1: 7 page photo handout

John James indicated that the property is an irregularly shaped triangular lot. The dwelling is currently non-conforming as to front yard setback, side yard setback and rear yard unoccupied. There is an existing driveway and garage which takes up a large part of the rear yard. A large part of the rear property is located in the floodplain which further restricts the area that can be utilized.

The proposal is to construct an addition to the right side of the dwelling. The existing front yard setback is 28.95 feet, where 40 feet is required. The proposal is set further back at 32.6 feet and will require variance relief of 6.4 feet. The existing side yard setback is non-conforming at 7.47 feet where 8 feet is required. This 7.47 foot setback is proposed to be continued but not further encroached upon. The combined side yard requirement is measured at the 40 foot front yard setback. The triangular shape of the property results in a large combined side yard setback requirement. The property narrows toward the back of the lot, resulting in the need for variance relief of 1.47 feet. The existing house and property are non-conforming with respect to rear yard unoccupied. There is a very small 73 square foot expansion to the existing deck that further exacerbates the condition, resulting in the need for variance relief to permit 17.4% rear yard unoccupied where 25% is required. Finally, variance relief is required to permit an expansion of the existing deck in the side yard area.

Mr. James indicated that the improvements proposed are consistent with the established character of the neighborhood and will cause no substantial detriment to the public good nor will it substantially impair the intent and purpose of the zone plan and Zoning Ordinance.

Overall, Board members were supportive of the applicant's proposal.

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

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Ellen Nimaroff Hirsch – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3530, Kenji & Hubiki Fujita, 54 Greenwood Drive, was **APPROVED**.

CAL#3531, CHRISTEL HUMMERT, 75 CLINTON AVENUE, MILLBURN

Danial Dubinett, Architect, and Christel Hummert appeared and were sworn. Mr. 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:

606.2e1e1a – side yard setback
606.2e1f – combined side yard setback
606.2e2a – building coverage
606.2e2b – lot coverage

Entered as A-1: 2 photos of subject property

Danial Dubinett indicated that the proposed addition will allow for functional kitchen space in the rear of the dwelling. He spoke to the variances required. Side yard setback relief is required to allow a setback of 7.5 feet where 12 feet is required. Combined side yard setback variance relief is required to permit 27.5% where 35% is required. Building coverage variance relief is required to allow 19.4% where 18% is permitted. Finally, lot coverage variance relief is required to allow 44.3% where 35% is permitted.

Mr. Dubinett stated that the property is located in the R-5 zone which has a minimum lot size of 14,500 square feet. The existing lot is undersized with a lot area of 9,190 square feet. The proposed 1-story addition will have no impact on the streetscape.

Frank Magnotti, 89 Mountain Avenue, asked if this proposed addition will block anyone's view. Mr. Dubinett indicated that this is a 1-story addition that will not block anyone's view.

Mary McNett feels the addition does no harm to the zone plan or streetscape.

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

Michael Birnberg – yes
Matthew Brett – yes
Mary McNett – yes
Ellen Nimaroff Hirsch – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3531, Christel Hummert, 75 Clinton Avenue, was **APPROVED**.

BUSINESS

There were no members of the public who wished to speak on non-agenda items.

ADJOURNMENT

A motion to adjourn was made by Steve Togher, seconded by Matthew Brett, and carried with a unanimous voice vote. (10:00 PM)

Eileen Davitt
Board Secretary

Motion: MM
Second: MBi
Date Adopted: 2/6/17