

Township of Millburn
Minutes of the Zoning Board of Adjustment
June 4, 2018

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 4, 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:

Mary Esquivel
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
Eileen Davitt, Zoning Officer/Board Secretary

APPROVAL OF MINUTES

A motion to approve the minutes of April 16, 2018 was made by Mary McNett, seconded by Craig Ploetner, and carried with a unanimous voice vote.

A motion to approve the minutes of May 7, 2018 was made by Jessica Glatt, seconded by Joy Siegel, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3619-18, Deborah Dine, 384 White Oak Ridge Road, Short Hills

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

Mary McNett – yes
Craig Ploetner – yes

Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**DEBORAH DINE
BLOCK 4903, LOT 24**

**CALENDAR NO. 3619-18
JUNE 4, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Deborah Dine, to permit the construction of a deck on property located at 384 White Oak Ridge Road, Short Hills, New Jersey known and designated as Lot 24, Block 4903 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (the “Board”) has held a public hearing according to law on May 7, 2018 in Calendar No. 3619-18 filed by Deborah Dine (the “Applicant”) for permission to construct a deck on property located at 384 White Oak Ridge Road, Short Hills, New Jersey; 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. The Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The subject property is located in the R-4 zone, which requires a minimum 12 foot accessory structure side yard setback. The Applicant’s proposed deck would result in an 8 foot accessory structure side yard setback. Therefore, the Applicant requires variance relief to permit the construction of the proposed deck.
3. The following documents were submitted in support of the application:
 - A. A survey of the property prepared by EKA Associates, P.A., dated July 25, 2016 marked up by Applicant to depict the proposed deck.
 - B. Photographs of the property and the neighboring lots, which were admitted into evidence as A-1 and A-2.
 - C. A photograph of a deck on another home, representative of the Applicant’s proposed deck, which was admitted into evidence as A-3.

D. A completed copy of Application Form Attachment F, which was admitted into evidence as A-4.

4. The Applicant, Deborah Dine, testified in support of the application.

5. The Applicant wishes to construct a rear deck on the dwelling, which would be accessible from the main living space on the upper level of the home. The proposed deck would be U-shaped, surrounding all three sides of a bump-out on the upper level of the home, which extends farther into the rear yard than the rest of the dwelling. The westerly side of the deck would be flush with the westerly side elevation of the home. The Applicant cannot shift the deck farther to the east to provide a conforming 12 foot westerly accessory side yard setback without covering an existing ground level patio and rear entry door to the home. The proposed deck is 20 feet wide along the rear.

6. The subject property is an undersized lot with a 14,235 square foot lot area and a 60 foot lot width, instead of the minimum 20,000 square foot lot area and 100 foot lot width required in the R-4 zone. The 14,235 square foot lot area is measured to the centerline of White Oak Ridge Road, while the lot area of the property when measured to the right-of-way of White Oak Ridge Road is smaller. In addition, the dwelling is skewed on the property so the home is not parallel to the side property lines. As a result of the skewed placement and undersized lot width, the westerly side yard setback of the dwelling ranges from 10.74 feet at the front of the home to 8.65 feet at the rear corner. The proposed alignment of the deck with the westerly façade of the dwelling will result in an 8 foot accessory structure side yard setback. The proposed deck will not have any negative impact on the neighboring lots. The nearest neighbor to the west has privacy trees, which separates their back yard with its trampoline from the subject property. The driveway and deck of the neighboring dwelling to the east will be closer to the subject property than the neighbors' living space. The deck will be in the rear yard so it will not be visible from the street and the neighboring lot to the rear is 85 feet away.

7. The Board concludes that variance relief requested by the Applicant may be granted to permit the construction of the proposed deck. The Board is satisfied that the need for variance relief is the result of the undersized lot width and the skewed placement of the existing dwelling. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The proposed deck will be no closer to the westerly side property line than the existing dwelling. The Board is satisfied that the proposed deck will not result in any negative impact on the nearest neighbors or the streetscape. The Board is also satisfied that the home with the proposed deck will continue to be in keeping with the other homes in the neighborhood. Therefore, the Board also concludes that variance relief can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW, THEREFORE, BE IT RESOLVED on this 4th day of June, 2018 that variance relief granted by this Board on May 7, 2018 to permit the construction of a deck on the rear of the existing dwelling resulting in an 8 foot accessory structure side yard setback, be and it hereby

is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the survey of the property prepared by EKA Associates, P.A., dated July 25, 2016 marked up by Applicant to depict the proposed deck.
2. The Applicant shall apply for a building permit within 365 days from the date of this decision.
3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals and other witnesses at the public hearings, if any, 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.
4. 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.
5. 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 4th day of June, 2018.

Cal#3622-18, Zero Gravity, LLC, 622 Morris Turnpike Short Hills

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

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

the following memorializing resolution was adopted:

Mr. Chairman, I move the adoption of the following Resolution granting an EIS checklist waiver, use and bulk variance relief, and minor site plan approval to the Applicant, Zero Gravity Fitness LLC, in Calendar Number 3622-18 to permit a one-on-one personal training/physical fitness gym in a 725 square foot portion of an existing building located at 622 Morris Turnpike, Short Hills, New Jersey; known and designated as Lot 12, Block 1801 on the Tax Map of the Township of Millburn; and

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the "Board") has held a public hearing according to law on May 7, 2018 in Calendar No. 3622-18, filed by Zero Gravity Fitness LLC (hereinafter referred to as the "Applicant") for permission to use a 725 square foot portion of the premises at 622 Morris Turnpike, Short Hills, New Jersey for a one-on-one personal training/physical fitness gym; 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. Steven Flyer, Esq. represented the Applicant. No objectors or interested parties appeared or testified at the hearing.

2. The subject property is located in the B-3 Neighborhood Business Zone District. The proposed one-on-one personal training/physical fitness gym is not an expressly permitted use in the B-3 zone district. Therefore, the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed one-on-one personal training/physical fitness gym. In addition, the Township Ordinance permits a maximum .75 lot coverage and one loading space is required. The Applicant proposes to maintain .775 lot coverage and no loading space. As a result, variance relief is required pursuant to N.J.S.A. 40:55D-70c to permit the proposed lot coverage and no loading space.

3. The Applicant also requested a waiver from the checklist requirement for the submission of an Environmental Impact Statement. The site is fully developed and the Applicant proposes no exterior structural changes to the building or property. Therefore, the Board concluded the request was reasonable and appropriate and granted the checklist waiver of the EIS requirement.

4. The Board received and considered the following documents in connection with this application:

a. Plans prepared by The Buchholz Architectural Group, P.C., consisting of two sheets, A-0 and A-1, dated April 11, 2018.

b. The following reports from Township Departments and professionals: Township Forester dated May 1, 2018; Millburn Police Traffic Bureau dated May 2, 2018; and Township Engineer, dated May 1, 2018.

5. Tim Bombaci, owner/manager and Sole Member of Zero Gravity Fitness LLC, and John Buchholz, Licensed Architect testified in support of the application.

6. The Board adopts the following testimony given at the hearing as its findings of fact. The Applicant currently operates a one-on-one personal training/physical fitness gym on the second floor of the Dunkin Donuts building at 633 Morris Turnpike in Springfield Township. He wishes to close that facility and relocate to 725 square feet of space in the existing OXXO Care Cleaners building on the opposite side of Morris Turnpike in Short Hills. He wishes to offer a style of personal training/physical fitness that requires a higher ceiling height than is available in his current location. In addition, OXXO Care Cleaners has more space than it needs and its on-site parking lot is never full. Other than a sign, which would conform to the Township Zoning Ordinance requirements, the Applicant does not propose any exterior changes to the existing building. Mr. Bombaci handles all the one-on-one personal training/physical fitness himself. As a result, he does not accept walk-in customers and he would not have any employees. His hours of operation would be 8:00 a.m. to 6:30 p.m. Monday through Friday, with a three hour break midday. Saturday hours would be from 8:00 a.m. to Noon and he would be closed on Sundays. His one-on-one training sessions are 45 minutes long, but he books on the hour to allow a gap between sessions. At the Applicant's Springfield location, the Applicant does not have any on-site parking. The subject property contains thirteen on-site parking spaces. Based upon square footage, the Applicant's proposed leased space would require 4 parking spaces and OXXO Care Cleaners requires 9 parking spaces. The on-site parking is more than sufficient to meet the needs of OXXO cleaners and the Applicant. Generally, the proposed use would require two parking spaces, one for Mr. Bombaci and one for the client. The two additional parking spaces reserved for the Applicant's use would allow for on-site parking of an additional vehicle if a client were to arrive very early for a session before the previous session ended. The proposed 725 square feet of leased space would provide two rooms containing the physical fitness equipment, as well as an existing restroom. The proposed use would generate minimal trash, which would be taken away and disposed of by the Applicant's cleaning service. Recycling, if any, would be comingled with OXXO Care Cleaners' recycling. The Applicant's cleaning service would clean the leased space after the business is closed, at approximately 9:00 p.m. The cleaning service arrives by standard panel van and cleaning takes between 45 minutes to 1 hour. The Applicant does not sell any products on site.

7. The purpose of the B-3 Zone District is to permit small scale commercial activities serving the needs of residents of the surrounding area. The permitted uses in the B-3 zone district are limited to retail sales and services, offices and financial institutions, and apartments over stores. The property is already developed with an existing building and an on-site parking lot. OXXO Care Cleaner's site plan was approved without an on-site loading space, as the dry-cleaning use did not require it. Other than the initial relocation of the physical fitness equipment to the subject property, the Applicant's use does not require a loading space. Towels

for the proposed use would be laundered by the on-site OXXO Care Cleaners. The Applicant does not anticipate any deliveries to the site because the operation does not include any retail sales component.

8. The Board concludes that the proposed use satisfies the positive and negative criteria as required for the granting of use variance relief under the Municipal Land Use Law. The proposed use will promote the public good and general welfare because it is particularly suitable for this site. The Applicant has an existing clientele in the neighborhood and the property is accessible from Morris Turnpike and Farley Place. The existing building on the subject property has sufficient vacant space and an interior height that is better suited to the space requirements for the Applicant's physical fitness training equipment than the Applicant's existing facility in Springfield Township. In addition, the proposed site also provides ample on-site parking for the proposed use, which is geared towards one-on-one physical fitness training. The Board is satisfied that the proposed use promotes several purposes of zoning as set forth in the Municipal Land Use Law. Specifically, the proposed use advances N.J.S.A. 40:55D-2 (a) and (g) in that it is well suited to the neighborhood business zone district, which is designed to accommodate small scale commercial activities serving the needs of the residents of the surrounding area, while the building will continue to maintain a desirable visual environment with no exterior changes other than signs, which will conform to the zoning ordinance requirements. Moreover, the proposed use also satisfies the negative criteria required by the Municipal Land Use Law in that the proposed use is one that already exists in the area, albeit across the street in Springfield Township, but will now provide the Applicant's existing client base with on-site parking. Thus, the proposed use will not result in any detriment to the public good and in fact will promote and advance the public good insofar as the proposed use will be compatible with other uses in the business district. Therefore, the Board further finds and concludes that the proposed use will not result in a substantial detriment to the public good or the zone plan or zoning ordinance.

9. The Board also finds and concludes that variance relief may be granted to permit the maintenance of the pre-existing .775 lot coverage, as well as no on-site loading space. The site is fully developed with an existing building and a 13 space parking lot that will be sufficient to serve the needs of the existing OXXO Care Cleaners and the Applicant's proposed use. Lot coverage is presently a pre-existing nonconforming .775, which will remain unchanged as the Applicant does not propose any exterior structural changes. The Board is satisfied that the .775 lot coverage and the absence of a loading space are pre-existing conditions. The existing OXXO and proposed personal training/physical fitness use are such that neither generates truck deliveries requiring a dedicated loading space. Therefore, the Board finds and concludes that the granting of variance relief to permit the maintenance of the pre-existing nonconforming .775 lot coverage and 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.

10. The Board also finds that the applicant has satisfied the requirements for minor site plan approval.

NOW, THEREFORE, BE IT RESOLVED, on this 4th day of June, 2018, that the waiver of EIS checklist requirement, use and bulk variance relief and minor site plan approval requested by the Applicant to permit a one-on-one personal training/physical fitness gym in a 725 square foot portion of the existing building located at 622 Morris Turnpike, Short Hills approved by this Board on May 7, 2018 be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. The use approved is that of a one-on-one personal training/physical fitness gym as described in the testimony at the hearing, and depicted on the plans prepared by The Buchholz Architectural Group, P.C., consisting of two sheets, A-0 and A-1, dated April 11, 2018.
2. The Applicant shall apply for a building permit within 365 days from the date of this decision.
3. 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.
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. The Applicant shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CERTIFICATION

I, Eileen Davitt, Clerk of the Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and exact copy of a resolution adopted at the meeting of the Board of Adjustment of the Township of Millburn held on the 4th day of June, 2018.

Cal#3623-18, Robert Rice, 14 Wyndham Road, Short Hills

Upon a motion made by Joy Siegel, seconded by Jyoti Sharma, and with a roll-call vote as follows:

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

the following memorializing resolution was adopted:

**ROBERT RICE
BLOCK 211, LOT 8**

**CALENDAR NO. 3623-18
JUNE 4, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Robert Rice, to permit the installation of a generator on property located at 14 Wyndham Road, Short Hills, New Jersey known and designated as Lot 8, Block 211 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (the “Board”) has held a public hearing according to law on May 21, 2018 in Calendar No. 3623-18 filed by Robert Rice (the “Applicant”) for permission to install a generator on property located at 14 Wyndham Road, Short Hills, New Jersey; 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. The Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The subject property is located in the R-4 zone district, which requires a 12 foot setback for generators. The proposed generator would provide a 5.3 foot setback. Therefore, the Applicant requires variance relief to permit the installation of the generator.
3. The following documents were submitted in support of the application:
 - A. A survey of the property prepared by Louis R. Puopolo, III, dated March 5, 2018, marked up by the Applicant to depict the location of the proposed generator.
 - B. Two photographs of the property.
4. Applicant Robert Rice testified in support of the application.
5. The Applicant wishes to install an emergency standby generator on the west side of the dwelling near the air conditioning unit. The Applicant could place a generator in a location on the east side of the dwelling with a conforming 12 foot setback. However, the dwelling on the adjacent property to the east is approximately 5 feet from the shared property line so a generator on the east side of the property would be 17 feet from the easterly neighbor’s dwelling. On the west side of the property, the neighbor’s home is 25.5 feet from the shared property line, which would provide a distance of almost 31 feet between the proposed generator and the neighbor’s dwelling. In addition, there is a dense stand of bamboo on the west side of the subject property which would buffer the neighbor’s view of the generator. The Applicant

also has a fence on the west side of the property, which has collapsed but would be replaced in connection with the installation of the generator to further buffer the impact of the generator on the property to the west.

6. The Board concludes that variance relief requested by the Applicant may be granted to permit the installation of the proposed generator. The Board is satisfied that the proposed generator location satisfies the criteria for granting variance relief pursuant to N.J.S.A. 40:55D-70c(2). The detriment associated with the granting of variance relief is the deviation from the minimum 12 foot setback for generators, placing the generator in closer proximity to a shared property line. In this instance, the benefit of granting variance relief to permit the installation of a generator on the west side of the home with a 5.3 foot setback would provide a much greater buffer between the generator and the adjacent neighbor's dwelling, than a conforming location on the east side of the home. Specifically, the living space in the easterly neighbor's dwelling is approximately 5 feet from the shared property line, so that a generator with a 12 foot setback on the east side of the property would only be 17 feet from the neighbor's home. The westerly neighbor's dwelling is 25.5 feet from the shared property line. As a result, the proposed location allows a separation of nearly 31 feet between the generator and the neighbor's living space. In addition, there is a substantial amount of bamboo on the west side of the Applicant's property, which will serve to buffer the neighbor's view of the generator and the Applicant proposes to replace the collapsed fence between the two properties to further buffer the impacts of the generator on his westerly neighbor. The Board finds that on balance, the benefits of granting variance relief to permit the installation of the generator with a 5.3 foot setback from the westerly property line exceeds the detriments associated with the granting of variance relief. The Board is satisfied that the home with the proposed generator will continue to be in keeping with the other homes in the neighborhood. Therefore, the Board also concludes that variance relief can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW, THEREFORE, BE IT RESOLVED on this 4th day of June, 2018 that variance relief granted by this Board on May 21, 2018 to permit the installation of a generator with a 5.3 foot setback be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the Puopolo survey as marked up by the Applicant to depict the proposed generator location.
2. The Applicant shall apply for a building permit within 365 days from the date of this decision.
3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall replace and install a new fence along the westerly shared property line as depicted on the survey to conceal the westerly neighbor's view of the generator.

4. 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.

5. The Applicant shall be bound to comply with the representations made before this Board by the Applicant 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 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 4th day of June, 2018.

Cal#3624-18, Vijay Mehta, 171 Highland Avenue, Short Hills

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

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

the following memorializing resolution was adopted:

**VIJAY MEHTA
BLOCK 3104, LOT 4**

**CALENDAR NO. 3624-18
JUNE 4, 2018**

Mr. Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Vijay Mehta, to permit a disturbance of 3,350 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 May 21, 2018 in Calendar No. 3624-18 filed by Vijay Mehta (hereinafter referred to as the “Applicant”) for variance relief to permit a disturbance of 3,350 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. Denise Glassman of 100 Stewart Road appeared and testified at the hearing in support of the application.

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 3,350 square feet of steep slopes on the property. Therefore, variance relief is required to permit the proposed disturbance.

3. On April 6, 2018, the Board denied an application by this Applicant for permission to disturb steep slopes on the property. At the outset of the hearing on this application, the Board determined that the doctrine of *res judicata* does not apply in this instance to preclude the current application. The application rejected in April 2018 sought variance relief to permit the disturbance of 4,215 square feet of steep slopes. The plan submitted with the rejected application depicted the installation of an in-ground swimming pool and sports court in the areas of disturbance. The current application also proposes the disturbance of steep slopes, but the extent of the disturbance has been reduced by approximately 35%. Moreover, the Applicant does not propose the installation of an in-ground swimming pool or sports court. The Board concluded that the current application is a substantial change from the earlier application denied by the Board due to the reduction in the extent of the disturbance and the elimination of the proposed swimming pool and sports court from the plan submitted with the application.

4. 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 and revised through March 27, 2018.

B. The Casey & Keller variance application plan, with highlighting, which was admitted into evidence as A-1.

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

D. Two reports of Barton Ross, the Millburn Historic Preservation Commission Consultant, a Field Report Memorandum Revised dated April 17, 2018 and

an Exemption Memorandum dated May 9, 2018, which were collectively admitted into evidence as Exhibit A-3.

E. A copy of proposed drainage improvement plan prepared by Millburn Township, dated April 3, 1968 and revised through July 16, 1973, which was admitted into evidence as A-4.

F. A copy of a Casey & Keller June 20, 2012 “as-built” plan of off-site drainage improvements prepared for the adjacent Glassman property at 100 Stewart Road, which was admitted into evidence as A-5.

G. Casey & Keller Photo Board #1, depicting photographs of neighboring properties along Stewart Road, which was admitted into evidence as A-6.

5. Applicant Vijay Mehta, and Richard Keller, P.E., P.P., testified in support of the application. The Board also heard testimony from Denise Glassman of 100 Stewart Road, Short Hills.

6. The Applicant is in the process of constructing a new home on the property for himself and his family. The construction of the dwelling requires approximately 300 square feet of steep slope disturbance, which is permissible without variance relief as the Township’s Ordinance permits a disturbance of 1,000 square feet of steep slopes over 20%.

7. The prior application depicted a proposed in-ground swimming pool and sports court. However, the Applicant has no plans to install an in-ground pool or sports court for safety reasons because the Applicant’s three children are all under three years of age. The Applicant does wish to create a safe and useable backyard area for his family’s enjoyment and eliminate some of the low-lying wetlands on the property that now serve as a breeding ground for mosquitos, which requires the disturbance of areas of steep slope in the rear yard.

8. The subject property is an oversized lot with a 48,000 square foot lot area in the R-3 zone district, which requires a 29,000 square foot minimum lot area. The property contains nearly 8,500 square feet of steep slopes over 20%. Mr. Keller testified that over the years the development of homes in this neighborhood resulted in the movement of soil to create level building pads for the homes constructed between Stewart Road and Highland Avenue. This development left the subject property with areas of concentrated man-made steep slopes and low-lying areas that tend to trap water, a condition which makes a significant portion of the property unusable. The steepest areas of the subject property are at the rear of the lot, nearest Stewart Road, where the slopes are 32.3%. The Applicant proposes that those areas of steep slope will remain untouched. However, the Applicant proposes to fill in the low-lying areas behind the home to eliminate the standing water by collecting and directing all drainage to the existing sewer line in Highland Avenue via a new storm drain, and to create a level backyard.

9. Because the low-lying areas of the Applicant’s property are deemed to be freshwater wetlands, the Applicant applied for and obtained from the New Jersey Department of

Environmental Protection a Freshwater Wetlands Permit that authorizes the disturbance of 8,867 square feet of wetlands. However, the Applicant proposes a total steep slope disturbance of only 3,350 square feet. This total disturbance includes the 300 square feet at the front of the property where the dwelling is being constructed. The Township Ordinance only permits a steep slope disturbance of 1,000 square feet, regardless of lot size. Therefore, the Applicant requires variance relief to permit the proposed disturbance of 2,350 square feet of steep slopes in the rear yard of the property. Mr. Keller confirmed that the Applicant would still require a grading permit from the Township Engineer and a tree removal permit from the Township Forester.

10. The subject property and the Glassman property to the north have been known as areas prone to flooding since 1968 when the Township prepared a proposed drainage improvement plan for the area, which was amended in 1969 and 1973, but never constructed. In 2012, the Glassman's undertook a drainage plan for their property which was constructed in accordance with the as-built plan prepared by Casey & Keller. The filling in of the low-lying areas of the Applicant's property together with the proposed new drainage improvements would ameliorate the standing water on the Applicant's property and further improve the neighborhood drainage plan.

11. The Millburn Historic Preservation Commission ("HPC") consultant has confirmed that the proposed steep slope disturbance is located off the rear side of the home and not visible from the public right-of-way so the Applicant does not require an application to the HPC, provided no new retaining walls or other structures are constructed.

12. Denise Glassman of 100 Stewart Road also testified. She testified that she has invested a considerable amount of time, effort and money to mitigate the flooding problem on her property, which is the result of drainage flows from surrounding properties. Ms. Glassman advised the Board that she is in support of the application which would benefit the entire neighborhood because the area now consists of nothing more than dead trees and standing water that serves as a mosquito breeding ground.

13. 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 Highland Avenue.

14. The Board finds that the Applicant has satisfied the positive and negative criteria as required by N.J.S.A. 40:55D-70(c) and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the disturbance of 3,350 square feet of steep slopes.

The Board finds the 2,350 square feet of disturbance that requires variance relief because it exceeds the 1,000 square feet of allowable disturbance under the Township Ordinance is less than 5% of the lot area of this oversized lot, while the proposed total 3,350 square feet of steep slope disturbance is less than 7% of the total lot area. The Board also notes that the Applicant has reduced the proposed steep slope disturbance by more than 35% over the prior application and eliminated the proposed in-ground pool and proposed play/sports areas from the plan. Although many of the residential properties on this block between Stewart Road and Highland Avenue are characterized by natural and man-made steep slopes, the Applicant's property is one of only two lots where these man-made steep slopes have resulted in creating a punchbowl effect that serves to collect neighborhood runoff in the low-lying areas on the property. The Board is satisfied that this is an exceptional circumstance that uniquely affects the property. In addition, the Board is satisfied that benefits of authorizing the limited steep slope disturbance proposed by the Applicant outweigh the detriments. The detriment associated with the proposed variance is the disturbance of steep slopes greater than permitted under the Township Ordinance. However, standing water collected in the low-lying areas of this property impacts on public health and safety as it serves as a breeding ground for mosquitos and creates a flood hazard. The filling in of these low-lying areas will serve to promote public health and safety by eliminating standing water and improving neighborhood drainage. In addition, the Board is satisfied that the proposed variance relief satisfies the negative criteria required by N.J.S.A. 40:55D-70. The proposed steep slope disturbance will not have any negative impact on the neighborhood. Indeed, the neighborhood will benefit from improved drainage resulting from the proposed disturbance. Moreover, the total disturbance of steep slopes is less than 7% of the total lot area of this oversized lot. Therefore, the Board concludes 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 4th day of June, 2018 that variance relief granted by this Board on May 21, 2018 to permit the disturbance of 3,350 square feet of steep slopes in excess of 20%, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the variance application plan prepared by Casey & Keller, consisting of one sheet dated January 23, 2017 and revised through March 27, 2018.
2. The Applicant shall apply for a building permit within 365 days from the date of this decision.
3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals and other witnesses at the public hearings, if any, 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.

4. 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.

5. 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 4th day of June, 2018.

REQUEST FOR EXTENSION

Cal#3384, John Boo, 252 Brookhaven Drive, Short Hills

A motion to grant a 1-year extension of variance relief was made by Craig Ploetner, seconded by Jessica Glatt, and carried with a unanimous voice vote. Said extension will expire on June 30, 2019 with no further extensions granted.

APPLICATIONS

CAL#3562-17, 521 MILLBURN AVENUE, LLC, 521 MILLBURN AVENUE – continued from April 16, 2018

Stephen Geffner, Attorney for the applicant, stated his appearance. This matter is continued from the Board’s April 16, 2018 meeting. The applicant made revisions to the plans in response to Board and public comments.

Tim Klesse, Architect for the applicant, appeared and remains sworn. He summarized the revised plans. He stated that the plans have been revised to reflect a reduction of 717 SF of FAR on the second floor. Both apartments are smaller than originally proposed and will be under 1,000 SF. In addition, both apartments will contain 2 bedrooms.

Entered as A-6: A-1 board with addition of rendering photo
Entered as A-7: panoramic view

The revised plan shows the façade pulled back and the gable to the rear of the building has been minimized. In addition, two of the dormer windows have been removed. The 3 foot parapet wall will conceal the air handlers on the roof.

Ms. McNett questioned whether the applicant’s daughter and her family still intend to live in one of the apartments. Mr. Klesse stated that due to the size reduction of the apartment, it is no longer feasible for the applicant’s daughter and her family to live in the apartment. Ms.

McNett asked if the applicant considered 1 apartment rather than 2. Mr. Klesse stated that it was the applicant's desire to have two units.

Lisa Reppert, Attorney for Ann Andreaggi, asked Mr. Klesse if he looked at the building from any of the surrounding residential properties. Mr. Klesse stated that he did not.

Richard Keller, P. E., P. P., appeared and remains sworn. He explained the changes to the plan. The front yard setbacks along Millburn Avenue and Glenwood Drive will remain existing non-conforming at 8.88 feet and 8.78 feet, respectively. The building coverage variance request has not changed from the originally proposed. The lot coverage has been reduced from the originally requested 96.8% (4,076 SF) to 89% (3,784 SF), where the ordinance permits 75% (3,141 SF). The FAR has been reduced from 136% (5,712 SF) to 112.7% (4,744 SF), where the ordinance permits 75%. The parking variance request has been reduced due to the reduction in size of the apartments. The original proposal required 4 parking spaces for the apartments. The reduced size of the apartments results in the requirement for 3 parking spaces.

Entered as A-8: aerial photo (Municipal lot #14)

Mr. Keller stated that it is common to see a variety of styles within a commercial district. The applicant has chosen a Tudor style. The proposal is an improvement to the area and the mass and height are in conformance with the ordinance requirement. The proposed 2nd floor residential use is less intense than office space.

Susan Gross, 93 Meadowbrook Road, asked Mr. Keller if this will be the tallest building along Millburn Avenue in this area. Mr. Keller stated the building will be 31 feet-9 inches, conforming to the ordinance, but one of the tallest in the area. Ms. Gross asked if there will be any exterior lighting in the loading area. Mr. Keller indicated there is no lighting proposed in that area.

Perri Urso, 514 Millburn Avenue, questioned the usage of the 6 parking spaces that straddle the Township right-of-way. Ms. Urso asked if the applicant proposes to reserve those spaces for his residential tenants. Mr. Keller indicated that it is likely that the applicant will reserve those spaces for the 1st floor commercial tenants.

Entered as O-1: Millburn Township Ordinance #2338-09

Public comments were received from several interested residents

Board members discussed the proposal and were divided in their views. Several members felt the proposal would not have a substantial negative impact on the surrounding area. Others felt the FAR was excessive and could not support a request in such excess of the allowable.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – no
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3562-17, 521 Millburn Avenue, LLC, 521 Millburn Avenue, FAR variance relief was **DENIED.**

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – no
Jessica Glatt – yes
Joseph Steinberg – yes

the remaining variances were subsumed due to the denial of the FAR variance.

CAL#3611-18, JENNIFER & STEPHEN KAY, 91 FAIRFIELD DRIVE, SHORT HILLS – carried from April 16, 2018

Brian Koribanick, Landscape Architect, Richard Keller, P. E., P. P., Jennifer & Stephen Kay, appeared and were sworn. The applicants would like to install an in-ground pool. Proposal is in violation of:

606.2e2b – Lot coverage
609.1c – Maximum accessory use coverage

Richard Keller’s credentials were presented and accepted by the Board. He gave a brief description of the applicants’ proposal. The property is an undersized lot in the R-4 zone. There is significant topographic relief from the front to the rear of the property. The rear yard is a full story below the first floor living space. There is currently no exit from the 1st floor to the rear yard area. The proposal is to expand the deck to provide stairs to connect the first floor to the backyard.

Entered as A-1: conceptual pool plan
Entered as A-2: photoboard #1

Board members expressed a concern with approving the application without first seeing a landscape plan. A motion to authorize the Board attorney prepare a resolution of approval pending the submission of a landscape plan 10 days prior to the June 25 hearing was made by Jessica Glatt, seconded by Mary McNett, and carried with a unanimous voice vote.

The matter was carried to June 25, 2018.

CAL#3618-18, 55 MINNISINK LLC, 55 MINNISINK ROAD, SHORT HILLS – carried from April 16, 2018

Anthony Cerciello, Attorney for the applicant, stated his appearance. The applicant proposes to construct an addition. Proposal is in violation of:

- 606.2e2a – Building coverage
- 608.5a – Steep slope disturbance
- 609.6a – Front yard wall height
- 606.2e1f – Combined side yard setback

Andrew Clarke, P. E., appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the proposed construction. He stated that the lot is irregularly shaped and has exceptional topographic conditions.

Adam Womelsdorf, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He indicated that he presented the proposal to the Historic Preservation Commission and received approval from the Commission on 12/7/17.

Entered as A-1: 24” x 36” colored rendering

Mr. Womelsdorf described the proposal.

Susan Blickstein, P. P., appeared and was sworn. Her credentials were presented and accepted by the Board. Ms. Blickstein stated that the site is pie-shaped and there are some topographic challenges associated with the property. Currently the house is a single story dwelling. In addition, the property is a designated historic site in the Short Hills Historic District.

Entered as A-2: 3-page handout
Entered as A-3: 4-page handout

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes

Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3618-18, 55 Minnisink LLC/Mills Trio LLC, 55 Minnisink Road, was **APPROVED**.

CAL#3634-18, DANIEL MAYO, 17 THACKERAY DRIVE, SHORT HILLS

Daniel Mayo appeared and was sworn. He would like to install an AC unit on his property. Proposal is in violation of:

609.1d – AC permitted in side or rear yard

Mr. Mayo stated that his property is a corner lot at the intersection of Wordsworth Road and Thackeray Drive. Currently there are 2 AC units in the proposed area. He would like to add a 3rd unit. The location is well screened.

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

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

Cal#3634-18, Daniel Mayo, 17 Thackeray Drive, was **APPROVED**.

CAL#3625-18, DAVID BLACKBURN, 889 RIDGEWOOD ROAD, MILLBURN

David Blackburn and Danial Dubinett, Architect, appeared and was sworn. The applicant would like to construct an addition and patio on the property. Proposal is in violation of:

606.2e2a – Building coverage
606.2e2b – Lot coverage
606.2e2d – FAR
606.2e1g – Rear yard unoccupied
606.2e3a – Accessory structure side setback

Danial Dubinett's credentials were presented and accepted by the Board. Mr. Dubinett gave a brief description of the applicant's proposal. The addition is restricted to the rear of the

dwelling and will not be visible from the street. There will be no negative impact to adjacent property owners.

A variance is required to permit building coverage of 26.5% where 23% is permitted. Variance relief is required to allow lot coverage of 55% where 45% is permitted. Rear yard unoccupied variance relief is being sought to allow 22.5% where 25% is required. Variance relief is required to permit FAR of 40.5% where 36% is permitted. Finally, accessory structure setback relief is required to allow a setback of 11 feet where 12 feet is required.

Board members discussed the proposal and felt there was no substantial detriment to surrounding properties.

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

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

Cal#3625-18, David Blackburn, 889 Ridgewood Road, was **APPROVED**.

CAL#3627-18, RICK & ANDREA SPAAR, 84 CEDAR STREET, MILLBURN

Andrea Spaar and Danial Dubinett, Architect, appeared and were sworn. The applicant would like to construct an addition to her dwelling. Proposal is in violation of:

606.2e1e1a – Side yard setback
606.2e2c – Maximum building height

Danial Dubinett’s credentials were presented and accepted by the Board. The property is located in the R-5 zone district and is a designated historic site in the Wyoming Historic District. The property has a narrow lot width of 50 feet where 75 foot lot width is required. Due to the topography of the lot, a height variance is triggered by the proposed addition. Although the height of the proposed addition is conforming, the overall height of the resulting dwelling, from average grade to peak of roof, will be over the allowable height of 32 feet.

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

Mary McNett – yes
Craig Ploetner – yes

Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3627-18, Rick & Andrea Spaar, 84 Cedar Street, height variance relief was **APPROVED**.

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

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

Cal#3627-18, Rick & Andrea Spaar, 64 Cedar Street, side yard setback variance relief was **APPROVED**.

BUSINESS

A motion to retain the services of Lee Klein as a Traffic Consultant for the matter pending before the Board in Cal#3595-18, NJ Energy Corp., was made by Jessica Glatt, seconded by Craig Ploetner, and carried with a unanimous voice vote.

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

ADJOURNMENT

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

Eileen Davitt
Board Secretary

Motion: CP
Second: EH
Date Adopted: 7/2/18