

Township of Millburn
Minutes of the Zoning Board of Adjustment
April 19, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, April 19, 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:

Jyoti Sharma
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

BUSINESS

Joseph Steinberg stated that NJ Energy filed litigation on their recently denied Zoning Board of Adjustment request for use variance relief. Our current Board attorney will not be able to act on the Board's behalf on the matter and alternate counsel will need to be obtained. Mr. Steinberg indicated that he reached out to Jonathan Drill, who has no conflict and indicated that he would be available to handle this litigation for the Board.

A motion to appoint Jonathan Drill as litigation counsel in the NJ Energy matter was made by Jessica Glatt, seconded by Steve Togher and carried with the following roll-call vote:

Jyoti Sharma – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg -- yes

APPROVAL OF MINUTES

A motion to approve the minutes of March 15, 2021 was made by Wolfgang Tsoutsouris, seconded by Amy Lawrence, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3777-20, Douglas & Pamela Solomon, 401 Wyoming Avenue, Millburn

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

- Jyoti Sharma – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**DOUG & PAMELA SOLOMON
BLOCK 204, LOT 10**

**CAL. NO. 3777-20
April 19, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of variance relief requested by the Applicants, Doug and Pamela Solomon (hereinafter the “Applicants”), in Calendar No. 3777-20 to deny bulk variance relief in connection with maintaining an illegally installed basketball “sports court” on property located at 401 Wyoming Avenue, Millburn, New Jersey, known and designated as Lot 10, Block 204, 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 March 15, 2021 as to Calendar No. 3777-20 for bulk variance relief to permit maintaining an illegally installed basketball “sports court” on property located at 401 Wyoming Avenue, Millburn, New Jersey, known and designated as Lot 10, Block 204, 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 March 15, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared with counsel, William F. Harrison, Esq., and together with Danial Dubinett, Licensed Architect (the “Architect”), testified in support of the application. Michael Jurist, 82 Pine Street, Millburn, New Jersey, Ryan and Donna Schneider,

83 Elm Street, Millburn, New Jersey, Natalie Hiott-Levine and Matthew Levine, 397 Wyoming Avenue, Millburn, New Jersey, and Lori Altman, 103 Cyprus Street, Millburn, New Jersey also testified in support of the application. Jean Banks, 115 Cypress Street, Millburn, New Jersey, testified in opposition to the application. All witnesses were sworn before the Board. No professional planning testimony was provided by the Applicants in support of the application.

2. The Applicants are the owners of the subject property, which is located in the R-5 zone district as well as within the Township's Wyoming Historic District. The Applicants propose to maintain the installation and use of a water-permeable, half-court basketball "sports court" measuring approximately 22 feet by 28 feet (the "Sports Court"). The surface of the Sports Court consists of connected removable tiles each consisting of 100 square inches, with a regulation ten foot high basketball hoop.

3. The property, containing a single family home, is located on a corner lot abutting Wyoming Avenue and Cypress Street. The lot is undersized for the R-5 zone, as it consists of 10,000 square feet and a lot depth of 100 feet, where a minimum lot area of 14,500 square feet and a minimum lot depth of 125 feet are required. The Township Zoning Ordinance requirements applicable to properties in the R-5 zone also include a minimum 12 foot side yard setback for an accessory structure, a maximum permitted accessory structure coverage of 7%, and that accessory structures on a corner lot be no closer to the front property line than two (2) times the required front yard setback (80 feet) and shall not be located in the front yard. The Sports Court is proposed to maintain its location in a front yard eight (8) feet from Cypress Street, three and one half (3.5) feet from the adjacent residential property located on Cypress Street, and with an accessory structure coverage of 9.5%. Therefore, bulk variance relief is required pursuant to N.J.S.A. 40:55D-70c.

4. The Board received and considered all documents submitted by the Applicants in support of the application, as well as the following documents introduced at the March 15, 2021 public hearing:

- A. Google Slides Presentation, consisting of 6 slides, dated March 15, 2021, which was admitted into evidence as Exhibit A-1 on March 15, 2021;
- B. Video recording from Jean Banks, recorded at 10:51 p.m. on July 16, 2020, which was admitted into evidence as Exhibit 0-1 on March 15, 2021.

5. On October 20, 2020, the Township of Millburn Historic Preservation Commission ("HPC") issued a Certificate of Appropriateness for the installation of the Sports Court. The HPC subsequently issued a revised Certificate of Appropriateness on February 23, 2021, which modified the HPC's recommendations for the types of trees that should be used to provide shielding for the Sports Court, consisting of four to five foot tall Holly trees, located two to three feet apart from each other along Cypress Street.

6. The Applicants explained that they mistakenly installed the Sports Court prior to filing Calendar No. 3777-20, as they were unaware that any variance relief would be required

until they received a Notice of Violation from the Township Zoning Officer informing them of same. According to the Applicants and their Architect, prior to installing the Sports Court the area it occupied had at one time (at least as of 2008) contained a children's swing set, including a "bouncy castle" and trampoline. While a permit would have been required at that time for the installation of a swing set in the location occupied by the Sports Court, it is unclear whether one was ever obtained.

7. The Applicants testified that they have lived at the subject property since 2004. The Applicants desire to maintain the Sports Court to provide an outdoor sports activity space for their children and their children's friends. With the installation of plantings required by the HPC, the Applicants believe that the Sports Court will not be seen by those traveling along Wyoming Avenue or Cypress Street. The Applicants further testified that it is very common for families within the immediate vicinity to have a basketball hoop either in their driveway or attached to a detached garage. The Applicants testified to their inability to place a basketball hoop on their driveway due to the sloping condition of their driveway (resulting in balls rolling into the street) and due to the subject property not having a detached garage (in 2008, the Applicants received a variance from the Board from the Ordinance requirement that a single family home contain a garage). The Applicants presented no photographs or other evidence depicting either the current condition of their driveway or the appearance of the proposed Sports Court.

8. The Applicants testified that they met with their neighbors to discuss potential limitations of use for the Sports Court (including time limitations), but those proposed limitations were rejected by their neighbor Jean Banks, the owner of 115 Cypress Street, Millburn. The Applicants nevertheless believed that the application should be approved by the Board due to the difficulties imposed by the subject property being a corner lot, the location of the existing home on the lot, their willingness to agree to evening time limits when the Sports Court would be in use, and the Certificate of Appropriateness for the Sports Court issued by the HPC.

9. The Applicant's Architect, Danial Dubinett, testified that it is impossible for the proposed Sports Court to fully comply with the Township Zoning Ordinance since the only conforming location on the subject property for an accessory structure is an eight foot by eight foot square located behind the existing single family home when viewed from Wyoming Avenue. Mr. Dubinett believed the Sports Court was located in an appropriate location due to the inability to comply with the setback requirements. While Mr. Dubinett testified that at least nine houses in the vicinity of the subject property have basketball hoops located in their respective driveways, he was unable to identify a property in the subject neighborhood that had a free-standing basketball court (let alone one with the dimensions of the Sports Court) on a residential property not reliant on the property's residential driveway. Mr. Dubinett did not believe that any of the nine basketball hoops he identified required variance relief since they were all located in residential driveways and/or attached to a garage servicing a residence.

10. During the course of the hearing on the application, Mr. Jurist, Mr. and Mrs. Schneider, Mrs. Hiott-Levine and Mr. Levine, and Mrs. Altman, each testified in support of the application. Their testimony included examples of the Applicants' good and reputable character;

their fondness for the aesthetics of the surrounding neighborhood; compliments as to the appearance of the Sports Court and its utility; and that the Sports Court cannot be seen from the street especially given the landscaping intended to be planted by the Applicants.

11. Ms. Banks testified in opposition to the application. While acknowledging that the Applicants are “good people” and have a reputable character, she noted that these characteristics are irrelevant considerations for the Board in determining whether the variance relief required by the Applicants was warranted. Since Ms. Banks does not have air conditioning in her home, she keeps her windows open when the weather is warmer. When the Sports Court was being used by the Applicants’ children and their friends (prior to when a zoning violation was issued by the Township as to the Sports Court’s illegal use without first obtaining variance relief), Ms. Banks was unable to sleep or nap due to the loud and constant noise caused by the bouncing of basketballs on the Sports Court located so close to her property line and bedroom window. Ms. Banks testified that the use of the Sports Court also extended late into the evening on multiple occasions, illuminated by bright lights intruding onto her property. Ms. Banks introduced and presented to the Board Exhibit O-1, consisting of a video and sound recording of the use of the Sports Court by the Applicants’ children and their friends taken from Ms. Banks’ home at 10:51 p.m. on July 16, 2020. This video depicted the illumination of the Sports Court. On one occasion, Ms. Banks apparently had to call the police to file a noise complaint associated with the evening use of the Sports Court. She further testified that the noise and lighting associated with the Sports Court substantially undermined her quality of life and enjoyment of her property.

12. Ms. Banks noted that there is a public park with a basketball court on Cypress Street a block and a half away from the Applicants’ property for their children’s use and enjoyment.

13. As to the aforementioned testimony by Ms. Banks associated with the nighttime use of the Sports Court, the Applicants testified that they never installed any additional lights or other lighting systems specifically for the Sports Court, nor did the Applicants redirect the existing security lights at the property to provide illumination for the Sports Court. The Applicants further stated that they would stipulate to time restraints and limitations for use of the Sports Court and associated lighting if the application were granted.

14. William Harrison, Esq., counsel for the Applicants, argued that the application qualifies for variance relief due to the unique circumstances affecting the subject property due to its being a corner lot, the location of the house on the subject property, the setback requirements for corner lots, the court being a permeable surface which negates any concerns about runoff, the lack of visibility concerns for the Sports Court, and the inability to locate the Sports Court within the area of setback compliance for a corner lot. He believed that for these reasons, an approval of the application would not cause a substantial detriment to the public good or a substantial impairment to the Township’s zone plan.

15. N.J.S.A. 40:55D-70(c)(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[.]

16. 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) (“To receive a variance under N.J.S.A. 40:55D-70c, applicants must satisfy two criteria: (1) that they will suffer exceptional or undue hardship if the variance is not granted - the so-called positive criteria; and (2) that the variance will not result in a substantial detriment to the public good or the zoning plan - the so-called negative criteria.”).

17. The Board finds that the Applicants have not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) and concludes that it is not appropriate to grant the variance relief requested by the Applicants to permit the proposed Sports Court in violation of the Township Zoning Ordinances. The Board further finds and concludes that the Applicants have not met their burden of proving the proposed basketball court satisfies the positive and negative criteria under N.J.S.A. 40:55D-70c(1). As to the positive criteria, the Applicants failed to meet their burden of proof that the subject corner lot property is exceptionally narrow, shallow, or shaped in a way that the application of the Township Zoning Ordinances would result in an undue hardship upon the Applicants. Namely, the Applicants failed to present any evidence or testimony as to how the property’s narrowness, shallowness or shape is “exceptional” especially when compared to other corner lot properties in the neighborhood. Similarly, no evidence was presented by the Applicants to demonstrate any “exceptional” topographical conditions or physical features or any “extraordinary” and “exceptional” situations that “uniquely” affect the subject property. No professional planning or other testimony was presented by the Applicants as to how the subject property’s existing conditions related to those experienced by other corner lot properties in the neighborhood. There was no testimony as to the existence of accessory structures located in the front yard of corner lot properties.

18. For all the reasons set forth above, the Applicants have not satisfied their burden of proof as to the positive criteria enumerated in N.J.S.A. 40:55D-70c(1) to demonstrate entitlement to the required variance relief. They failed to demonstrate that any practical difficulties or hardship associated with their property is “peculiar” or “exceptional” especially as compared to other residential corner lots in the subject neighborhood. The Applicants also did not demonstrate to the Board that they made any attempt to reduce the size of the Sports Court

(especially given that the square tiles are apparently removable) or locate it anywhere else on the property which may result in a lesser degree of deviation from the standards in the Township's Zoning Ordinance than what was proposed. The Board also notes that the proposed location of the Sports Court was previously occupied by a swing set that the Applicants decided to remove.

19. The Applicants also have not met their burden of proving the proposed Sports Court satisfies the negative criteria under N.J.S.A. 40:55D-70c(1). The Board finds that the negative impacts associated with the installation and use of the proposed Sports Court is a substantial detriment to the surrounding residential neighborhood and nearby properties, especially given its location (in a front yard, only 3.5 feet from Ms. Banks' property and 8 feet from Cypress Street); associated noise and lighting issues; the proposed size of the Sports Court (especially as compared to other properties in the neighborhood that utilize existing residential driveways to play basketball); the practical difficulty of enforcing any conditions of approval relating to hours of operation and associated lighting requirements; and the availability of public recreational facilities, including basketball courts, within walking distance of the subject property.

20. The Board further finds that the Applicants failed to meet their burden of proof to demonstrate that the variance relief requested could be granted without substantially impairing the intent and the purpose of the Township Master Plan and Zoning Ordinance. Township Zoning Ordinance Section 606.2(e), "Area and Setback Requirements" contains a note that explicitly states "[a]dequate consideration shall be given to impact on adjoining properties." The Township Master Plan's goals include "[t]o protect the character of established neighborhoods." The Board finds that it cannot allow the installation and use of an accessory structure in a front yard, with a front yard setback of 8 feet (where 80 feet is required, constituting 10% of the required minimum), with a side yard setback of 3.5 feet (where 12 is required, constituting approximately 30% of the required minimum), without severely undermining the intent and purpose of the Township's Zoning Ordinance and Master Plan. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested herein cannot be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township's Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 19th day of April, 2021 that the variance relief requested by the Applicants to construct the proposed Sports Court located in the front yard of the subject property, resulting in a 3.5 foot accessory structure side yard setback, a 9.5% accessory structure coverage, and an 8 foot accessory structure front yard setback, denied by this Board at its meeting of March 15, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 19th day of April, 2021.

Cal#3780-21, Ao Wu, 28 Parkview Drive, Millburn

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

Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**AO WU
BLOCK 810, LOT 34**

**CAL. NO. 3780-21
APRIL 19, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of variance relief requested by the Applicant, Ao Wu (hereinafter the “Applicant”), in Calendar No. 3780-21 for the construction of a full asphalt driveway not containing previously approved grass paver strips, on property located at 28 Parkview Drive, Millburn, New Jersey, known and designated as Lot 34, Block 810 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 March 15, 2021, in Calendar No. 3780-21 filed by the Applicant to permit the construction of a full asphalt driveway not containing previously approved grass paver strips, on property located at 28 Parkview Drive, Millburn, New Jersey, known and designated as Lot 34, Block 810 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 March 15, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel and together with Catherine Mueller, P.E., testified in support of the application. At the March 15, 2021 hearing, Sheila Varki, 21 Undercliff Road, Millburn, New Jersey, Susan Guerin, 25 Undercliff Road, Millburn, New Jersey, and Alper Ozocak, 27 Undercliff Road, Millburn, New Jersey, appeared without counsel in opposition to the application. All witnesses were sworn before the Board. No professional planning testimony was presented by the Applicant in support of the application.

2. The Applicant is the owner of the subject property, which is located in the R-6 zone district. The Applicant proposes to construct a full asphalt driveway not containing previously approved grass paver strips, in lieu of an asphalt driveway with grass paver strips that

the Applicant previously received approval for building permits from the Township in connection with the construction of a single family home at the property. The Township Zoning Ordinance requirements for the R-6 zone permit a maximum 30% front yard impervious surface coverage. The proposed asphalt driveway would result in a front yard impervious surface coverage of 44.5%. Therefore, variance relief is required.

3. The Board received and considered the following documents supplied by the Applicant in support of the application: Variance plans prepared by Page-Mueller Engineering Consultants, P.C., consisting of two sheets, dated November 3, 2020, which was admitted into evidence as A-1 on March 15, 2021.

4. The Applicant is currently in the process of constructing a single family residence on the subject property, with a front-loaded, two-car garage and an asphalt driveway with grass paver strips. The Applicant proposes to change the approved driveway design on the subject property from an asphalt driveway with grass paver strips to a full asphalt driveway, which requires variance relief for impervious front yard coverage.

5. The Applicant testified that he currently lives at 1599 Grouse Lane, Mountainside, New Jersey, and plans to move to the subject property upon completion of the aforementioned construction. The Applicant further testified that he desires variance relief to construct a full asphalt driveway because he wants his driveway to accommodate the width of two cars for vehicular parking and maneuvering purposes associated with his front-loaded, two car garage.

6. The Applicant's Engineer, Catherine Mueller, P.E., was qualified as an expert by the Board. Ms. Mueller testified that the original plans depicted an asphalt driveway with grass paver strips, and that the plans have been modified to include a proposed, full asphalt driveway without the grass paver strips. Ms. Mueller testified that the subject property is undersized in width for the R-6 zone, where 60 feet is required and the subject property is just over 50 feet in width. Ms. Mueller testified that due to the front yard impervious surface coverage restrictions, coupled with the property's lot size and location of the home's front stoop and walkway, the Applicant is only able to have a driveway that is 12 feet in width. Ms. Mueller testified that she and the Applicant originally designed the driveway to include grass strips because it would not require variance relief, fully intending to make an application to the Board for variance relief so to permit a full asphalt driveway subsequent to the issuance by the Township of building permits for the originally designed residential home. Ms. Mueller also testified that the original house plans were submitted to the Township Building Department in this manner so that the Applicant could save time by commencing construction while simultaneously seeking the desired variance relief relating to the driveway. Ms. Mueller testified that the full asphalt driveway resulted in a front yard impervious surface coverage of 44.5% where 30% was the maximum amount allowed. Ms. Mueller further testified that the garage doors together are approximately 17.5 feet wide, and the proposed full asphalt driveway would be approximately 20 feet wide.

7. During the course of the hearing on the application, Board members expressed concerns about the Applicant's inability to identify any other house in the area with a front-

loaded, two-car garage on a property with a narrow lot width. This condition results in there being “more garage than house” in the front of the subject property, with the proposed full asphalt driveway containing 800 square feet of pavement on a 2,000 square foot front yard. The Board additionally expressed displeasure that fully-compliant plans were submitted by the Applicant and approved by the Township despite the Applicant’s intentions at the time to subsequently seek variance relief from the Board during construction, and that construction on the subject property proceeded based on these plans approved by the Township that did not include the then-contemplated variance relief. If a property owner intends to apply for variance relief in connection with a project, he or she should not wait until after construction commences before seeking said relief.

8. The Applicant’s neighbors, Sheila Varki, Susan Guerin, and Alper Ozocak, testified in opposition to the application, essentially opining that a full asphalt driveway would appear out of character with the neighborhood given the Applicant’s chosen house and garage design presently under construction.

9. The Board finds that the Applicant has not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(c)(1) and concludes that it is not appropriate to grant the variance relief requested by the Applicant to permit a full asphalt driveway not containing the aforementioned grass pavers. The need for variance relief is not related to any conditions affecting the subject property, but rather is a self-created hardship due to the Applicant’s choice of design for the subject property and subsequent attempt to modify fully compliant plans that were already approved by the Township and did not require any variance relief. Although the subject property is undersized for its width, it is larger than other properties in the R-6 zone. The Applicant’s previous plans which included an asphalt driveway with grass strips fully conformed to the requirements of the R-6 zone and did not require variance relief. The Board concludes that allowing the full asphalt driveway not containing the aforementioned grass pavers would not be in-line with the purpose and intent of the front yard maximum impervious coverage requirements of the R-6 zone and would not further the Township’s zone plan or zoning ordinances, especially in light of the fact that original plans were submitted that fully complied with the Township zoning ordinances, and only subsequent to construction occurring on the subject property did the Applicant seek to revise the plans in a way that created the need for variance relief. Therefore, the Board concludes that the granting of the variance relief requested herein cannot be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The Applicant did not meet his burden of proof for variance relief under N.J.S.A. 40:55D-70c(1) or (2).

NOW, THEREFORE, BE IT RESOLVED on this 19th day of April, 2021 that the variance relief requested by the Applicant to construct a full asphalt driveway without grass pavers on the subject property, resulting in a front yard impervious surface coverage of 44.5%, denied by this Board at its meeting of March 15, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 19th day of April, 2021.

Cal#3781-21, Bryan Solpietro, 11 Crescent Place, Short Hills

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

- Jyoti Sharma – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**BRYAN SOLPIETRO
BLOCK 1604, LOT 13**

**CALENDAR NO. 3781-21
APRIL 19, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Bryan Solpietro, to permit the installation of a generator in the front yard of the property located at 11 Crescent Place, Short Hills, New Jersey, known and designated as Lot 13, Block 1604 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 15, 2021 in Calendar No. 3781-21 filed by Bryan Solpietro (hereinafter referred to as the “Applicant”) for permission to install a generator in the front yard of the property located at 11 Crescent Place, 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-5 zone. The Applicant wishes to install a generator next to the electrical panel and gas meter located in the front corner of the subject property. Pursuant to Section 609.1(f)(1) of the Township zoning ordinance, generators are only permitted within a property’s side yard or rear yard. The proposed generator would be located in

the front yard of this property. Therefore, variance relief is required pursuant to N.J.S.A. 40:55D-70c.

3. The subject property is owned by the Applicant and his wife, Karrie Solpietro, and contains a single family residence. The property currently contains an existing nonconformity due to the location of the house on the property. Namely, a side yard setback of only 6.9 feet where 12 feet is the minimum side yard setback requirement for the R-5 zone pursuant to the Township zoning ordinance.

4. The Applicant testified that he is unable to place the generator in a conforming location within one of the property's side yards due to the aforementioned nonconforming side yard setback of 6.9 feet; existing underground drainage pipes located within one of the property's side yards; and two (2) retaining walls and a driveway located within the property's other side yard. The Applicant also testified that he was unable to place the generator in the rear yard of the property due to existing trenching located within that area.

5. The Applicant proposes to place the generator in the back corner of the property's front yard where the electrical panel and gas meter servicing the home on the property are already located. The proposed location of the generator would have a 59.7 foot front yard setback, which is more than the minimum front yard setback requirement of 40 feet for the R-5 zone pursuant to the Township zoning ordinances. The Applicant also testified that he would provide screening for the generator through the use of landscaping including evergreen shrubs, and would paint the generator a dark color to make sure it would not be visible from the street.

6. The Board finds that the Applicant has satisfied the statutory criteria for variance relief as required by N.J.S.A. 40:55D-70c and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the installation of a generator in the front yard of the subject property. The Board is satisfied that the need for variance relief to permit the proposed generator is due to the conditions affecting the subject property; the placement of the dwelling and other structures on the property; and the inability to place the generator in a different location on the property without requiring the same or additional variance relief. The proposed generator will be fully screened from view from Crescent Place by the Applicant's planting and maintaining landscaping including evergreen shrubs and by painting the generator a dark color. The installation of the landscaping will also serve to mitigate any noise impacts associated with the proposed generator. The Board finds these combined factors present an exceptional situation uniquely affecting the property and justifying the requested variance relief. The Board also concludes, for all the reasons contained herein, that the proposed generator will not result in a substantial detriment to the zone plan, zoning ordinance or public good. 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).

NOW, THEREFORE, BE IT RESOLVED on this 19th day of April, 2021 that the variance relief requested by the Applicant to install a generator in the front yard of the property located at 11 Crescent Place, Short Hills, granted by this Board at its meeting of March 15, 2021,

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

1. The proposed generator shall be fully screened from view from Crescent Place by the Applicant's installation of landscaping and evergreen shrubs of at least four (4) feet above the root ball.
2. The Applicant shall insure that all new plantings, as well as existing trees and landscaping, shall be maintained in order to fully screen the view of the proposed generator from Crescent Place.
3. The Applicant shall paint the proposed generator a dark color to further insure that it will not be visible from Crescent Place.
4. The Applicant shall be bound to comply with the representations made before this Board, including as set forth in the Board's findings of fact contained in this resolution, and as contained in the application materials submitted in support of the application. 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 19th day of April, 2021.

APPLICATIONS

CAL#3768-20, LAUREN & SPIRO SKOURAS, 10 ALEXANDER LANE, SHORT HILLS

Samantha Alfonso, Attorney for the applicant, stated her appearance. She stated that the applicants revised their application based on comments and concerns expressed by the Board at a previous meeting.

The lot coverage variance request has been reduced from the originally requested 37.6% to 36.7% where 35% is permitted. The maximum accessory structure coverage has been reduced from 23.9% to 22% where 20% is permitted.

Entered as A-1: google map image of pools in the surrounding area of 10 Alexander Land

Spiro & Lauren Skouras appeared and were sworn. They gave a brief description of their proposal and their request for variance relief. They moved here from the city and love the family atmosphere of Millburn/Short Hills. They installed a Hampton style in-ground pool and soon realized that the style was not functional for their active children. They love the aesthetics of the pool but have found that it is not safe for their needs. They are proposing a small patio area as well as a small pool surround in order to provide a safe outdoor area for their family.

Lauren Skouras spoke to exhibit A-1 and the existing in-ground pools in the immediate vicinity of their property. They used this data to decide on a size and scale of pool. Most of the pools are 20 feet by 40 feet.

Joseph Polacek, Landscape Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He spoke to the evergreen screen around the north, east and south side property lines. The plan consists of a combination of over 60 deciduous and coniferous trees as well as over 40 different shrubs.

Jessica Glatt feels it is a very attractive landscaping plan. She has some concerns since this is an oversized lot for the R-4 zone with an in-ground pool and patio area that was constructed on the site to the maximum allowable coverages. The hardship is a self-created one.

Steve Togher stated that he went back out to the sight and feels that this is the only logical solution to the problem. They have scaled back on their original requests. This comment was echoed by Wolfgang Tsoutsouris.

Upon a motion made by Wolfgang Tsoutsouris, a second by Steve Togher, and with a roll-call vote as follows:

Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – no
Joseph Steinberg – yes

Cal#3768-20, Spiro & Lauren Skouras, 10 Alexander Lane, was **APPROVED**.

CAL#3788-21, MELISSA RODRIGUEZ, 8 WELLS LANE, SHORT HILLS

Thomas Singer, Architect, P. P., and Melissa Rodriguez, appeared and was sworn. The applicant would like to install a patio and expand an existing deck. Proposal is in violation of:

606.2e1g – Rear yard unoccupied
609.1b – Accessory structures shall be in rear yard only

Thomas Singer's credentials were presented and accepted by the Board. He gave a brief description of the applicant's proposal. Variance relief is required to permit a rear yard unoccupied of 19.6% where 25% is required. In addition, variance relief is required to allow a portion of the proposed patio to be in the side yard area, where the ordinance requires accessory structures to be in the rear yard only.

The lot configuration and the location of the dwelling on the property cause the need for both variances. The rear yard unoccupied area is already non-conforming. Thomas Singer stated that the lot configuration creates a hardship and the granting of variance relief will not create a substantial detriment to the zone plan or the surrounding area. He respectfully requested a favorable vote by the Board.

Xiaoluo Yuan, 8 Wyndham Road, asked the applicant if she intends to install a fence or any landscaping along the common property line. Ms. Rodriguez indicated that she plans to install a cedar fence along the property line.

Zhiyuan Wang, 8 Wyndham Road, stated that he is concerned with the potential negative impact that this proposal will have on his property. The applicant's property is much higher than his and the proposed deck will overlook their back yard.

Overall, Board members felt the installation of a patio in the side yard would be very intrusive to the adjoining property.

The Board voted on the deck and patio separately.

Upon a motion to approve the deck request made by Wolfgang Tsoutsouris, a second by Steve Togher, and with a roll-call vote as follows:

Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Chandru Harjani – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3788-21, Melissa Rodriguez, 8 Wells Lane, rear yard unoccupied variance relief for the construction of a deck was **APPROVED** with the condition that the applicant install a 6 foot privacy fence along the common property line with 8 Wyndham Road.

Upon a motion to deny the patio request made by Steve Togher, seconded by Jyoti Sharma, and with a roll-call vote as follows:

Jyoti Sharma – yes
Steve Togher – yes

Wolfgang Tsoutsouris – no
Amy Lawrence – yes
Chandru Harjani – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3788-21, Melissa Rodriguez, 8 Wells Lane, accessory structure location variance relief for the installation of a deck was **DENIED**.

CAL#3789-21, JORDAN BETTMAN, 1 MINNISINK ROAD, SHORT HILLS

Jordan & Lauren Bettman, John James, Architect, and Richard Keller, P. E., appeared and were sworn. The applicant would like to install a pool/pool house/fence and gates on the property. Proposal is in violation of:

609.5 – Accessory structure front setback on a corner lot
609.1c – Maximum accessory coverage
609.6a – Front yard fences are prohibited

John James' credentials were presented and accepted by the Board. He gave a brief description of the applicants' proposal. He spoke to sheet T-02 of the submitted plans. The property is a corner lot at the intersection of Minnisink Road and Highland Avenue. The pool is proposed in the rear corner of the property, which is the only logical placement for the pool. A small triangular portion of the pool encroaches into the required 80 foot setback. This small portion is 75.3 feet off the Minnisink Road front lot line. In addition, the pool fence will encroach into the front yard area.

Entered as A-1: set of 10 photos of the existing property

Mr. James stated that there are mature evergreen trees along Minnisink Road that are directly in front of the pool house and completely conceal the pool house and pool from street view.

Richard Keller's credentials were presented and accepted by the Board. He spoke to the applicants' proposal and the variance relief being requested.

Entered as A-2: aerial photo nearmap.com (3/21/21)

Richard Keller indicated that the property is a uniquely shaped corner lot which creates a hardship as it relates to locating accessory structures. He has worked diligently with the applicants and John James to present an application that offers the applicants the outdoor area they would like while keeping the variance relief required to a minimum. The improvements proposed are consistent with the established character of the neighborhood and the application will not cause a substantial detriment to the public good and will not impair the intent and purpose of the zone plan and zoning ordinance.

Gregg Grunstra, 2 Minnisink Road, appeared and was sworn. He stated that he did not receive formal notice of tonight's meeting. He stated that he raised concerns about this project when the applicant went before the HPC. He feels that the proposal will be very visible from the street and does not believe the testimony that landscaping will adequately screen these structures. He does not feel a front yard fence is in-keeping with the historic nature of these properties and does not fit the aesthetics of the area. He is also concerned with the on-going and potential drainage problems in the area.

Richard Keller referred to the aerial map in order to show the location of the proposed pool in relation to 2 Minnisink Road. He estimated that there is approximately 300 feet from the proposed pool to the front stoop of 2 Minnisink. He also stated that, if approved, stormwater management will be required to be provided to the Township Engineering department for review and approval.

John James indicated that the applicant should not be held responsible for on-going drainage problems caused by other properties. The applicants will be held responsible for all Township Engineering requirements. The screening proposed will provide a buffer that will adequately screen the project.

Eileen Davitt, Board Secretary, indicated that the applicant provided proof of service indicating that the required notices were sent via certified mail on April 1, 2021.

Overall, Board members were supportive of the application.

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

Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Chandru Harjani – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3789-21, Jordan Bettman, 1 Minnisink Road, was **APPROVED**.

CAL#3790-21, BRIAN LAU, 80 CYPRESS STREET, MILLBURN

The matter was carried to June 7, 2021, with no further notice required. The applicant consented to an extension of time for decision until June 30, 2021.

CAL#3791-21, CORI & JASON WILF, 30 MONTVIEW AVENUE, SHORT HILLS

The matter was carried to June 7, 2021, with no further notice required. The applicant consented to an extension of time for decision until June 30, 2021.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Amy Lawrence, seconded by Wolfgang Tsoutsouris, and carried with a unanimous voice vote. (10:25 PM)

Eileen Davitt
Board Secretary

Motion: CP
Second: JSG
Date Adopted: 6/21/21