

Township of Millburn
Minutes of the Zoning Board of Adjustment
April 5, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, April 5, 2021** 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:

Craig Ploetner
Joy Siegel
Steve Togher
Wolfgang Tsoutsouris
Amy Lawrence
Chandru Harjani
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

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

MEMORIALIZATIONS

Cal#3774-20, Saurabh & Sonika Agarwal, 9 Burnside Drive, Short Hills

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

Craig Ploetner – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Saurabh and Sonika Agarwal (hereinafter the “Applicants”), in Calendar No. 3774-20 to permit the construction of a grade level patio on property located at 9 Burnside Drive, Short Hills, New Jersey, known and designated as Lot 15, Block 1402, 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 February 1, 2021 and March 1, 2021 as to Calendar No. 3774-20 to permit the construction of a patio on property located at 9 Burnside Drive, Short Hills, New Jersey, known and designated as Lot 15, Block 1402, 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 February 1, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel, and together with Donald Fiore, Licensed Architect, testified in support of the application. Carol Ball of 2 Farley Road, Short Hills, New Jersey, appeared at the February 1, 2021 hearing in opposition to the application. At the March 1, 2021 hearing, Carol Ball, Sharon Klesse of 4 Burnside Drive, Short Hills, New Jersey, and Muffin Muller of 5 Burnside Drive, Short Hills, New Jersey, appeared in support of the application as amended.

2. The Applicants are the owners of the subject property, which is located in the R-5 zone district. Due to the extensive curve of Burnside Drive, the property constitutes a corner lot per the Township Zoning Ordinance. The property contains a detached, single family residence.

3. The Applicants originally proposed to construct a raised deck at the rear of their dwelling. The Township Zoning Ordinance requirements for the R-5 zone include a maximum lot coverage of 35%, a minimum 80 foot setback from front lot lines for accessory structures on a corner lot, and a minimum 12 foot side yard setback for an accessory structure. The Applicants’ original proposal to construct a raised deck required variance relief to permit lot coverage of 42.2%, a 6.5 foot side yard setback for an accessory structure, and a 58.28 foot accessory structure setback from a front lot line of a corner lot. During the course of the hearings on the application, and in response to concerns expressed by the Board and the Applicants’ neighbors, the Applicants amended their application and replaced the deck with a grade level patio. The proposed patio would result in a lot coverage of 42.5%, a 6.5 foot side yard setback for an accessory structure, and a 58.28 foot accessory structure setback from a front yard of a corner lot. Therefore, variance relief is required.

4. Since a patio and a deck are substantially similar structures, the Board determined that the Applicants' original public notice for variance relief as to the deck was legally sufficient for it to confer jurisdiction as to the amended application for relief related to the grade level patio.

5. The Board received and considered the following documents submitted with the application:

A. Site Plan prepared by Heinz & Fiore, LLC, Architects, consisting of two sheets identified as SP-1.1 and A-1.1, each dated November 20, 2020;

B. Revised Site Plan prepared by Heinz & Fiore, LLC, Architects, consisting of one sheet identified as SP-1.2, dated March 1, 2021, which was admitted into evidence as A-1 on March 1, 2021;

6. The proposed patio would be located at the rear of the dwelling and in the same location as the proposed deck. Proposed new stairs would be installed to provide access between the proposed patio and the property's existing driveway.

7. During the course of the second hearing on the application, Mr. Fiore stated that three of the Applicants' neighbors (the Ball, Klesse and Muller families) had expressed concern with the visibility of the proposed deck especially given the subject property's elevation, and believed it would be out of character for the area. The Applicants agreed to replace the proposed deck with a grade level patio pursuant to these discussions so to be more consistent with the neighborhood. Ms. Ball, Ms. Klesse, and Mr. Muller stated at the March 1, 2021 hearing that they had no objection to the proposed patio, and thanked the Applicants for revising their development plan.

8. The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(c)(1) and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed patio. The need for variance relief is related to several existing conditions affecting the property, dwelling and existing site improvements. Specifically, the unique shape of the subject property creates a significant hardship and substantially impairs the reasonable development of this property. The extensive curve of the front property line, with an angle of intersection less than 135 degrees, coupled with the front property line being located at the centerline of a private street (approximately 2,611 SF of the road is counted towards the property's lot coverage) contribute to the property's hardships. The Board finds these conditions to be exceptional circumstances affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants. Although the proposed patio requires variance relief to permit 42.5% lot coverage, a 6.5 foot side yard setback for an accessory structure, and a 58.28 foot setback from a front lot line for an accessory structure on a corner lot, the deviations from the requirements are modest in light of the inability to relocate the proposed patio anywhere on the property without requiring the same or additional variance relief. The proposed patio will not be visible from the street as there will

be a 16” – 18” wall surrounding the patio with base plantings to provide screening, and the Applicants have agreed to plant a minimum of nine, four foot tall (above the root ball) emerald green arborvitae (two feet on center) to screen the patio from view from the street and surrounding properties. The Board concludes that any negative impact on the surrounding neighbors from the proposed patio and use is negligible and not a substantial detriment, especially given the existence of other patios in the neighborhood and the aforementioned neighbors working with the Applicants and Mr. Fiore to create a superior plan for the neighborhood. Therefore, the Board concludes that the granting of the variance relief requested herein can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 5th day of April, 2021 that the variance relief requested by the Applicants to construct a patio resulting in lot coverage of 42.5%, a 6.5 foot side yard setback for an accessory structure, and a 58.28 foot accessory structure front yard setback, on property located at 9 Burnside Drive, Short Hills, granted by this Board at its meeting of March 1, 2021, is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Heinz & Fiore, LLC, Architects, consisting of one sheet identified as SP-1.2, dated March 1, 2021, which was admitted into evidence as A-1 on March 1, 2021.
2. The Applicants shall plant a minimum of nine, four foot tall (above the root ball) emerald green arborvitae, two feet on center, to screen the patio from view from the street and surrounding properties.
3. The Applicants shall insure that all new plantings be maintained in order to screen the view of the patio from the street and surrounding properties.
4. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
5. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants’ professional at the public hearings, as set forth in the Board’s findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
6. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
7. 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 5th day of April, 2021.

Cal#3778-21, Bing Shen, 332 Lupine Way, Short Hills

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

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

the following memorializing resolution was adopted:

**BING SHEN
BLOCK 1903, LOT 13**

**CALENDAR NO. 3778-21
APRIL 5, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Bing Shen, in Calendar No. 3778-21 for permission to construct front yard retaining walls incident to the proposed construction of a new single family dwelling on property located at 332 Lupine Way, Short Hills, New Jersey, known and designated as Lot 13, Block 1903 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on March 1, 2021 in Calendar No. 3778-21 filed by Bing Shen (hereinafter referred to as the “Applicant”) for permission to construct front yard retaining walls incident to the proposed construction of a new single family dwelling on property located at 332 Lupine Way, Short Hills, New Jersey, known and designated as Lot 13, Block 1903 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The Applicant is the owner of the subject property which is located in the R-6 zone district. The R-6 zone requirements include a maximum front yard retaining wall height of

two (2) feet. As measured at the front yard setback line, the proposed retaining walls are to be 4.2 feet (north side) and 3.8 feet (south side) in height. Therefore, the Applicant requires variance relief. The Applicant previously received variance relief from the Board on January 13, 2020 incident to the proposed construction of a new single family residence at the property resulting in a 49 foot average front yard setback and 43.2% front yard coverage. The need for a variance for front yard wall height was inadvertently omitted by the Applicant from the original variance application.

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

A. Plans prepared by Asral Architect, consisting of two sheets, Z-1 and Z-2, dated March 16, 2020 and revised through August 31, 2020;

B. Plans prepared by Korzen Engineering consisting of five sheets, Sheets 1 through 5, dated December 21, 2018 and revised through October 26, 2020;

4. Peter Korzen, Professional Engineer and Professional Planner, and Douglas Asral, Registered Architect, provided sworn testimony in support of the application.

5. The subject property is an oversized lot in the R-6 zone district, which is located on a bend in the road of Lupine Way. Because the property is located along a curve in the roadway of Lupine Way, it technically has two front yards on Lupine Way. The property is also an irregularly shaped lot, which steeply slopes downward towards the street.

6. The Applicant proposes to demolish the existing dwelling and construct a new two-story single-family dwelling in roughly the same location as the original dwelling. As part of this residential development, the Applicant proposes to construct front yard retaining walls at a height in excess of that permitted by Ordinance.

7. The shape, location and topography of this corner lot present challenges in designing a home which does not require variance relief for front yard retaining wall height. There are existing steep slopes along the easterly side property line, and further disturbance of additional steep slopes would require additional variance relief.

8. Douglas Asral, Registered Architect, referred to sheet Z-2 of his plans in describing details of the two retaining walls in question. They will range in height from 1.3 feet at the street to a maximum of 5.2 feet at the proposed residence's garage doors. The variance relief requested is necessary to construct a conforming driveway to service the proposed single family dwelling on the property.

9. The Board concludes that the variance relief requested by the Applicant may be granted. The Board is satisfied that the need for variance relief is the result of the irregular shape of the property, its topography and location along the curve in the roadway of Lupine Way. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The Board is satisfied that it would be

extremely difficult for the Applicant to revise the plans to provide conforming retaining walls with a conforming driveway without triggering the need for additional variance relief for disturbance of steep slopes. As a result of the corner lot placement of the property on a curve in the roadway, the driveway necessary for access to the attached two-car garage triggers the need for the requested variance relief. The Board is satisfied that the proposed single-family dwelling with the proposed retaining walls will be in keeping with the other homes in this established residential neighborhood. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 5th day of April, 2021 that variance relief to permit the construction of the proposed front yard retaining walls with a maximum height of 4.2 feet at the front yard setback, granted by this Board on March 1, 2021 is hereby 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 plans prepared by Asral Architect, consisting of two sheets, Z-1 Plans prepared by Asral Architect, consisting of two sheets, Z-1 and Z-2, dated March 16, 2020 and revised through August 31, 2020; and plans prepared by Korzen Engineering consisting of five sheets, Sheets 1 through 5, dated December 21, 2018 and revised through October 26, 2020.
2. The Applicant shall apply for a building permit within 365 days from the date of publication of this Resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.
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 and the Applicant's professionals and other witnesses at the public hearing, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approval set forth herein. Such representations are hereby made conditions of such approval.
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 5th day of April, 2021.

APPLICATIONS

CAL#3767-20, BOCCONE SOUTH, 519 MILLBURN AVENUE, SHORT HILLS

The matter was not heard. The matter will be re-noticed for a future agenda.

CAL#3783-21, YING LI, 89 PINE STREET, MILLBURN

Ying Li appeared and was sworn. The applicant would like to demolish and re-build an existing screen porch. Proposal is in violation of:

- 606.2e1f – Combined side yard setback
- 606.2e2b – Lot coverage

The structure is currently non-conforming with regard to combined side yard setback requirement of 35% of the lot width. The proposal will result in a combined side yard setback of 27.6%. The proposal also requires lot coverage variance relief to allow coverage of 40% where 35% is permitted by ordinance. The property has a current lot coverage of 39%. The increase in lot coverage will allow for a slight widening of the driveway.

Board members were supportive of the proposal.

With a motion made by Joy Siegel, a second by Amy Lawrence, and the following roll-call vote:

- Craig Ploetner – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

Cal#3783-21, Ying Li, 89 Pine Street, was **APPROVED**.

CAL#3784-21, LISA & ROBERT DELACRUZ, 17 WOODLAND ROAD, SHORT HILLS

Timothy Klesse, Architect, and Robert DelaCruz & Lisa Leung appeared and was sworn. Mr. Klesse’s credentials were presented and accepted by the Board. The applicants are proposing an addition to the dwelling. Proposal is in violation of:

- 606.2e1d – Front yard setback
- 606.2e2a – Building coverage
- 606.2e2d – Floor area ratio

Mr. Klesse stated that the applicants are proposing to expand their garage footprint, connect it to the principal dwelling and add an office space above the garage.

Entered as A-1: 4 photos of subject property

Mr. Klesse spoke to sheets BOA-1 through BOA-4 and described the existing and proposed conditions.

Jessica Caldwell, P. P., appeared and was sworn. Her credentials were presented and accepted by the Board. She gave a brief description of the proposal and the variances being requested by the applicant.

Entered as A-2: aerial view of subject property

She indicated that the current front yard setback along Wellington Road is 14.71 feet, where the required front yard setback is 40 feet. The proposal requires variance relief to permit a front yard setback of 26.5 feet. Building coverage variance relief is being requested to allow 27% where 23% is permitted by ordinance. Finally, floor area ratio variance relief is being requested to allow 48% where 36% is permitted. The current floor area ratio is 40.8%.

Ms. Campbell spoke to the d variance and indicated that the proposal will cause no substantial detriment to the surrounding properties and no substantial impairment to the Master Plan or the zone plan. Ms. Campbell also indicated that the property is a corner lot with large frontage that absorbs the additional floor area ratio. The proposal does not negatively impact the neighborhood. Ms. Campbell stated that the proposal advances the purpose of the MLUL in that it promotes the general welfare by allowing 2 cars to be parked in a garage. The proposal also promotes a desirable visual environment.

Yike Li, 62 Wellington Avenue, appeared and was sworn and expressed concern with the garage coming closer to the shared property line.

Tim Klesse indicated that he could make a reduction of about 2 feet in order to increase the setback slightly. It would also decrease the floor area ratio by 50 SF.

Board members felt the floor area ratio variance request was excessive and would negatively affect the neighborhood.

The matter was carried to May 3, 2021.

CAL#3785-21, PREETI & KAMAL SINGH, 93 ADDISON DRIVE, SHORT HILLS

Timothy Klesse, Architect, Preeti & Kamal Singh appeared and were sworn. Timothy Klesse's credentials were presented and accepted by the Board. The applicant would like to construct an addition and add a patio on their property. Proposal is in violation of:

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

Tim Klesse gave a brief description of the applicants' proposal.

Entered as A-1: 5 photos of subject property
Entered as A-2: neighboring property survey (87 Addison Drive) L-side
Entered as A-3: video of Addison Drive going toward dead end

The applicants propose to construct a left side addition and extend the current dwelling 5 feet closer to the side property line in order to enlarge a current bedroom/bathroom space and family room on the first floor and add space for a walk-in closet off the master bedroom on the 2nd floor. The applicants are also proposing to install a patio off the rear of the dwelling.

Mr. Klesse spoke to the variance relief being requested by the applicants. He indicated that the patio is proposed to be set back 4.87 feet where the ordinance requirement is 12 feet. The combined side yard setback is proposed to be 15.7% where 35% of the lot width is required. The side yard setback is proposed to be 3 feet where 12 feet is required. The applicant is proposing to plant landscaping along the left side property line in order to screen the addition. Mr. Klesse indicated that the need for variance relief is the result of the pie shape of the lot.

Several Board members felt the proposal was asking for large deviations from the zoning requirements and were concerned with the massing of the house and the impact it would have on the neighborhood.

Mr. Klesse indicated that he could drop the roof line 3 feet which would alleviate the need for additional side yard setback for the structure above 18 feet in height. Board members appreciated the effort but felt that even with the reduced height, the proposal overwhelms the property and ruins the horizontal street scape in the neighborhood.

A motion to approve was made by Craig Ploetner but failed for lack of a second.

Upon a motion to deny made by Joy Siegel, seconded by Amy Lawrence, and with a roll-call vote as follows:

Craig Ploetner – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3785-21, Preeti & Kamal Singh, 93 Addison Drive, was **DENIED**.

CAL#3793-21, UPNEET DHIMAN, 1 EXETER ROAD, SHORT HILLS

Upneet Dhiman appeared and was sworn. She would like to install a patio and play set on her property. Proposal is in violation of:

- 609.5 – Accessory structure front setback on a corner lot
- 606.2e3a – Accessory structure setback

Ms. Dhiman stated that her property is a corner lot requiring accessory structures to be set back 80 feet from the front lot lines. The proposed patio will have a 50 foot setback and the play set will have a 60 foot setback. The play set will meet the required 12 foot side yard setback but a small portion of the patio will have a setback of 10 feet.

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

- Craig Ploetner – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

Cal#3793-21, Upneet Dhiman, 1 Exeter Road, was **APPROVED**, with the condition that a minimum of 5 emerald green arborvitae, 4 feet above the root ball, be planted to screen the patio and outdoor play structure.

CAL#3776-20, NEW CINGULAR WIRELESS, 340 MILLBURN AVENUE, MILLBURN

Board Attorney, Robert Simon, recused from the matter and left the meeting.

Jonathan Drill is serving as Board Attorney on this matter. Mr. Drill stated that a dispute surfaced as to whether the owner of the property gave his consent to the filing of this application. Mr. Drill indicated that it was his opinion that the entity that filed the application had a proprietary interest and was, therefore, qualified as the applicant. The property owner, the applicant and a 3rd party had discussions and the property owner withdrew his objection to Board jurisdiction provided that the Board approval, if granted, be conditioned on a sidewalk bridge being constructed during the installation of the antenna in order to protect people walking on the sidewalk.

Judith Fairweather, Attorney for the applicant, stated her appearance. She stated that the applicant received approval in 2013 for the installation of 16 antenna on the roof top of 340 Millburn Avenue. That project was never done and the applicant is now back before the Board for the installation of 16 antenna. The proposal requires use variance approval for a use not permitted in this zone as well as height variance and preliminary and final site plan approval.

Daniel Penesso, Radio Frequency Engineer, appeared and was sworn. His credentials were presented and accepted by the Board. He referred to map #1 (W-G45 Millburn) which depicts the existing coverage. Currently there is unreliable coverage along Millburn Avenue and Main Street. This proposal will alleviate that and fill that gap in coverage. Mr. Penesso explained that the areas shown in blue depict the existing “in building” coverage and the areas shown in green depict the existing “in vehicle” coverage. Reliable in building coverage requires negative 95DBM signal strength and reliable in vehicle coverage requires negative 105DBM signal strength (decibel milliwatts). The areas shown in green do not have good in building coverage at this time. The areas shown in white do not have good in building or in vehicle coverage at this time. Mr. Penesso spoke to map #2 which shows the proposed coverage area based on the installation as proposed. The gaps in coverage are almost eliminated.

The matter was carried to May 17, 2021. At that time, the Board will hear from the applicant’s civil engineer and planner.

BUSINESS

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 Wolfgang Tsoutsouris, and carried with a unanimous voice vote. (10:32 PM)

Eileen Davitt
Board Secretary

Motion: CP
Second: JSi
Date Adopted: 5/17/21