

Township of Millburn
Minutes of the Zoning Board of Adjustment
April 16, 2018

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, April 16, 2018** at 7:00 PM in Millburn Town Hall.

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

The following members were present for the meeting:

Ellen Hirsch
Mary McNett
Craig Ploetner
Jyoti Sharma
Joy Siegel
Steve Togher
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

Gail Fraser, Board Attorney
Eric Fishman, Court Reporter

MEMORIALIZATIONS

Cal#3604-18, Genius Gems, 219 Millburn Avenue, Millburn

Upon a motion made by Mary McNett seconded by Craig Ploetner and with the following roll-call vote:

Mary McNett – yes
Craig Ploetner – yes
Steve Togher – yes
Jessica Glatt – yes

the following resolution was approved:

**GENIUS GEMS LLC
BLOCK 705, LOT 4**

**CAL. NO. 3604-18
APRIL 16, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of a waiver from the Environmental Impact Statement (“EIS”) checklist requirement,

variance relief pursuant to N.J.S.A. 40:55D-70c(1) and N.J.S.A. 40:55D-70d(1), and granting preliminary and final site plan approval to the Applicant, Genius Gems, LLC in connection with an application for an indoor STEM-based learning and play studio on property located at 215-219 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 4, Block 705 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on March 19, 2018 in Calendar No. 3604-18 filed by Genius Gems LLC (hereinafter the “Applicant”) in connection with an application for an indoor STEM-based learning and play studio on property located at 215-219 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 4, Block 705 on the tax map of the Township of Millburn; and

WHEREAS the Board does hereby set forth the following findings of fact, circumstances, reasons, and conclusions:

1. The application and service of notice were found to be in order. Anthony Cerciello, Esq. represented the Applicant. Interested parties appeared and testified at the hearing.

2. The Applicant is the prospective tenant of the subject property, which is located in the B-2 Highway Business zone district. The owner of the property, The Milled Family Limited Partnership, consented to the application. The Applicant proposes to lease the property for use as an indoor STEM-based learning and play studio. The proposed use is not an expressly permitted use in the B-2 zone. Therefore, the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70d (1) to permit the proposed indoor learning and play studio.

3. In addition, the Township Zoning Ordinance requires 43 on-site parking spaces and 1 on-site loading space. The Applicant proposes 41 on-site parking spaces and no on-site loading space. Therefore, the Applicant requires variance relief pursuant to N.J.S.A. 40:55D-70c.

4. The Applicant also requires preliminary and final major site plan approval.

5. The Board received and considered the following documents in support of the application:

A. A plan prepared by Uhlarch, LLC, consisting of one sheet, A-1, dated December 10, 2017 and revised through December 14, 2017.

B. A Use Variance and Major Site Plan, prepared by Casey & Keller, dated December 15, 2017.

C. An architectural rendering, Sheet A-2, prepared by Uhlarch, LLC, dated March 19, 2018, which was admitted into evidence as A-1.

D. A satellite aerial photograph from October 31, 2017, prepared by Casey & Keller, was admitted into evidence as A-2.

E. The following reports from Township Officials and Departments: Millburn Township Police Department Traffic Bureau dated February 22, 2018, Millburn Township Fire Marshal dated February 28, 2018, Millburn Township Engineer dated March 6, 2018 and the Millburn Township Zoning Officer dated March 13, 2018.

6. The Board heard testimony from Jennifer Romanoff, Sole Member/Manager of Genius Gems, LLC, Joshua Uhl, Licensed Architect, and Richard Keller, Professional Engineer and Professional Planner in support of the application. The Board also heard testimony from the following interested parties in favor of the application: Emily Neider of 29 Marion Avenue, Short Hills, Russell Reich of 132 Greenwood Drive, Millburn, Cecile Tarlie of 357 Old Short Hills Road, Short Hills, and Sharon Altman of 504 Long Hill Drive, Short Hills.

7. Jennifer Romanoff, the sole Member and Manager of the Applicant, has a Master's degree in Science and Education. She previously worked in the teaching field in New York City and moved to Millburn to be near relatives. She wishes to operate a learning and play studio based on Science, Technology, Engineering and Math ("STEM"), which encourages creative thinking and problem solving. Although the Applicant is not presently operating this business use at another stationary location, the Applicant has conducted STEM-based classes at public libraries, summer events and private birthday parties at other locations during the last one and one-half years. All activities which would be offered at the proposed facility are founded on four "Ps", peers, passion, projects and play. The Applicant proposes that classes would be divided by age groups. The initial business program is geared towards children from 2 to 12 years of age, but if warranted in the future, the Applicant would consider expanding the target market to include possible team challenges for high school and college age students, as well as adults. The classes for younger children, such as 2 to 3 year olds, and 4 to 5 year olds, would focus on science experiments in a variety of ways, while classes for older children would be geared towards robotics and coding. The STEM-based activities would not involve the use of chemicals, although there might be science experiments using common materials, such as baking soda. The Applicant proposes morning classes for younger children and afternoon sessions for older children on weekdays, while weekends would be devoted to celebrations and parties. The proposed hours of operation would be from 9:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 9:00 p.m. on Saturdays and Sundays. Parents would register their children for classes via an online registration service that manages some of the largest museums in the country. Although online registration is preferred, the Applicant would allow up to 10% of each class for walk-ins at a higher price, but there would be no guarantee of space availability for walk-ins. The registration system has a capacity management feature that would allow the Applicant to set the specific capacity for the space, including the ability to turn off the drop in feature if a proposed class is fully subscribed. The Applicant proposes that the initial operation would consist of one morning class for 2 to 3 year olds and one afternoon class. The afternoon

class would be grouped according to age, 4 to 5 year olds one day, 6 to 8 year olds on another day, etc. Each class would be 45 minutes long. The Applicant anticipates that in the future there would be more than one class in the morning and afternoon, but only one class per time slot with a 30 minute window between classes to allow for pick-up and drop-off of children. The Applicant proposes a main play area divided into play zones to accommodate a maximum of 25 registrants and/or drop-ins of various age groups for a two hour time slot. The Applicant anticipates that 20 to 50% of the children would be siblings, or they would arrive via carpool. The facility would also have two separate rooms for classes. The larger classroom would convert to a party room on the weekends for birthday parties and other celebrations for a maximum of 26 children, while the smaller classroom is designed to serve a maximum of 10 children. Children age 4 and older would be dropped off for scheduled classes, while parents of younger children would remain on the premises during the class. In the main play space, parents would remain on-site to supervise their children. Adults would come into the facility to pick up their children at the end of a class and the Applicant proposes the use of a dismissal app called "PikMyKid" which uses real-time tools to make pick up of children safer and more efficient. The Applicant proposes that at maximum capacity, the facility would allow for a maximum of 25 children in the main play space and 26 children in the party space, for a total of 51 children on site at any one time.

8. Ms. Romanoff would be on-site every day, overseeing the operation and security, and interacting with customers, children, teachers/instructors. The Applicant anticipates that in addition to Ms. Romanoff, there would be four employees on weekdays, and between six and seven employees on the weekends, depending on how many parties are scheduled. There would be one instructor, or teacher, for every 8 to 10 children and the instructors would be primarily college students from Seton Hall University, Rutgers, Montclair State, and New Jersey Institute of Technology. Those teachers/instructors who live locally could walk to work, while the others would most likely arrive via train or carpool from the various colleges.

9. The facility would also contain a small retail section where STEM-based toys and other products would be for sale, as well as some refrigerated pre-packaged snacks. While pre-packaged snacks would be delivered to the facility in small refrigerated trucks in the morning hours, STEM-based products for sale would be delivered to Ms. Romanoff's home.

10. The on-site parking lot serves all the uses in the building and parking is on a first come, first served basis for all tenants, except that the Landlord has agreed to provide the Applicant with three parking spaces that would be designated as 15 minute, short-term drop-off parking spaces for parents to use when dropping off their children for classes. The parking lot is generally empty on the weekends as the second floor offices are unoccupied on those days. The Applicant's lease also permits the use of on-site garbage and recycling receptacles in the parking lot, which would be adequate for the Applicant's minimal needs.

11. The subject property is fully developed with an existing structure and an on-site parking lot. The existing building was completely renovated and updated by prior owners, so the Applicant's proposed use would simply require internal cosmetic changes. The leased area would consist of 4,800 square feet of ground floor space, with use of the basement, which is

shared with other tenants in the building, for storage purposes. The basement space is accessible only from an exterior entrance, not from from inside the building. The doors facing the parking lot would serve as the main entry into a reception area. Beyond the entry and reception area there would be a central play space with a variety of play space zones for different activities, which would be open to view from the entry and reception area. The main play space area would also include areas with café style seating where parents may observe and supervise their children. Within the open central space, there would be areas for retail sales, concessions and ticketing. A project room on the east side of the leased space would serve to accommodate groups of 8 to 10 children for classes or other special events, while the larger party room to the west would accommodate up to 26 children for weekend parties. There would be designated areas for storage and closet space, as well as handicapped accessible bathrooms and a small office area.

12. Because the property is a fully developed site, the Board determined the Applicant's request for a waiver of the checklist requirement for the submission of an EIS was reasonable and appropriate and granted the EIS checklist waiver.

13. The Applicant's planner, Richard Keller, testified that the subject property is at the intersection of Millburn Avenue and Wyoming Avenue and surrounded on two sides by The Millburn Common. A drycleaner's shop is located to the immediate left and the South Mountain residential neighborhood and R-8 zone apartments are located on the opposite side of Millburn Avenue. As a result, the proposed site is in close proximity to a large number of children, who would be able to walk to the site. The leased space is now vacant, but it was previously occupied by Blockbuster, a use that no longer exists and HSBC Bank. The second floor tenants consist of a 2,000 square foot wholesale bridal use that is not open to the public and a 2,500 square foot law office. The second floor has a generous overhang at the front of the building, which shields the proposed first floor space from sun, but also limits the view of the first floor space from passing motorists on Millburn Avenue. Access to the on-site parking lot at the rear of the building is from a 20 foot wide, two-way access driveway shared with the drycleaner's shop. A concrete walkway runs from the rear of the building, along the shared driveway to the entry doors at the front of the building. The on-site parking lot contains 41 striped parking spaces and a dumpster area at the northeast corner of the lot.

14. The existing uses approved for this building required 39 parking spaces because the prior financial service use, HSBC Bank, required 1 space for every 250 square feet of space, or 19.2 spaces, whereas the required parking for the proposed use is undefined in the Township Ordinance and is calculated based on the retail parking requirement of 1 space for every 200 square feet of space, or 24.0 spaces, a net increase of 4 spaces over the existing uses. The requirement for 43 parking spaces is 2 spaces less than the 41 existing parking spaces in the on-site parking lot. Mr. Keller testified that he has visited the property frequently and he has never seen more than nine cars parked in the lot at any one time. Based upon the projected number of maximum staff and children on site at any one time, he calculated the potential parking need to be a maximum of 33 cars, which could be accommodated by the existing parking lot.

15. There is currently no loading space on the property, a pre-existing nonconforming condition that the Applicant proposes would be maintained if this application is approved. The Applicant's expert, Richard Keller, testified that there is no place to create an on-site loading space without eliminating existing parking spaces. The Applicant proposes most deliveries would be to the Managing Member's home and the minimal deliveries of pre-packaged snacks to the property could be scheduled for morning hours. Therefore, Mr. Keller opined that there would be no benefit from eliminating any of the 41 on-site parking spaces to provide a loading space.

16. Mr. Keller testified that the stated purpose of the B-2 Highway Business zone is the continuation of established businesses and to promote investment in new commercial activities that serve the community's needs. The permitted uses in the B-2 zone include retail sales, offices and financial institutions, beauty and barber shops, health and fitness facilities, laundry, dry cleaning and tailoring, photographic portrait studios and shoe repair shops. Although the proposed learning and play studio has a small retail component, the proposed use is not primarily retail sales. He testified that although retail sales are a permitted use in the zone, the subject property is not well suited for retail sales uses for several reasons. The first floor commercial space is set back under the second floor overhang of the building, which limits the visibility of the commercial space from the street. In addition, consistent with the trend in the downtown Millburn area, due to changes in consumers' shopping habits, there is a shift away from retail stores to establishments that provide experiential or educational uses. Mr. Keller testified that the proposed use satisfies several purposes of zoning as set forth in the Municipal Land Use Law, including specifically: purpose (a), promotion of the general welfare as the proposed use is educational in nature, providing STEM-based learning and play activities for children in an indoor environment; purpose (g), promotion of a commercial and educational use to meet the needs of the community; and purpose (i) promotion of a desirable visual environment as this intersection serves as one of the gateways into the Millburn community and it eliminates this vacant storefront.

17. Mr. Keller testified that the proposed use is particularly suitable for the subject property for several reasons. The proposed learning and play studio use is a commercial use in a commercial zone. The building configuration is particularly conducive to the proposed use as it includes a large open area that allows movement from play zone to play zone with private areas at either end for classes or parties or other celebrations. Moreover, there is a 41 space on-site parking lot, which would provide more than adequate parking for the existing uses in the building and the proposed use. Importantly, the property is contiguous to the South Mountain R-6 residential zone, which would provide the residents of that neighborhood with an educational play environment within walking distance. Mr. Keller also testified that the site has remained vacant because it is isolated from the heart of the downtown area. Many of the permitted uses are not viable uses for this site. Although there was previously a bank at this site, offices and financial institutions are consolidating, not expanding, their physical locations. The community has an over-saturation of beauty salons and barber shops, and multiple health and fitness facilities and studios. There is already a drycleaner's shop next door, and many photography portrait studios that previously existed in Millburn have closed down. Moreover, the site is not suitable for restaurants and other food uses due to the proximity of residential neighborhoods.

18. Mr. Keller testified that the proposed use also satisfies the negative criteria under the MLUL. He testified that the proposed use will not result in any detriment to the public good because it is located in the B-2 zone district, which is designed for commercial uses. The Applicant's proposed STEM-based learning and play studio use is consistent with other experience uses recently approved by the Board, such as the Busy Bee play studio, which did not include a STEM-based educational component. Mr. Keller testified that the proposed use would not substantially impair the intent and purpose of the zone plan and zoning ordinance. He also advised the Board of his opinion that the proposed use is not inconsistent with the purpose of the B-2 zone district as set forth in the Township's Master Plan. He opined that the Applicant's proposed learning and play studio use is a relatively new use, one which did not exist when the Master Plan was adopted, nor was the proposed use contemplated at the time of the last Master Plan reexamination in 2008.

19. Mr. Keller also testified that the proposed loading space variance and parking space variance satisfied the statutory criteria to support variance relief pursuant to N.J.S.A. 40:55D-70c (1) and (2). He advised the Board that the current on-site parking lot cannot physically accommodate a loading space without eliminating one or more parking spaces. Moreover, even if an on-site loading space were available, it would be of limited utility given the minimal deliveries to the proposed use and it would be better to preserve the on-site parking spaces for customer parking. Mr. Keller also testified that the existing 41 space on-site parking lot is more than adequate to serve the needs of the existing tenants in the building and the proposed use, particularly because of the proximity of the site to the South Mountain residential neighborhood, which would allow families to walk to the property.

20. The Board also heard testimony from Emily Neider of 29 Marion Avenue, Short Hills, Russell Reich of 132 Greenwood Drive, Millburn, Cecile Tarlie of 357 Old Short Hills Road, Short Hills, and Sharon Altman of 504 Long Hill Drive, Short Hills, parents with children ranging in age from 3 to 13 years old. They testified that they were very much in favor of the proposed STEM-based learning and play studio use for a variety of reasons. Ms. Neider recognized that e-commerce has resulted in a change in the retail landscape and a shift to activity based uses that would permit her to drop off her children for a class, allowing her to shop, work out or perform other activities locally. Mr. Reich testified that he moved to the community partly due to its walkability and that the proposed use would be a great asset to the community. Ms. Tarlie testified that she has had personal experience with Genius Gems at some of the classes and activities conducted at other locations and she favored the opportunity for her children to work in an environment where they would be able to collaborate with other children on STEM-based activities. Sharon Altman offered her opinion that the proposed STEM-based learning and play studio is a great idea as it would allow like-minded children to play with each other in a supervised environment.

21. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d (1) and concludes that it is appropriate to grant the use variance requested by the Applicant to permit the use of the property for a STEM-based learning and play studio. The Board finds and concludes that the Applicant has met its burden of proving the

proposed use on this property satisfies the positive and negative criteria under N.J.S.A. 40:55D-70d (1). The Board accepts and adopts the testimony of the Applicant's planner that the proposed STEM-based learning and play studio use advances the purposes of zoning set forth in the MLUL at N.J.S.A. 40:55D-2(a), (g) and (i). The Board is satisfied that the proposed use advances the public health, safety and general welfare and promotes a unique educational play use that meets the needs of the residents of Millburn Township and the surrounding communities, and it also serves to eliminate a vacant storefront in the highway business zone, which serves as one of the gateways to the community. The Board is also satisfied that the subject property is particularly suitable for the proposed use. The subject property is already developed with a commercial building and on-site parking lot. The Board finds that the proposed STEM-based learning and play studio is a unique educational use that will serve to provide the youngest residents of Millburn Township and the surrounding areas with STEM-based educational play in an indoor environment. The proposed use in this location is particularly suitable as it is within walking distance for the residents of the nearby South Mountain residential district. The Board acknowledges that evolving consumer shopping trends have had a significant impact on traditional local retail sales establishments. As a result, while the heart of Millburn's downtown area still contains retail sales, Millburn Township business uses are also undergoing a shift towards experiential uses. The Board is satisfied that the proposed STEM-based learning and play studio use will benefit the residents of the Township and surrounding areas.

22. With respect to the negative criteria required under the MLUL, the Board notes that the subject property is zoned for commercial use. The Board is satisfied that the proposed STEM-based learning and play studio use would not have any substantial impact on the zone plan or zoning ordinance. The Township Master Plan and Reexamination Reports continue to emphasize the commercial development of the B-2 zone district. As noted in the Township Zoning Ordinance, one of the purposes of the B-2 zone district is to promote investment in new commercial activities to serve the needs of the community. The Board finds the proposed STEM-based learning and play studio is such a use. It will serve to eliminate a vacant commercial space in an existing building in the B-2 zone district. In addition, the proposed use would be contiguous to and within walking distance of the South Mountain residential neighborhood, which will serve to encourage families to walk to the proposed facility. In addition, the Board finds that the proposed use will not result in any detriment to the zone plan or zoning ordinance. In balancing the benefits of the proposed use against the detriments, the Board concludes that the benefits of the proposed use at this site substantially outweigh any detriment. Moreover, the proposed use is one that did not exist when the Master Plan was adopted or at the time of the 2008 Master Plan Reexamination. Therefore, the Board finds and concludes that the grant of use variance relief to permit the proposed STEM-based learning and play studio would not result in a substantial detriment to the public good, nor would it result in a substantial impairment of the intent and purpose of the established zone plan and zoning ordinance of the Township under the enhanced burden required by Medici v. BPR Co., 107 N.J. 1 (1987).

23. The Board also finds and concludes that variance relief may be granted to permit no on-site loading space and 41 on-site parking spaces. The absence of an on-site loading space

is a pre-existing nonconforming condition. The proposed use is such that it will not generate deliveries requiring a dedicated loading space. Therefore, the Board finds and concludes that the granting of variance relief to permit no on-site loading space will not result in a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance. The Board is also satisfied that the existing 41 space on-site parking lot will serve to provide safe and adequate on-site parking for the existing uses and the proposed use, despite the absence of two additional parking spaces necessary to meet the 43 space parking requirement. The Board is also satisfied that the elimination of one or more on-site parking spaces to create a loading space would result in a greater negative impact than the preservation of the existing on-site parking.

24. The Board also finds that the Applicant has satisfied the requirements for preliminary and final major site plan approval.

NOW, THEREFORE, BE IT RESOLVED on this 16th day of April, 2018 that the checklist waiver from the Environmental Impact Statement requirement, use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed STEM-based learning and play studio, bulk variance relief to permit no on-site loading space and 41 on-site parking spaces, and preliminary and major site plan approval requested by the Applicant for property located at 215-219 Millburn Avenue, Millburn, granted by this Board at its meeting of March 19, 2018 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. The use approved is that of a STEM-based learning and play studio as described in the testimony at the hearing and depicted on the plans prepared by Uhlarch, LLC, consisting of one sheet, A-1, dated December 10, 2017 and revised through December 14, 2017 and the Use Variance and Major Site Plan, prepared by Casey & Keller, dated December 15, 2017.
2. The Applicant shall apply for a building permit within 365 days from the date of this decision, if required.
3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall comply with the requirements set forth in the February 28, 2018 Report of the Township Fire Marshal and the March 6, 2018 Report of the Township Engineer and submit proof of same to the Board Secretary.
4. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, the Applicant's professionals and other witnesses as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
5. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

6. The Applicant shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 16th day of April, 2018.

Cal#3607-18, Robert & Tina Barton, 60 Meadowbrook Road, Short Hills

Upon a motion made by Jyoti Sharma, seconded by Jessica Glatt and with the following roll-call vote:

- Mary McNett – yes
- Jyoti Sharma – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following resolution was approved:

**ROBERT AND TINA BARTON
BLOCK 1801, LOT 39**

**CAL. NO. 3607-18
APRIL 16, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Robert and Tina Barton, in Calendar No. 3607-18 for permission to widen the existing driveway on property located at 60 Meadowbrook Road, Short Hills, New Jersey, known and designated as Lot 39, Block 1801 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on March 19, 2018 in Calendar No. 3607-18 filed by Robert and Tina Barton (hereinafter referred to as the “Applicants”) for permission to widen the existing driveway on property located at 60 Meadowbrook Road, Short Hills, New Jersey, known and designated as Lot 39, Block 1801 on the tax map of the Township of Millburn; and

WHEREAS, the Board does hereby set forth the following findings of fact, circumstances, reasons, and conclusions:

1. The Applicants appeared without counsel. Akash Gupta, of 62 Meadowbrook Road appeared and testified at the hearing as an interested party.

2. The property is located in the R-6 zone, which is subject to the following zoning requirements: maximum 30% front yard coverage and front yard parking spaces are prohibited. The home with the driveway widening would result in 36% front yard coverage and front yard parking spaces. Therefore, the Applicants require variance relief.

3. The Board received and considered the following in support of the application:

A. An exhibit consisting of a portion of a survey of the property prepared by Richlan, Lupo & Associates, Inc., dated July 18, 2017, marked up by the Applicants to depict the originally proposed driveway widening.

4. The Applicants, Robert Barton and Tina Barton, testified in support of the application. The Board also heard testimony from Akash Gupta, of 62 Meadowbrook Road.

5. The existing dwelling has a one-car attached garage with a paving stone driveway in the front yard. The Applicants plan to purchase a second car as Mrs. Barton travels frequently for work and a second car has become a necessity. However, the Applicants' property is relatively close to the intersection of Meadowbrook Road and Baltusrol Way. As a result, the property is in a high traffic area and there is limited street parking on Meadowbrook Road. The Applicants wish to widen their existing driveway to allow them to safely park a second car on their property without obstructing access to their garage. The proposed driveway widening would be constructed of the same pavers as the existing driveway. The proposed driveway widening would require the removal of an existing tree on the property. The proposed driveway widening has been designed to maintain the existing driveway opening on the left side of the driveway in order to avoid any impact on the existing sewer grate in that area.

6. Initially, the Applicants proposed to expand the driveway by a total of seven feet, five feet to the left of the existing driveway and two feet to the right of the existing driveway. However, the Applicants' neighbor Akash Gupta, of 62 Meadowbrook Road, the property to the east of that of the Applicant, requested that the Applicants maintain a two foot grassy area between their shared property line so that the Applicants would not be exiting their vehicles on his property. During the hearing the Applicants agreed to provide a revised driveway widening plan, which would reduce the driveway widening to a total of six feet, a three foot expansion to the left of the existing driveway and a three foot expansion to the right of the existing driveway. The proposed driveway widening would increase the front yard coverage, resulting in 36.0% front yard coverage, whereas 30% front yard coverage is permitted. Although front yard parking spaces are prohibited in the R-6 zone, the proposed driveway widening would be consistent with other properties in the Applicants' neighborhood, as eight of the eighteen homes with a one-car garage have a front yard parking area similar to that proposed by the Applicants.

7. The Board is satisfied that variance relief may be granted to permit the proposed driveway widening resulting in 36% front yard coverage and front yard parking spaces.

Although the subject property has an oversized lot area, the lot width is undersized and the dwelling has a pre-existing nonconforming front yard setback of 34.9 feet, which reduces the available square footage of the front yard. As a result, the Board finds that the 30% maximum front yard coverage requirement has a greater impact on the subject property than it would if the dwelling had a deeper, conforming, front yard setback. The Board notes that because street parking in this neighborhood is very limited, many of the homes in this neighborhood with one-car garages have widened driveways to permit on-site parking of cars in the front yard. The Board is also satisfied that widening the driveway by an additional six feet will serve to enhance safety and the general welfare as a wider driveway will allow the Applicants and any visitors to their property to park on-site. The home with the wider driveway will remain in keeping with the existing character of the property and the neighborhood. Consequently, the Board concludes that variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 16th day of April, 2018 that variance relief to permit a six foot driveway widening which results in front yard parking spaces and a 36.0% front yard coverage, granted by this Board on March 19, 2018, be and it is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicants shall revise their original exhibit consisting of a marked up portion of a survey of the property prepared by Richlan, Lupo & Associates, Inc., dated July 18, 2017, to depict a six foot driveway widening, three feet to the left of the existing driveway and three feet to the right of the existing driveway, which maintains a two foot grassy area along the easterly property line adjoining Lot 38, and submit the revised exhibit to the Township Zoning Officer for approval. Construction shall be in accordance with the testimony at the hearing and the revised exhibit approved by the Township Zoning Officer pursuant to this condition.
2. Prior to the issuance of a building permit, the Applicants shall obtain a tree removal permit, if required by the Township Forester.
3. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and other witnesses at the public hearing, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

6. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 16th day of April, 2018.

Cal#3610-18, Vijay Mehta, 171 Highland Avenue, Short Hills

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

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Jessica Glatt – yes

the following resolution was approved:

**VIJAY MEHTA
BLOCK 3104, LOT 4**

**CALENDAR NO. 3610-18
APRIL 16, 2018**

Mr. Chairman, I move the adoption of the following resolution memorializing the denial of variance relief requested by the Applicant, Vijay Mehta, to permit a disturbance of 4,215 square feet of steep slopes on property located at 171 Highland Avenue, Short Hills, New Jersey known and designated as Lot 4, Block 3104 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on March 19, 2018 in Calendar No. 3610-18 filed by Vijay Mehta (hereinafter referred to as the “Applicant”) for variance relief to permit a disturbance of 4,215 square feet of steep slopes on property located at 171 Highland Avenue, Short Hills, New Jersey; and

WHEREAS, the Board does hereby set forth its findings of facts, circumstances, reasons and conclusions:

1. The application and service of notice were found to be in order. The Applicant was not represented by counsel. Jennifer Amorosa of 86 Stewart Road, Short Hills appeared and testified at the hearing as an objector.

2. The Applicant is the owner of the subject property, which is located in the R-3 zone district. The Township Zoning Ordinance prohibits a disturbance of steep slopes in excess of 1,000 square feet on any lot. The Applicant proposes to disturb 5,215 square feet of steep slopes on the property. Therefore, variance relief is required to permit the construction of the fence.

3. The Board received and considered the following in support of the application:

A. A variance application plan prepared by Casey & Keller, consisting of one sheet dated January 23, 2017.

B. The Casey & Keller variance application plan, revised through March 19 2018, was admitted into evidence as A-1.

C. A slope diagram prepared by Casey & Keller was admitted into evidence as A-2.

D. A copy of an NJDEP Permit 0712-17-0003.1, Freshwater Wetlands 170001, allowing the disturbance of non-tributary wetlands dated November 21, 2017 with a November 20, 2022 expiration date was admitted into evidence as A-3.

E. A Casey & Keller photo board #1 with six photographs dated March 18, 2018 was admitted into evidence as A-4.

4. Richard Keller, P.E., P.P., testified in support of the application under a Limited Power of Attorney from the Applicant, Vijay Mehta.

5. The subject property is located in the R-3 zone district, which requires a 29,000 square foot minimum lot area. The property is an oversized lot with a 48,000 square foot lot area. The property is also a non-designated site within the Short Hills Park Historic District and the Millburn Historic Preservation Commission (“HPC”) issued a regulatory decision authorizing the demolition of a then-existing residence and the construction of a new conforming single family dwelling on the property, which is presently under construction. The construction of the dwelling will result in a disturbance of 440 square feet of steep slope at the southeast corner of the dwelling, which do not require variance relief as the disturbance falls within the 1,000 square feet of allowable steep slope disturbance. However, the Applicant now seeks variance relief to permit the disturbance of an additional 4,775 square feet of steep slope on the property to allow for the construction of an in-ground pool, play area/sports court and filling in portions of the rear yard to create a more useable back yard. The Applicant’s proposal would result in 4,215 square

feet of steep slope disturbance which requires variance relief because it is in excess of the 1,000 square feet of disturbance permitted by Township Ordinance.

6. Mr. Keller testified that the first homes on this block were developed at the turn of the century, with the larger lots broken up and developed through the mid-1950's. He opined that during the development of the homes on this block, soil was moved to create level building pads for the homes constructed between Stewart Road and Highland Avenue, which left the subject property, one of the last lots to be developed in 1955, with areas of concentrated steep slopes that tend to trap water, a condition made worse by development on Stewart Road. The combined effect of the steep slopes and the trapped water is that a significant portion of the property is unusable. The proposed steep slope disturbance would create a level plateau for the in-ground pool and play area/sports court. Although Township Ordinance permits the disturbance of 1,000 square feet of steep slopes, the Applicant's proposed disturbance totals 5,215 square feet, which constitutes 60% of the steep slope inventory of the property and 10.9% of the total 48,000 square foot lot area.

7. Mr. Keller testified that the Applicant has a NJDEP Freshwater Wetlands permit authorizing the disturbance of 8,867 square feet of wetlands, which was issued November 21, 2017 with an expiration date of November 20, 2022. The Applicant would still require a grading permit from the Township Engineer and a tree removal permit from the Township Forester.

8. In conjunction with the proposed steep slope disturbance and construction of improvements, the Applicant proposes the installation of an on-site inlet and 8" storm line that would capture drainage and direct it to an existing sewer line in Highland Avenue. Mr. Keller advised the Board of his opinion that the proposed steep slope disturbance would satisfy the statutory criteria for variance relief under N.J.S.A. 40:55D-70c(1) and (2). Mr. Keller offered his opinion that the need for variance relief under c(1) is the result of the topography of the property, which consists of natural and man-made steep slopes, resulting in low-lying areas on the property that trap water from the subject property and surrounding properties. He testified that under a c(2) analysis, filling in a portion of the steep slopes on the property would eliminate the low-lying areas on the property that serve as breeding grounds for mosquitos. Mr. Keller testified that the proposed variance would satisfy the negative criteria required by N.J.S.A. 40:55D-70 because removing the low-lying areas of the property would reduce the slopes on the property, slow soil erosion and direct surface water to drainage improvements on Highlands Avenue.

9. The Board finds that the Applicant has not satisfied the positive and negative criteria as required by N.J.S.A. 40:55D-70(c) and concludes that it is not appropriate to grant the variance relief requested by the Applicant to permit the disturbance of 4,215 square feet of steep slopes. The Board finds the proposed disturbance of 60% of the steep slopes on this property is simply too great. The plans depict that the proposed in-ground pool and proposed play/sports areas require only a fraction of the steep slope disturbance requested by the Applicant. This block between Stewart Road and Highland Avenue is characterized by steep slopes, a circumstance that affects many of the residential properties on this block. Therefore, the Applicant's property is not unique in that regard. In addition, the Applicant has not proved to the

Board's satisfaction that the proposed variance relief satisfies the negative criteria required by N.J.S.A. 40:55D-70. Therefore, the Board cannot conclude that the variance relief may be granted without substantial impairment to the intent and purpose of the zone plan and zoning ordinance and without substantial detriment to the public good.

NOW, THEREFORE, BE IT RESOLVED on this 16th day of April, 2018 that the variance relief requested by the Applicant, Vijay Mehta to disturb 4,215 square feet of steep slopes on property located at 171 Highland Avenue, Short Hills, denied by this Board at its meeting of March 19, 2018 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g).

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 16th day of April, 2018.

APPLICATIONS

CAL#3562-17, 521 MILLBURN AVENUE, LLC, 521 MILLBURN AVENUE, SHORT HILLS

Stephen Geffner, Attorney for the applicant, stated his appearance. The applicant, 521 Millburn Avenue, LLC, would like to construct 2nd floor apartments. Proposal is in violation of:

- 606.6.1e1b – Front yard setback
- 606.6.1e2a – Building coverage
- 606.6.1e2c – Lot coverage
- 606.6.1e2b – Floor area ratio
- 607.2 – Parking requirement

In addition, the applicant requires site plan approval as per section 301.60b of the Township Development Regulations and Zoning Ordinance.

Michael Rozansky, principal of 521 Millburn Avenue, LLC, appeared and was sworn. He stated that he has lived in the Township since 1982. Currently his daughter and her husband and children are living with the applicant. Mr. Rozansky stated that his daughter owns and operates the Tillie's restaurant located next to the subject property. It is his desire to construct an apartment on the second floor in order for his daughter and her family to live there, in close proximity to their business.

Susan Gross, 93 Meadowbrook Road, asked Mr. Rozansky if there were any other tudor-style buildings in the immediate area. Mr. Rozansky stated that he was not aware of any. Ms. Gross asked if the proposed apartments would be for rent or for purchase. Mr. Rozansky stated that they would be rental units.

Tim Klesse, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the proposed plan. He stated that he designed the plans and is familiar with the immediate area. The applicant is proposing to construct one 2-bedroom apartment and one 3-bedroom apartment above the existing first floor space. Access to the proposed apartments will be by way of an interior stairway along the right side of the building. The proposal is to construct one 3-bedroom, 2-1/2 bathroom unit and one 2-bedroom, 1 bathroom unit. The 3-bedroom unit has an area of 1,614 SF and requires 2 parking spaces. The 2-bedroom unit has an area of 994 SF and requires 1.5 parking spaces.

Entered as A-1: existing elevations and rendering

Entered as A-2: enlarged rendering of Glenwood Drive view

Entered as A-3: enlarged rendering of multiple views

Tim Klesse stated that the proposed architecture is a dramatic improvement to the area. Although the style proposed is unique for Millburn Avenue, it will not be offensive to the streetscape.

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 proposed construction.

Entered as A-4: 4/15/16 aerial photo

Entered as A-5: photoboard #1 (6 photos dated 2/13/18)

Richard Keller stated that the property is block 1707, lot 1, located at the corner of Glenwood Drive and Millburn Avenue in the B-3, Neighborhood Business District. It has a lot size of 4200 SF and is adjacent to the R-6, residential zone district. He added that the subject area is unique in that Glenwood Road is a large right-of-way of approximately 100 feet, separated by a centered median. There is one-way traffic on both sides of the median and the 6 referenced parking spaces straddle the applicant's property line and Township right-of-way.

Richard Keller gave a brief description of the immediate area and indicated that the subject property, as well as the majority of the buildings along the north side of Millburn Avenue, has about 10-15 feet from the back of their buildings to the rear property line. Very few of the properties have on-site parking. The properties rely on on-street parking or municipal lot #14 to accommodate their parking needs.

Richard Keller spoke to the variances required for the proposed development. The applicant is seeking front yard setback variance relief to permit a setback of 1.12 feet along Millburn Avenue and 1.22 feet along Glenwood Drive. This is a pre-existing condition. The applicant is seeking lot coverage variance relief to permit 96.8% where 75% is permitted. The current lot coverage is 89.4%. The applicant is seeking building coverage variance relief to permit 68% where 50% is permitted. The existing building coverage is 61%. The applicant is seeking floor area ratio variance relief to permit a ratio of 1.34 where .75 is permitted. The applicant is seeking a parking variance for 16 spaces, where no spaces are completely on-site.

There are, however, 6 parking spaces that are partially on the subject property and partially in the Township right-of-way that are utilized by the property.

Richard Keller stated that the subject property is located at a high-profile corner. He indicated that the proposed construction promotes the general welfare of the public, contributes to the B-3 zone foot traffic, and enhances the area through aesthetic architecture. The proposed construction has no substantial negative detriment to the public good, the zone plan or the master plan. It will be a positive impact on the streetscape.

David Honeysett, 92 Meadowbrook Road, questioned whether the HVAC units will be heard from the neighboring residential properties. Richard Keller stated that the HVAC will not cause excessive noise. They are designed by current energy standards and are much quieter than units were 5 years ago. Susan Gross, 93 Meadowbrook Road, asked if there is any signage proposed as part of the proposal. Richard Keller indicated that there has been no signage proposed at this time. He added that any potential signage will conform to the ordinance requirements.

Chairman Steinberg opened the floor for public comment.

Carolyn Libele, 24 Elmwood Place, appeared and was sworn. She feels this is a positive proposal as it will result in a residential element that will increase the foot traffic on this portion of Millburn Avenue.

Mengkuo Wang, 26 Glenwood Drive, appeared and was sworn. He feels the traffic will be negatively affected by this proposal.

Perri Urso, 514 Millburn Avenue, appeared and was sworn. She stated that the parking situation in municipal lot #14 and along Millburn Avenue is already problematic. She feels this proposal will only add to the problem.

Lisa Reppert, Attorney for Ann Andreaggi, 10 Glenwood Avenue, summarized by stating that the intent of the Township ordinance in this area was to restrict development to 1-story buildings. The approval of this application will set a dangerous precedent and will create a parking shortage in an area that already has insufficient parking.

Stephen Geffner, Attorney for the applicant, summarized and stated that there is no precedent in land use law. Each application is judged on its own merits. The proposal requires 4 parking spaces for the residential uses. The impact on the neighborhood is negligible and he respectfully requested the Board's affirmative vote on the matter.

Board members were divided on the application. Several members felt that this area needs improvement and revitalization. They felt the proposed construction would breathe new life into this area of Millburn Avenue and would promote the residential element that is needed in order to contribute to a more vibrant retail area.

Other members were concerned with the parking that was being generated and the FAR variance being requested. Several members felt that modifications could be made to the proposed construction that would decrease the FAR.

Based on the Board comments, Mr. Geffner requested a continuance.

The matter was carried to June 4, 2018 with no further notice required.

CAL#3611-18, JENNIFER & STEVEN KAY, 91 FAIRFIELD DRIVE, SHORT HILLS

The matter was carried to June 4, 2018.

CAL#3616-18, TODD BUILIONE, 250 HARTSHORN DRIVE, SHORT HILLS

The matter was carried to May 21, 2018.

CAL#3618-18, 55 MINNISINK LLC/MILLS TRIO LLC, 55 MINNISINK ROAD, SHORT HILLS

The matter was carried to June 4, 2018.

ADJOURNMENT

A motion to adjourn was made by Joseph Steinberg, seconded by Jessica Glatt, and carried with a unanimous voice vote. (11:06 PM)

Eileen Davitt
Board Secretary

Motion: MM
Second: CP
Date Adopted: 6/4/18