

Township of Millburn
Minutes of the Zoning Board of Adjustment
February 7, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, February 7, 2022** at 7:00 PM via Zoom webinar.

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

The following members were present for the meeting:

Amy Lawrence
Jyoti Sharma
Joseph Steinberg – arrived at 7:10 PM
Steve Togher
Wolfgang Tsoutsouris
Chandru Harjani
Ashley Avigdor
Jessica Glatt, Vice Chairwoman
Craig Ploetner, Chairman

Also present:

Robert Simon, Board Attorney
Eric Fishman, Court Reporter
Eileen Davitt, Zoning Officer/Board Secretary

MINUTES

A motion to approve the minutes of November 15, 2021 was made by Jessica Glatt, seconded by Steve Togher and carried with a unanimous vote.

A motion to approve the minutes of December 6, 2021 was made by Wolfgang Tsoutsouris, seconded by Steve Togher and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3820-21, Erica & Peter Kay, 17 Park Circle, Short Hills

Upon a motion made by Wolfgang Tsoutsouris, seconded by Amy Lawrence, and with a roll-call vote as follows:

Craig Ploetner – yes
Steve Togher – yes

Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes
Amy Lawrence – yes

the following memorializing resolution was adopted:

**ERIKA & PETER KAY
BLOCK 2406, LOT 24**

**CAL. NO. 3820-21
FEBRUARY 7, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Erika and Peter Kay (hereinafter the “Applicants”), in Calendar No. 3820-21 to permit the construction of a second floor expansion, on property located at 17 Park Circle, Short Hills, New Jersey, and designated as Lot 24, Block 2406, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on October 27, 2021, and November 15, 2021, as to Calendar No. 3820-21 to permit the construction of a second floor expansion, on property located at 17 Park Circle, Short Hills, New Jersey, and designated as Lot 24, Block 2406, 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. At both the October 27, 2021 hearing and the November 15, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Daniel Dubinett, provided sworn testimony in support of the application. Walter and Sonia Harris, 19 Park Circle, Short Hills (hereinafter the “Objectors”) testified in opposition to the application.
2. The Applicants are the owners of the subject property, which contains a single family, 1½ story Cape Cod style residence with an attached garage, located in the Township’s R-4 Zone District (the “R-4 Zone”). The Applicants propose to expand the second floor of the residence over the existing attached garage, adding a bedroom and laundry room, lifting the existing roof line, and creating a dormer.
3. The application notes that the subject property contains four (4) non-conforming conditions pursuant to the Township Zoning Ordinances: (a) a minimum lot area of 20,000 square feet is required, and the subject property has an existing lot area of 10,406 square feet; (b) a minimum lot depth of 150 feet is required, and the subject property has an existing lot depth of 110 feet; (c) a minimum side yard setback of 15 feet for a building up to 18 feet in height is required, and the subject property has an existing side yard setback of 6.06 feet for a building up to 18 feet in height; and (d) a minimum side yard setback of 22 feet for a building over 18 feet in

height is required, and the subject property has an existing side yard setback of 6.06 feet for a building over 18 feet in height.

4. The proposed construction would result in a side yard setback of 6.06 feet for a building up to 18 feet in height, where 15 feet is the minimum required side yard setback for a building up to 18 feet in height; and a side yard setback of 6.06 feet for a building over 18 feet in height, where 22 feet is the minimum required side yard setback for a building over 18 feet in height. Therefore, variance relief is required.

5. At the October 27, 2021 hearing and the November 15, 2021 hearing, the Board received and considered the following additional documents submitted in support of the application:

- A. Township Zoning Map, consisting of 1 sheet, introduced into evidence as Exhibit A-1, on October 27, 2021;
- B. Slide Show with photos and related depictions of the subject property, consisting of 6 slides, prepared by Daniel Dubinett on October 27, 2021, introduced into evidence as Exhibit A-2, on October 27, 2021;
- C. Slide Show with photos and related depictions of the subject property, consisting of 9 slides, prepared by Daniel Dubinett on November 15, 2021, introduced into evidence as Exhibit A-3, on November 15, 2021;
- D. Photograph of the view from the subject residence, consisting of 1 sheet, taken by the Applicants in 2021, introduced into evidence as Exhibit A-4 on November 15, 2021.

6. At the October 27, 2021 hearing the Board received and considered the following additional documents submitted in opposition to the application:

- A. Slide Show with photos, consisting of 9 sheets, prepared by the Objectors on October 27, 2021, introduced into evidence as Exhibit O-1, on October 27, 2021.

7. Both the Applicants and Daniel Dubinett, the Applicants' architect, testified that the subject property is very undersized for the R-4 Zone, both in area and depth, and this creates an undue hardship for the Applicants. Mr. Dubinett elaborated that the subject property is about half the size of the required minimum lot area for the R-4 Zone. Mr. Dubinett stated that the subject residence was an existing non-conforming structure. Mr. Dubinett stated that the subject property was a pie shaped lot that "pinched" in the corners, and that the undersized and irregularly shaped lot, combined with the nonconforming location of the existing residence, created an undue hardship on the Applicants. Mr. Dubinett also stated that the proposed additional bedroom and laundry room modernizes the subject residence, enhances the streetscape, and is appropriate in both size and location as a modest expansion of the subject residence.

8. Mr. Dubinett stated that the application proposed to expand the second floor above the existing garage to create a new bedroom and laundry room. Mr. Dubinett also stated that the proposed construction would lift the existing roof line and create a dormer. Mr. Dubinett stated that the application's proposed construction would not result in the Applicants exceeding the maximum allowable lot coverage, building coverage, or Floor Area Ratio ("FAR") for the R-4 Zone. Mr. Dubinett also stated that the application did not propose to remove any trees, and that existing mature trees provided a partial screening of the proposed construction when viewed from the property of the Applicants' neighbor most impacted by the proposed construction. Mr. Dubinett opined that the existing trees separating the Applicants' property from their immediate neighbor will be maintained by the Applicants, and that there would not be any shading issues impacting any neighboring property in connection with the application's proposed construction. At the October 27, 2021 application hearing, the Objectors testified in opposition to the application. The Objectors stated that the application's proposed construction was inappropriately within the prohibited setback area, and that the Applicants could have used other areas on the subject property for the proposed construction without violating the minimum setback requirements. The Objectors also stated that their property was lower in elevation as compared to the Applicants' property; that the existing trees noted by Mr. Dubinett did not provide adequate screening; and that the proposed construction would "dominate" the view from the Objectors' property.

9. Due to comments and concerns expressed by the Board and by the Objectors at the October 27, 2021 hearing, the Applicants agreed at that time to install additional evergreen arborvitae plantings to provide greater screening for the benefit of the Objectors' property, and to remove a previously proposed window that would have been facing the Objectors' property.

10. At the November 15, 2021 application hearing, Mr. Dubinett described the Applicants' proposed changes to the application, which now included increasing the side yard setback from 6.06 feet to 8.5 feet; relocating the proposed laundry room to the rear of the existing residence; relocating the proposed bedroom to the rear of the area above the existing garage; eliminating the proposed dormer in the front of the existing residence; and adding additional evergreen arborvitae plantings to provide greater screening for the application's proposed construction. Mr. Dubinett concluded by stating that the proposed construction still would not result in the Applicants exceeding the maximum allowable lot coverage, building coverage, or FAR for the R-4 Zone, and that if the proposed construction were located on the other side of the subject residence, the application would have required greater variance relief than requested.

11. N.J.S.A. 40:55D-70c(1) states:

Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to

such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

12. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and Zoning Ordinance” (the so-called “negative criteria”).

13. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction as revised. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the subject property’s irregular pie shape, extremely undersized nature in area, and undersized depth for the R-4 Zone, as well as the aforementioned, existing nonconforming conditions on the subject property, including the location of the subject residence, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

14. Although the proposed construction requires variance relief to permit a side yard setback of 8.5 feet for a building up to 18 feet in height where 15 feet is the minimum required side yard setback for a building up to 18 feet in height, and a side yard setback of 8.5 feet for a building over 18 feet in height where 22 feet is the minimum required side yard setback for a building over 18 feet in height, the deviations from the requirements are modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring, per Mr. Dubinett’s sworn testimony, greater variance relief than requested. Additionally, the Applicants have decreased the nonconforming side yard setbacks from what was proposed in the original application, eliminated the proposed dormer, relocated the proposed laundry room and proposed bedroom to minimize the proposed construction’s impact, and have agreed to install and maintain additional plantings in addition to the existing mature trees to provide greater screening of the proposed construction from view from the Applicants’ neighbor’s property. The revisions to the application, predominantly located in the rear of the subject property, cannot reasonably be located elsewhere on the subject property due to the aforementioned undersized nature of the subject property and the existing residence’s location.

15. The Board concludes that the proposed construction as revised is tasteful and modest, preserves the character of the subject neighborhood, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. Specifically, the subject property can accommodate the negligible impact of the application’s proposed construction. For all the reasons stated above, the positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1). For said reasons, the Board concludes that the granting of the variance relief requested relating to the revised proposed

construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinances.

NOW, THEREFORE, BE IT RESOLVED on this 7th day of February, 2022 that the variance relief requested by the Applicants to construct a second floor bedroom and a first floor laundry room in the rear of the residence, resulting in a side yard setback of 8.5 feet for a building up to 18 feet in height where 15 feet is the minimum required side yard setback for a building up to 18 feet in height, and a side yard setback of 8.5 feet for a building over 18 feet in height where 22 feet is the minimum required side yard setback for a building over 18 feet in height, on property located at 17 Park Circle, Short Hills, New Jersey, granted by this Board at its meeting of November 15, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall install additional evergreen arborvitae plantings per the testimony of the Applicants’ architect so to provide enhanced screening of the proposed construction for the benefit of the Objectors’ property.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
3. The Applicants shall be bound to comply with the representations made before this Board by the Applicants at the public hearing, including 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. 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 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 7th day of February, 2022.

Cal#3823-21, Stephen Gillman, 2 Troy Drive, Short Hills

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

Craig Ploetner – yes
Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**STEPHEN GILLMAN
BLOCK 4705, LOT 10**

**CAL. NO. 3823-21
FEBRUARY 7, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Stephen Gillman (hereinafter the “Applicant”), in Calendar No. 3823-21 to permit the expansion of a patio and installation of a front yard fence, on property located at 2 Troy Drive, Short Hills, New Jersey, known and designated as Lot 10, Block 4705, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on November 15, 2021, as to Calendar No. 3823-21 to permit the expansion of a patio and installation of a front yard fence, on property located at 2 Troy Drive, Short Hills, New Jersey, known and designated as Lot 10, Block 4705, 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. At the November 15, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel, and together with Joe Vuich, the Applicant’s Engineer and Planner, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicant is the owner of the subject property, which contains a 2½ story single-family residence with an attached two-car garage, located in the Township’s R-4 Zone District (the “R-4 Zone”). The subject property is a corner lot pursuant to the Township Zoning Ordinance, located at the intersection of Troy Drive and Great Hills Road.

3. The Applicant proposes to construct a 1,596 square foot expansion to the existing paver patio on the subject property, replace retaining walls on the subject property, install a 4 foot tall black iron fence, and install 5 foot planting beds and plantings along the Great Hills Road side of the subject property. Due to the location of Great Hills Road relative to the subject property, the application’s proposed construction would occur in an area on the subject property that would be considered a front yard pursuant to the Township Zoning Ordinance.

4. The subject property has one (1) existing non-conforming condition for the R-4 Zone: a minimum accessory structure street setback of 80 feet for a corner lot is required, and the subject property has an existing accessory structure street setback of 79.4 feet for a corner lot. The proposed development would result in a 7.97% corner lot accessory coverage, where 7% of the lot area is the maximum accessory coverage allowed on a corner lot; a 40 foot accessory structure street setback for a corner lot, where 80 feet is the required minimum accessory structure street setback for a corner lot; a front yard accessory structure on a corner lot, where front yard accessory structures are not permitted on corner lots; and a front yard fence, where front yard fences are not permitted. Therefore, variance relief is required.

5. Both the Applicant and Joe Vuich, the Applicant's Engineer and Planner, testified that the existing retaining wall on the subject property was in poor condition and at risk of collapsing. Mr. Vuich stated that the proposed replacement retaining wall could accommodate the subject property's sloping condition. Mr. Vuich also stated that the side yard on the subject property was the only functional and useable space for the proposed patio due to the sloping conditions on other areas of the property. Mr. Vuich confirmed that any re-grading in connection with the application will comply with the Township Zoning Ordinance requirements for steep slopes.

6. Mr. Vuich stated that the subject residence was orientated towards Troy Drive. Mr. Vuich stated that the need for variance relief was related to the subject residence's existing orientation as well as the subject property's status as a corner lot, and that adherence to the Township Zoning Ordinance requirements would subject the Applicant to an undue hardship given the aforementioned property-specific conditions as well as the unusable steep slope areas on the subject property. Mr. Vuich also stated that the proposed 4 foot tall black iron fence and the 5 foot planting beds and accompanying plantings for screening would be located in the front yard as to both Great Hills Road and Troy Drive. Mr. Vuich concluded by stating that the application's proposed construction was consistent in style and scope with other residences in the subject neighborhood and the R-4 Zone, as these residences also contained similar size patios as well as front yard fencing.

7. Due to comments and concerns expressed by the Board at the November 15, 2021 application hearing, the Applicant agreed to reduce the size of the proposed patio expansion. Specifically, the Applicant agreed to reduce the expansion of the proposed patio so as not to exceed 7% of the overall lot area (1,402.17 square feet), therefore eliminating the need for maximum accessory coverage allowed on a corner lot. The Applicant additionally agreed to increase the setback for the proposed construction from 40 feet to 45 feet.

8. N.J.S.A. 40:55D-70c(1) states:
Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this

act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

9. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and Zoning Ordinance.” See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

10. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested variance relief, and that it is appropriate to grant this variance relief to permit the proposed construction. The need for the requested variance relief is related to several pre-existing conditions affecting the property. Specifically, the existing location and orientation of the subject residence, coupled with the property’s status as a corner lot, as well as the large unusable steep sloped areas on the subject property, prevents the Applicant from complying with the subject Ordinance requirement. The proposed construction’s inability to be located in a conforming location elsewhere on the subject property due to these conditions creates practical difficulties and an undue hardship on the Applicant. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures lawfully thereon.

11. Although the proposed construction requires variance relief to permit a 45 foot accessory structure street setback for a corner lot where 80 feet is the required minimum accessory structure street setback for a corner lot, a front yard accessory structure on a corner lot where front yard accessory structures are not permitted on corner lots, and a front yard fence where front yard fences are not permitted, the requested deviations from the requirements of the Township Zoning Ordinance are not excessive in light of the inability to functionally relocate the proposed construction elsewhere on the subject property without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. The application also proposes sufficient landscaping to adequately screen any view of the proposed patio from surrounding neighbors or from street view. The Board notes that the Applicant has eliminated the need for variance relief relating to corner lot accessory coverage, and increased the proposed construction’s setback by five (5) feet over what was initially proposed in the application. The Board concludes that the proposed development is tasteful and modest, and preserves the character of the subject neighborhood. Any negative impact from this proposed construction is negligible and not a substantial detriment, especially given the presence of similar structures in similar locations throughout both the subject neighborhood and the R-4 Zone.

12. The subject property can accommodate the negligible impact of the application’s proposed construction, and the proposed construction is visually similar with that located within the subject neighborhood. The positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1). For all the reasons stated above,

the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and the Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 7th day of February, 2022, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70c(1), to permit the expansion of a patio and installation of a front yard fence, resulting in a 45 foot accessory structure street setback for a corner lot where 80 feet is the required minimum accessory structure street setback for a corner lot, a front yard accessory structure on a corner lot where front yard accessory structures are not permitted on corner lots, and a front yard fence where front yard fences are not permitted, on property located at 2 Troy Drive, Short Hills, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall reduce the size of the proposed paver patio expansion so as not to exceed 7% of the overall lot area (1,402.17 square feet).
2. The Applicant shall increase the setback of the proposed paver patio from 40 feet to 45 feet.
3. The Applicant shall install the proposed fence as shown on the plan submitted in connection with the application.
4. The Applicant shall install and maintain plantings sufficient to screen the proposed construction from view from the Applicant's neighbor's property and from street view, as depicted in the application and as represented to the Board during the application hearing.
5. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
6. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and at the public hearing, including 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.
7. 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.
8. 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 7th day of February, 2022.

APPLICATIONS

CAL#3833-21, QING ZHAO & WEN ZHU, 15 MEADOWBROOK ROAD, SHORT HILLS

The applicant, Qing Zhao, and Martha Victoria, architect, appeared and were sworn. Martha Victoria’s credentials were presented and accepted by the Board. The applicant would like to construct a small addition to the dwelling. Proposal is in violation of:

- 606.2e1f – combined side yard
- 606.2e2d – floor area ratio

Ms. Victoria spoke to the variances being requested. Ms. Victoria gave a brief description of the application and the proposal is to add a master bedroom suite on the second floor above the existing first floor in the rear of the dwelling.

The 5,282 SF lot is undersized for the R-6 zone, which has a minimum lot size requirement of 6,000 SF. A combined side yard variance relief is required to allow 32.2% where 35% is required. A floor area ratio variance is also required to allow 42.3% (2,238 SF) where 36% (1,901 SF) is permitted. Ms. Victoria stated that the lot can adequately accommodate a floor area ratio in excess of that allowed.

The property also has a pre-existing non-conforming combined side-yard. The proposal would be more in conformance but still not compliant with the 35% of lot width required.

Entered as Exhibit A-1: series of 8 photos

Ms. Victoria spoke to the exhibit and showed the area of the proposed addition.

Comments were opened to board members. Jessica Glatt, Vice Chairwoman, acknowledged the undersized, irregular shape lot along with the pre-existing non-conforming conditions. She felt that this proposal would not be detrimental to the neighborhood. Craig Ploetner, Chairman, agreed with Jessica and said that there was a clearly a case of hardship for this application.

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

Amy Lawrence – yes
Jyoti Sharma – yes
Joseph Steinberg – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Craig Ploetner – yes

CAL#3833-21, Zhao, 15 Meadowbrook Road, “d” use variance was **APPROVED**.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

CAL#3833-21, Zhao, 15 Meadowbrook Road, combined side yard setback variance was **APPROVED**.

CAL#3834-21, JACQUELINE STEIN, 37 KEAN ROAD, SHORT HILLS

Vincent Verdorano, Esq., appeared. Richard Keller, P.E, P.P., appeared and was sworn. The applicant converted a shed into an office space. The structure in question is 8 feet from the property line where a minimum of 12 feet is required.

Entered as Exhibit A-1: marked up survey

The property has a lot size of 22,982 SF with a depth of 200’ and width of 115’. It is located in the R-4 zone. Mr. Keller clarified that this home office within the shed was not going to be a commercial office space and that there would be no other employees working there other than the homeowners. No guests would be staying at the office space even after the applicants return to working back on site.

Entered as Exhibit A-2: photo exhibit

Rich Keller stated that the applicants would not generate any noise from this space. They also agreed to adding generous landscape along the rear property line to properly screen the structure. Rich Keller also stated that 1,593 SF of lot coverage would be eliminated as part of this application, which would reduce the amount of storm water runoff. He concluded that overall this application would have no negative impact on the surrounding properties.

Steve Togher asked if the structure has any plumbing or electrical installed. Mr. Keller said there is only an electrical plan for the structure. Heating would also be electrical heating and no furnace installed.

Robert Simon asked if it was fair to state that there was no intention of having any meetings with clients or employees in the proposed shed. Rich Keller stated that this was correct. The applicant intends to use the shed only as a private workspace as though they were working from the house.

Rob Simon asked to clarify that there will be no deliveries separate from the single-family home on the property. Rich Keller stated this was correct. Robert Simon also asked if the shed will function in any way as a pool house. Rich Keller stated that it would not be used as a pool house, as it does not include a bathroom, changing space, and shower space that a pool house typically includes.

Amy Lawrence asked how much change there was in the size of the structure compared to what it used to be. Rich Keller stated that the structure still stands on the same concrete pad but the wall thickness increased from 3 to 6 inches.

Ashley Avigdor asked if there was any particular reason why the proposed trees only run along the length of the shed and not curved around it. Rich Keller felt the proposed trees was adequate for screening the area, but if the Board felt more was required the applicant would not be opposed.

Michael Lipari, Esq., stated his appearance. He appeared as an attorney representing residents Mark & Jennifer Pantone, 52 Winthrop Road, and Michael & Marion Saffer, 48 Winthrop Road. These residents share a rear yard lot line with the applicant.

Mr. Lipari objected to the application and stated that he feels this is a non-permitted accessory use and requires a “d” variance. Vincent Verdorano responded and clarified that the notice for the application stated that the applicant proposed a one-story home office space. Rich Keller added that accessory structures a subordinate to principal use.

Rob Simon spoke to the Board in regards to Mr. Lipari’s assertion that the notice for this application was deficient. Eileen Davitt, Board Secretary, confirmed that the hearing notice submitted by the applicant disclosed that they proposed a “free standing one-story home office space in the rear yard on the property”.

All Board members agreed that the notice was sufficient and voted in favor of continuing the case as it has been presented.

Mr. Lapari asked Rich Keller if a drywell was part of the application, to which Mr. Keller responded no.

The public portion of the meeting was opened.

Marc Pantoni and Jennifer Sanfillipo appeared and were sworn. They live directly behind the applicant and share their rear lot line. They expressed their concerns over the construction of the home office and felt it was built too close to the property line. They were worried it might negatively affect their property value.

Entered as Exhibit O-1: photographs the of home office, “View Towards Rear Yard”

Marc Pantoni and Jennifer Sanfillipo explained the impact this project has had on their property and provided examples of this using the presented exhibit.

Eileen Klein, 36 Kean Road, appeared and was sworn. Ms. Klein lives diagonally across the street from the applicant. Ms. Klein vouched for the applicant and stated that they are good members of the community and believed the home office was necessary for their circumstances.

Michael and Marion Stafford, 48 Winthrop Road, appeared and were sworn. They are neighbors of the applicant and felt that the constructed home office was too close to their property line. They also felt it would negatively impacts their property value. They claimed that the construction of the structure caused their trees and flower plantings located along the shared property line to die.

Adam Shanker, 41 Kean Road, appeared and was sworn. Mr. Shanker’s property shares a side lot line with the applicant’s. He supported this application and stated that this structure was not a problem for him and his property.

Murtaza Shikari, 33 Kean Road, appeared and was sworn. Mr. Shikari’s property shares a side lot line with the applicant’s. Despite having an elevated deck, Mr. Shikari cannot see much of this structure from his property. He claimed that the trees he has planted have helped properly screen the structure.

The public portion of the meeting was closed.

The Board felt additional professional testimony would be required in order to vote on this application. The matter was carried to April 4, 2022.

CAL#3800-21, CHAI CENTER, 437-439 MILLBURN AVENUE; 7 BODWELL TERRACE, MILLBURN

Michael Lavigne, attorney for the applicant, stated his appearance.

Joseph Steinberg indicated that he served on this Board when the applicant appeared several years ago in a similar application which was denied. He addressed the matter and stated that case did not apply if there are any significant differences. For context, Rob Simon provided the Board context on res judicata.

John McDonough, P.P., appeared and was sworn. He spoke to the issues of res judicata, and reviewed the following differences in the application:

1. Statutory test has changed.
2. Factual distinctions - Previous application was for a retro fit. This application proposes the demolition of an existing structure and the construction of a new one.
3. There are changed circumstances. Due to the current climate, many people participate in remote worship.

The meeting was opened to the public for questions as they pertained only to the testimony provided by Mr. McDonough in the matter of res judicata.

Jack Gordon, 27 Bodwell Terrace, appeared and was sworn. He spoke to the issues of res judicata and stated that this application should not be heard and has been heard twice already. He continued stating that the Planning Board heard an application in 1994 filed by the applicant, in which he was seeking to merge 437 and 439 Millburn Avenue. The conclusion of the Board was that the proposal was inconsistent with the residential character of the neighborhood. In 2001, after numerous hearings in connection with the applicant's request to construct a house of worship at the corner of Old Short Hills Road and Jefferson Avenue, the Board denied the matter. The Board specifically stated that there was inadequate buffer, inadequate parking and the proposal would be a substantial detriment to the public good and would be a substantial impairment of the Zone Plan and the Zoning Ordinance due to the insufficient lot size. There has been no rational argument given that any of these issues have changed.

Simon Basyuk, 436 Millburn Avenue, appeared and was sworn. He indicated that the argument relative to remote worship cannot be used as a changed circumstance.

The matter was carried to April 18, 2022.

ADJOURNMENT

A motion to adjourn was made by Craig Ploetner, seconded by Steve Togher, and carried with a unanimous voice vote. (11:05 PM)

Eileen Davitt
Board Secretary

Motion: JG
Second: ST
Date Adopted: 4/4/22