

Township of Millburn
Minutes of the Zoning Board of Adjustment
May 3, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, May 3, 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
Jyoti Sharma
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#3783-21, Ying Li, 89 Pine Street, Millburn

Upon a motion made by Craig Ploetner, 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

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 Applicant, Ying Li (hereinafter the “Applicant”), in Calendar No. 3783-21 to permit the widening of a residential driveway as well as the restoration and enclosure of an existing side porch, on property located at 89 Pine Street, Millburn, New Jersey, known and designated as Lot 3, Block 203, 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 April 5, 2021 as to Calendar No. 3783-21 to permit the widening of a residential driveway as well as the restoration and enclosure of an existing side porch, on property located at 89 Pine Street, Millburn, New Jersey, known and designated as Lot 3, Block 203, 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 April 5, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel and testified in support of the application.
2. The Applicant is a licensed Architect and provided sworn testimony in that capacity and in support of the application. No members of the public testified in opposition to the application.
3. The Applicant is the owner of the subject residential property, which is located in the R-5 zone district. The Applicant proposes to restore and enclose an existing side porch on the subject property and to widen the property’s driveway (which entails moving an existing retaining wall).
4. The subject property contains a single family residence with a detached two-car garage. Beyond its condition as an undersized lot for the R-5 zone district, the subject property contains three (3) other existing nonconforming conditions pertaining to the Township Ordinances for the R-5 zone: (a) a minimum lot width of 75 feet is required and the subject property has an existing lot width of 58.33 feet; (b) a maximum lot coverage of 35% is permitted and the subject property has an existing lot coverage of 39%; and (c) a minimum combined side yard setback of 35% of the lot width is required and the subject property has an existing combined side yard setback of 27.6%. The proposed application would result in a lot coverage of 40% and a proposed combined side yard setback of 27.6%. Therefore, variance relief is required.
5. The Applicant testified that she prepared the plans submitted in support of the application. According to the Applicant, the side porch is in a substantially deteriorated

condition (with a rotted structure and leaking roof) that requires restoration. The Applicant also wishes to widen her driveway and move the nearby retaining wall to allow for her car door to open when another car is parked beside it. The Applicant testified that widening the driveway by four feet and moving the retaining wall would also allow for the bushes on the neighboring property to grow uninhibited.

6. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c1 and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed restoration and enclosure of the existing side porch as well as the proposed widening of the driveway and relocation of the existing retaining wall. The need for variance relief is related to several already-existing conditions affecting the property, dwelling and other site improvements. Specifically, the subject property's undersized lot area and lot width creates a significant hardship and substantially impairs the reasonable development of this property. 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 Applicant. Although the proposed porch restoration and enclosure as well as the widening of the driveway and relocation of the retaining wall require variance relief as set forth above, the deviation from the requirements are modest in light of the inability to relocate the porch, driveway, or retaining wall anywhere else on the property without requiring the same or additional variance relief. The application will not result in any increase in the already-existing combined side yard setback nonconformance and will only result in a 1% increase in lot coverage. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed use is negligible and not a substantial detriment. Therefore, for the reasons stated above, 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 3rd day of May, 2021 that the variance relief requested by the Applicant in connection with the proposed widening of the driveway and relocation of a retaining wall, as well as the proposed restoration and enclosure of a side porch, resulting in a total lot coverage of 40% and a combined side yard setback of 27.6%, on property located at 89 Pine Street, Millburn, New Jersey, granted by this Board at its meeting of April 5, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.

2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant at the public hearing, as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

3. 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 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 3rd day of May, 2021.

Cal#3793-21, Upneet Dhiman, 1 Exeter Road, Short Hills

Upon a motion made by Joy Siegel, seconded by Wolfgang Tsoutsouris, 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

the following memorializing resolution was adopted:

**UPNEET DHIMAN
BLOCK 4405, LOT 9**

**CAL. NO. 3793-21
MAY 3, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the applicant, Upneet Dhiman (hereinafter the “Applicant”), in Calendar No. 3793-21 to permit the installation of a grade-level patio and outdoor play structure (swing set) on property located at 1 Exeter Road, Short Hills, New Jersey, known and designated as Lot 9, Block 4405, 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 April 5, 2021 as to Calendar No. 3793-21 to permit the installation of a patio and outdoor play structure (swing set) on property located at 1 Exeter Road, Short Hills, New Jersey, known and designated as Lot 9, Block 4405, 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 April 5, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel or expert witnesses, and provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicant and her husband are the owners of the subject property, located in the R-5 zone district. The Applicant proposes to install a patio and outdoor play structure (swing set – with dimensions of approximately 14 feet by 9 feet) on the subject property. The Township Zoning Ordinance requirements for the R-5 zone include a minimum 80 foot setback from the front lot line for accessory structures on a corner lot. The proposed patio and play structure require variance relief to permit a 50 foot front yard setback from Old Short Hills Road for the proposed patio, and a 60 foot front yard setback from Old Short Hills Road for the proposed outdoor play structure, each an accessory structure on a corner lot. Therefore, variance relief is required.

3. The Board received and considered the following as submitted by the Applicant in support of the application:

A. Property Survey prepared by Morgan Engineering & Surveying, consisting of one sheet identified as Sheet # 1 of 1, dated January 29, 2020;

4. The subject property, containing a detached single family residence, constitutes a corner lot per the Township Zoning Ordinance and is located at the intersection of Exeter Road and Old Short Hills Road.

5. The Applicant desires to install the proposed outdoor play structure so that her child can spend more time outdoors getting exercise, including during the current State of Emergency caused by the pandemic. The Applicant also wants to construct the aforementioned patio so she and her husband can spend more time enjoying their backyard space - and from that outside space be able to supervise their child using the proposed outdoor play structure. The Applicant has already begun installing a row of seven (7) foot tall evergreen trees to screen her property, and said landscaping would screen the proposed patio and outdoor play structure from view from the adjacent streets and properties.

6. The Board finds that the Applicant has 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 Applicant to permit the proposed patio and outdoor play structure. The need for variance relief is related to existing conditions affecting the existing dwelling, property, and site improvements. The subject property is a corner lot and there is no location on the subject property where the proposed outdoor play structure and/or patio can be located that would comply with the 80 foot minimum accessory structure setback for a corner lot. 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 Applicant. The deviations from the Ordinance standards requiring variance relief are modest, especially given the inability to relocate the proposed patio or outdoor play structure anywhere on the property without requiring the same or additional variance relief. The proposed patio and outdoor play structure will each be screened from view from the adjacent streets and surrounding properties by a minimum of five, four foot tall (above the root ball) emerald green arborvitae (at a planting height not less than four feet above the root ball) to be planted by the Applicant, including but not limited to plantings to the west and south of the swing set. The Board concludes that any negative impact on the surrounding neighbors from the proposed development is negligible and not a substantial detriment, especially given the existence of other patios and swing sets in the neighborhood. Therefore, for all the reasons stated above, 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 3rd day of May, 2021 that the variance relief requested by the Applicant to construct a patio and outdoor play structure (swing set) resulting in a 50 foot front yard setback from Old Short Hills Road for the proposed patio, and a 60 foot front yard setback from Old Short Hills Road for the proposed outdoor play structure, on property located at 1 Exeter Road, Short Hills, granted by this Board at its meeting of April 5, 2021, is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. The Applicant shall plant a minimum of five, four foot tall (above the root ball) emerald green arborvitae, two feet on center, to screen the proposed patio and outdoor play structure from view from the adjacent streets and properties.
2. The Applicant shall insure that all new plantings be maintained in order to screen the view of the patio and the outdoor play structure from the streets and surrounding properties.
3. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
4. The Applicant shall be bound to comply with the representations made before this Board by the Applicant at the public hearing, as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
5. The Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
6. The Applicant shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 3rd day of May, 2021.

APPLICATIONS

CAL#3779-21, ERICA & JAMES MOFFITT, 19 BAILEY ROAD, MILLBURN

Ying Li, Architect, and Erica & James Moffitt, appeared and were sworn. This is a carry-over application from the April 5, 2021 meeting. The applicant was asked to clarify their application as it relates to whether they were constructing a deck or a patio. Ms. Li indicated that the applicant will be constructing a deck.

Ms. Li gave a brief summary of the proposal and indicated that the applicants are proposing an addition to the rear of the house to accommodate kitchen on the first floor and a master suite above on the second floor. They are also proposing to construct a deck off the rear of the dwelling. There is also a large paved area in the rear of the property that the applicant will be removing in order to comply with the rear yard unoccupied requirement and reduce the overall lot coverage.

Ms. Li spoke to the variance relief being requested. The current house has not had any improvements since it was built in 1926. The kitchen is very small and the circulation within is poor. The existing detached 2-car garage and the driveway leading to it make any expansion impossible without the need for variance relief.

The deck is proposed to be constructed in line with the existing house and will have a setback of 9 feet where 12 feet is required. Floor area ratio relief is being requested to permit 39% where 36% is permitted. Finally, variance relief is being requested to allow lot coverage of 48% where 45% is permitted. The lot can adequately accommodate floor area ratio in excess of the allowable and will have no substantial impact on the streetscape or the surrounding homes.

Overall, Board members were in favor of the application.

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

- Craig Ploetner – yes
- Jyoti Sharma –yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Joseph Steinberg – yes

Cal#3779-21, Erica & James Moffitt, 19 Bailey Road, Millburn, “c” variance relief was **APPROVED**.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Joseph Steinberg – yes

Cal#3779-21, Erica & James Moffitt, 19 Bailey Road, Millburn, “d” variance relief was **APPROVED**.

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

The application was carried to June 7, 2021

CAL#3787-21, SAMANTHA & MARK MIELER, 49 PINE STREET, MILLBURN

Cinder Boerner-Lay, Architect, Samantha & Mark Meiler, appeared and were sworn. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

606.2e1e1a – Side yard setback
606.2e1e1b – Additional side yard setback
606.2e2b – Lot coverage
606.2e1f – Combined side yard setback

Ms. Boerner-Lay’s credentials were presented and accepted by the Board. She gave a brief description of the applicants’ proposal. She stated that the proposal is to expand the first floor to accommodate a family room, breakfast area and kitchen area. There is a proposed second floor addition of a master bedroom suite over the newly proposed first floor addition.

Entered as A-1: 5 photos of subject property/1 google photo

Ms. Boerner-Lay spoke to the variances being requested. She stated that this 10,089 SF lot is undersized for the R-5 zone, which has a minimum lot size of 14,500 SF. In addition the lot width is deficient at 50 feet where the minimum is 75 feet. The undersized lot width causes the need for side yard setback and combined side yard setback variance relief.

Overall, Board members felt the undersized lot width and lot area created a hardship for the applicant and limited their ability to construct an addition to the dwelling. They feel the addition will add to the character of the area and will not have no negative impact on the area.

Upon a motion made by Jessica Glatt, a second by Craig Ploetner, 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#3787-21, Samantha & Mark Meiler, 49 Pine Street, Millburn, was **APPROVED**.

CAL#3795-21, EDWARD & DANIELLE SHANNON, 9 KILMER DRIVE, SHORT HILLS

William Figdor, Architect, and Edward & Danielle Shannon, appeared and were sworn. The applicants would like to construct a 2nd floor addition to their dwelling. Proposal is in violation of:

606.2e1f – Combined side yard setback

William Figdor’s credentials were presented and accepted by the Board. He gave a brief description of the applicants’ proposal. He stated that the applicant is proposing a 2nd floor addition over a portion of the dwelling. There is an existing non-conforming side yard setback on the right side of the property. This combined with the proposed 2nd floor setback on the left side creates the need for combined side yard setback variance relief. All other setback requirements are conforming.

Julius Haas, 11 Kilmer Drive, appeared and was sworn. He stated that the garage is not used for parking cars. There are always 2 cars parked in the driveway which encroaches onto his property. He also stated that the new 2nd floor will create stormwater issues on his property which is slightly lower than the applicants’ property.

Mr. Haas was informed that stormwater and drainage matters are addressed by the Township Engineer upon receipt of building plans. It is up to the Engineer to determine what, if any, mitigation factors must be taken.

Upon a motion made by Joy Siegel, a second by Steve Togher, 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#3795-21, Edward & Danielle Shannon, 9 Kilmer Drive, Short Hills, was **APPROVED**.

BUSINESS

Board Attorney, Rob Simon, informed the Board that an appeal was filed against the Township Zoning Board in Superior Court in late 2020 but was not served to this Board until very recently. He stated that he will respond accordingly to the summons.

ADJOURNMENT

A motion to adjourn was made by Craig Ploetner, seconded by Steve Togher, and carried with a unanimous voice vote. (8:41 PM)

Eileen Davitt
Board Secretary

Motion: WT
Second: JSi
Date Adopted: 6/21/21