

Township of Millburn
Minutes of the Zoning Board of Adjustment
June 3, 2019

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 3, 2019** at 7:00 PM in Millburn Town Hall.

Chairman Joseph Steinberg opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Jyoti Sharma
Joy Siegel
Steve Togher
Wolfgang Tsoutsouris
Kevin Wenzel
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

Gail Fraser, Board Attorney
Eric Fishman, Court Reporter
Eileen Davitt, Zoning Officer/Board Secretary

MEMORIALIZATIONS

Cal#3665-19, Stephanie & Howard Vogel, 35 Sinclair Terrace, Short Hills

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

Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes

the following memorializing resolution was approved:

**STEPHANIE & HOWARD VOGEL
BLOCK 4206, LOT 17**

**CALENDAR NO 3665-19
JUNE 3, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Stephanie and Howard Vogel, in Calendar No. 3665-19 for permission to construct a new single family dwelling on property

located at 38 Sinclair Terrace, Short Hills, known and designated as Lot 17, Block 4206 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on May 6, 2019 in Calendar No. 3665-19 filed by Stephanie and Howard Vogel (hereinafter referred to as the “Applicants”) for permission to construct a new single family dwelling on property located at 38 Sinclair Terrace, Short Hills, New Jersey known and designated as Lot 17, Block 4206 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. Robert Simon, Esq. represented the Applicants. Ronald Gasiorowski, Esq. appeared on behalf of Mr. & Mrs. Freund, of 48 Sinclair Terrace and represented to the Board at the outset of the hearing that the Freund’s objections to the application were withdrawn based upon the Applicants’ plan revisions which were acceptable to Mr. & Mrs. Freund. Ronni Weinstein of 20 Dorison Drive, Laura Janay of 35 Sinclair Terrace and Douglas Segal of 21 Sinclair Terrace testified as interested parties in favor of the application.

2. The Applicants are the owners of the subject property which is located in the R-3 zone district. The R-3 zone requirements include the following: maximum 13% building coverage, minimum 41.40 foot front yard setback based on the average front yard setback within 500 feet on the same side of the street, minimum 25 foot side yard setback for second story or buildings over 18 feet in height, minimum 35% combined side yard setback, and minimum 28 foot side yard setback for side-facing garages. The proposed new single family dwelling with attached garage would result in 14% building coverage, 35.36 foot front yard setback based on the average front yard setback within 500 feet on the same side of the street, 15.93 foot side yard setback for second story or buildings over 18 feet in height, 30.86% combined side yard setback, and 20.22 foot side yard setback for the side-facing attached garage. Therefore, the Applicants require variance relief.

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

A. Plans prepared by Appel Design Group, consisting of four sheets, ZB-1 through ZB-4, dated October 19, 2018 and revised through April 23, 2019;

B. A one sheet Variance Plot Plan prepared by Casey & Keller, Inc. dated December 20, 2018 and revised through April 18, 2019;

C. A Tax & Zoning Map exhibit prepared by Casey & Keller, Inc., which was admitted into evidence as A-1;

D. Photo Board #1 prepared by Casey & Keller, Inc., which was admitted into evidence as A-2;

E. A Satellite Photo exhibit prepared by Casey & Keller, Inc., which was admitted into evidence as A-3;

F. A marked-up version of Sheet ZB-3 of the Appel Design Group plans, which was admitted into evidence as A-4; and

G. A marked-up version of Sheet ZB-1 of the Appel Design Group plans, which was admitted into evidence as A-5.

4. Richard Keller, Professional Engineer and Professional Planner, and Joseph Cestaro, Registered Architect, testified in support of the application. The Board also heard testimony from the following interested parties in favor of the application: Ronni Weinstein of 20 Dorison Drive, Laura Janay of 35 Sinclair Terrace, and Douglas Segal of 21 Sinclair Terrace.

5. The subject property is located in the R-3 zone which requires a minimum lot area of 29,000 square feet, whereas the property has a 24,343 square foot lot area. The subject property, as well as the adjacent lot at 48 Sinclair Terrace which is owned and occupied by Mr. & Mrs. Freund, are smaller lots more in keeping with the lot size of properties in the R-4 zone district than the R-3 zone district in which they are located. Both the Applicants' and the Friends' lots are also much smaller than the rest of the lots in the neighborhood which are oversized lots, many with lot areas well in excess of the required minimum. The existing dwelling on the Applicants' property is a small 1948 ranch home, which is out of character with the size and scale of most of the homes in the neighborhood. The existing dwelling, with its partial basement and low ceiling height, presents limited potential for renovating the home effectively and efficiently for a modern family without the need for variance relief. In addition to the pre-existing nonconforming undersized lot area of the property, the property has an irregular shape, with an angled frontage on Sinclair Terrace and an easterly side property line which tapers to a lot width of less than 85 feet at the rear property line. Furthermore, the existing dwelling also has a pre-existing nonconforming 13.03 foot side yard setback on the right side of the dwelling and a pre-existing nonconforming 24.66%, or 32.70 foot, combined side yard setback. Because the property abuts South Mountain Reservation along the right property line, it gives the impression of being much larger.

6. Originally, the Applicants' architect designed the proposed new home as an L-shaped dwelling with an automobile courtyard in the front of the property which would provide access to an attached garage. That original design would have had a greater impact on the neighbors residing at 48 Sinclair Terrace because the home would be situated much farther back on the property, placing it within the neighbors' view and also blocking the neighbors' view of the South Mountain Reservation. The proposed revised design takes advantage of the unusual shape of the property and its long curving frontage on Sinclair Terrace by allowing for the construction of a home which addresses the needs of the Applicants, while respecting the views of South Mountain Reservation from the neighboring property at 48 Sinclair Terrace. The

Applicants also propose to bias the new construction towards the right side of the property by shifting the driveway and attached garage to the right side of the property abutting the wooded South Mountain Reservation to further limit the impact of the proposed improvements on the nearest neighbors. Although the placement of the proposed new home requires variance relief, it serves to balance the size and shape limitations of the property against the needs of the Applicants and their nearest neighbors.

7. With respect to the front yard setback of the proposed dwelling, the main house would provide a 56.98 foot front yard setback which conforms to the average 41.40 foot front yard setback. However, a 45 square foot triangular piece of the angled side-facing attached garage would provide a 35.36 foot front yard setback. The proposed six-foot deviation would not be perceptible to the naked eye and the placement of the front façade of the home and garage would mimic the curve in the roadway. All three bays of the side-facing garage are accessible, but the garage bay with the most restricted access would be used for storage of bikes and household paraphernalia.

8. Although the proposed 14%, or 3,405 square foot, building coverage exceeds the allowable 13% building coverage, the deviation is limited to 240 square feet. If this property had a conforming lot area, the building coverage of the proposed dwelling would be a conforming 11.75%. Despite the need for variance relief to permit the proposed deviation from building coverage, the proposed home would provide a conforming floor area ratio and lot coverage. Moreover, the proposed 14% building coverage allows for the construction of a dwelling which is more consistent with the size and scale of other homes in the neighborhood.

9. The existing home has a pre-existing nonconforming 13.03 foot one-story side yard setback on the right side of the property. In order to provide a conforming second story side yard setback adjacent to the neighboring property to the west at 48 Sinclair Terrace, the only adjoining residential neighbors, the Applicants have positioned the proposed new home so that it remains biased towards the right, or east, side of the property which abuts the South Mountain Reservation. As a result, the proposed new home would provide a 15.93 foot side yard setback on the right side of the property. The proposed side yard setback would meet the R-4 zone district requirement for the side yard setback for the first story. However, the 15.93 foot second story side yard setback falls short of the 25 foot second story side yard setback required in the zone district. The proposed deviation is limited to an encroachment of 125 square feet, which would not be apparent from the street because adjacent land to the right is the undeveloped wooded South Mountain Reservation.

10. The variance to permit a 30.86%, or 40.93 foot, combined side yard setback is the result of the long curving front property line which impacts upon the calculation for combined side yard setback. Although the Applicants require variance relief for combined side yard setback, the proposed combined side yard setback would come closer to a conforming combined side yard setback than the 24.66%, or 32.70 foot, combined side yard setback of the existing dwelling, which has a placement much closer to the street and to the neighboring property at 48 Sinclair Terrace. Again, the proposed deviation from the required combined side yard setback

will not be perceptible from the street because it is adjacent to the South Mountain Reservation, an undeveloped wooded area.

11. With respect to the proposed 20.22 foot side yard setback for the side-facing garage, the need for variance relief is a by-product of the tapering side property line, as well as the desire to place the proposed dwelling on the property in a location that avoids any impact on the adjacent neighbors at 48 Sinclair Terrace. The proposed side-facing garage conceals the garage doors from view from Sinclair Terrace, which will also serve to benefit the streetscape.

12. Richard Keller, the Applicants' Professional Planner, testified that the proposed variances satisfy the positive and negative criteria for the granting of variance relief under N.J.S.A. 40:55D-70c(1) or c(2). The need for variance relief for front yard setback, combined side yard setback, second story side yard setback, and side yard setback for the side-facing garage are the result of the irregular shape of the property with its long, angled front property line and easterly side property line which tapers towards the rear of the property, satisfying the criteria for variance relief under N.J.S.A. 40:55D-70c(1). The main dwelling provides a front yard setback substantially in excess of the required average front yard setback, while the deviation from the required front yard setback is limited to a 45 square foot portion of the attached three-car garage. As for combined side yard setback, although the Applicants require variance relief, the proposed dwelling would be closer to the required combined side yard setback than the existing dwelling on the property. The proposed variance to permit a 15.93 foot second story side yard setback allows the Applicants to shift the proposed dwelling away from the nearest neighbors to the left in order to provide a conforming second story side yard setback on the west side of the property, while the 125 square foot encroachment on the right side of the property would not be perceptible from the street. The proposed 20.22 foot side yard setback for the three-car, side-facing garage is also the result of biasing the proposed dwelling to the right to avoid any impact on the nearest neighbors to the west.

13. Mr. Keller also testified that the proposed variance for building coverage may be granted under N.J.S.A. 40:55D-70c(2) because it satisfies certain purposes of the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 et seq., including purpose 2(a) – the promotion of the general welfare because the proposed dwelling would be more consistent with the streetscape than the existing home, purpose 2(c) - the promotion of adequate light air and open space by shifting the home away from the adjacent residential property to the left, and purpose 2(e) – the establishment of appropriate densities contributing to the well-being of neighborhoods because the proposed dwelling would be a more appropriately sized home for this R-3 neighborhood than the small ranch dwelling on the property with its front facing garage.

14. With respect to the negative criteria, the Applicants' planner, Richard Keller, testified that the proposed new single-family home would not result in a substantial detriment to the public good or a substantial impairment of the zone plan and zoning ordinance. Specifically, the proposed dwelling, while still smaller than many of the other homes in this R-3 neighborhood, would be more in keeping with the homes in the neighborhood than the existing, outdated, undersized ranch dwelling. To illustrate, he testified that the neighboring property to the left, also an undersized lot in the R-3 zone, has a building coverage of 14%. Mr. Keller

testified that reducing building coverage of the proposed home even further to provide a conforming building coverage on the Applicants' property would be inconsistent with the neighborhood. If this lot had a conforming lot area, the building coverage of the proposed home would be a conforming 11.75%. The main massing of the proposed home would be set back farther on the property than the existing dwelling. Despite the undersized lot area of the property, the proposed dwelling would provide a conforming floor area ratio and lot coverage. In addition, the proposed new home would satisfy one of the goals expressed in the 2018 Master Plan Reexamination Report that the development of properties promotes the character of established residential neighborhoods.

15. Various neighbors advised the Board of their opinion that the existing home is out of keeping with the neighborhood and the proposed home would be a vast improvement to the streetscape and the neighborhood as a whole.

16. The Board concludes that the variance relief requested by the Applicants may be granted. The Board is satisfied that the need for variance relief for front yard setback, combined side yard setback, second story side yard setback and side yard setback for the side-facing garage are the result of the irregular shape of the property with its elongated, angled front property line and easterly side property line which tapers towards the rear property line, as well as a pre-existing nonconforming lot area. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The Board notes that if this property had a conforming lot area, the need for building coverage variance relief would be eliminated. The Board is satisfied that the benefits of granting variance relief to permit a 14% building coverage outweighs the detriments associated with the deviation from the required building coverage. The placement of the proposed dwelling is biased towards the right side of the property adjacent to South Mountain Reservation to eliminate any impact on the nearest neighboring residential lot to the west. As a result, the proposed home will not result in any substantial negative impact on the light, air or open space of the adjoining neighbors. In addition, the Applicants' property gives the impression of a much larger lot due to the undeveloped wooded South Mountain Reservation which borders the Applicants right property line. The Board is satisfied that the proposed single-family dwelling 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 3rd day of June, 2019 that variance relief to permit the construction of a new single-family home with attached three-car garage resulting in 14% building coverage, 35.36 foot front yard setback based on the average front yard setback within 500 feet on the same side of the street, 15.93 foot side yard setback for second story or buildings over 18 feet in height, 30.86% combined side yard setback, and 20.22 foot side yard setback for the side-facing attached garage, granted by this Board on May 6, 2019 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 one sheet Variance Plot Plan prepared by Casey & Keller, Inc. dated December 20, 2018 and revised through April 18, 2019 and the plans prepared by Appel Design Group, consisting of four sheets, ZB-1 through ZB-4, dated October 19, 2018 and revised through April 23, 2019.

2. The Applicants 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 Applicants 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 Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' 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 approvals set forth herein. Such representations are hereby made conditions of such approvals.

5. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 3rd day of June, 2019.

APPLICATIONS

CAL#3673-19, KATIE & TYLER FOSTER, 9 CAPE COURT, MILLBURN

Timothy Klesse, Architect, Tyler & Katie Foster, appeared and were sworn. The applicants would like to construct an addition to the dwelling. Proposal is in violation of:

- 606.2e1d – Front yard setback
- 606.2e1g – Rear yard unoccupied
- 606.2e1h – Rear yard setback
- 606.2e2a – Building coverage
- 606.2e2d – Floor area ratio
- 609.1b – Accessory structures shall be in rear yard only
- 607.3e – Front yard coverage

Tyler Foster gave a brief description of the proposal. Timothy Klesse's credentials were presented and accepted by the Board. He outlined the applicants' proposal. The property is an undersized lot located in the R-6 zone and the dwelling is a Colonial revival.

Entered as A-1: photoboard with 4 photographs

The applicants propose to demolish the existing detached garage in the rear of the property and construct a 2-story addition to the house. They propose to add a driveway in the front and construct a new garage under the existing porch. The primary building will remain where it is. The porch will be renovated.

Tim Klesse spoke to the variance request being sought. Front yard setback variance relief is required to permit a setback of 15.61 feet where the ordinance minimum required is 40 feet. The dwelling will be in line with many of the currently existing houses along the street. Rear yard unoccupied variance relief is required to permit 7% (336 SF) where 25% (1,190 SF) is required. Rear yard setback variance relief is required to allow a setback of 5.77 feet (6%) where 17 feet (20%) is required. Building coverage variance relief is required to allow 29.5% (1,404 SF) where 23% (1,095 SF) is permitted by ordinance. Floor area ratio variance relief is required to permit 48% (2,288 SF) where 36% (1,714 SF) is permitted by ordinance. Variance relief is required to allow the construction of a patio in the side yard where the ordinance permits accessory structures in the rear yard only. Finally, front yard coverage variance relief is required to allow 41.5% (581 SF) where the ordinance permits 30% (420 SF).

The approval of variance relief will allow the applicants to enhance the neighborhood and give the applicants much needed added living space.

Margo Strauss, 6 Cape Court, appeared and was sworn. She supports the proposal and encourages the Board to vote favorably. She testified that the proposed construction will greatly enhance the atmosphere and aesthetics of the neighborhood.

Margaret Meyer, 7 Cape Court, appeared and was sworn. She stated that this proposal will enhance Cape Court. The property is in need of updating and she is happy that the applicant is undertaking this project.

Frank Meyer, 7 Cape Court, appeared and was sworn. He feels this construction will have no negative impact on the surrounding properties.

Board members discussed the merits of the case and felt the variance relief could be granted without substantial detriment to the surrounding area.

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

Jyoti Sharma – yes

Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3673-19, Katie & Tyler Foster, 9 Cape Court, “d” variance relief for floor area ratio was **APPROVED**.

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

Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3673-19, Katie & Tyler Foster, 9 Cape Court, “c” variance relief was **APPROVED**.

CAL#3676-19, JOE & LISA ROMANO, 20 PARK ROAD, SHORT HILLS

The matter was carried to August 5, 2019 with no further notice required.

CAL#3681-19, EMILY CHANG-ZIDAROV/PAOLO CAPOFFERRI, 353 WYOMING AVENUE, MILLBURN

Emily Chang-Zidarov and Paolo Capoffferri appeared and were sworn. Ms. Chang-Zidarov’s credentials were presented and she was accepted as an expert in architecture.

The applicants would like to construct a 2nd story addition. Proposal is in violation of:

606.2e1e1a – Side yard setback
606.2e1e1b – Addt’l side yard setback for structure over 18 feet in height
606.2e1f – Combined side yard setback

Ms. Chang-Zidarov gave a brief description of the proposal. The property is a 16,874 SF lot located in the R-5 zone district, which has a minimum lot size of 14,500 SF. The proposal is to add a level to the existing 1st floor dwelling. The footprint is proposed to be enlarged at the back of the house. The variances being sought are existing non-conforming conditions.

The house to the left has 2 large trees and the applicant is proposing the addition of more trees once the drainage issues in that area have been addressed.

Entered as A-1: sheet A-4 shaded to show violation above 18 feet in height

Ms. Chang-Zidarov stated that the current house is uninhabitable. They are proposing measures to enhance the exterior to be more characteristic of the other houses in the Wyoming Avenue area.

Several Board members felt there were some inaccurate calculations and they were concerned with the variance being requested for the portion of the structure above 18 feet in height on the left side of the dwelling. The dwelling on the adjoining property to the left will be impacted and some members were concerned about the potential negative impact of the proposed construction.

Ms. Chang-Zidarov agreed to revise the plans in order to eliminate the need for variance relief over 18 feet on the left side of the dwelling.

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

Jyoti Sharma – yes
Joy Siegel – no
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3681-19, Emily Chang/Paolo Capofferri, 353 Wyoming Avenue, was **APPROVED** with the following conditions: 1) the applicants shall submit revised plans depicting the elimination of the left side variance relief for the structure above 18 feet in height; 2) the applicants shall consult with the Township Forester and install an evergreen landscape buffer on the south side of the property, to the extent appropriate due to the existing drainage condition.

CAL#3693-19, SARA CAROTHERS, 130 HOBART AVENUE, SHORT HILLS

Sara Carothers and Gary Ross appeared and were sworn. The applicant would like to install a front yard fence on the property. Proposal is in violation of:

609.6a – Front yard fences are not permitted

The property is located in the Short Hills Historic District and the matter was heard and a certificate of appropriateness was granted by the Historic Preservation Commission for the installation of a 4 foot fence.

The proposed fence will be installed in the front yard parallel to Hobart Avenue.

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

Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3683-19, Sara Carothers, 130 Hobart Avenue, was **APPROVED**.

CAL#3695-19, RIO SLAVEN, 75 FARLEY ROAD, SHORT HILLS

Jonathan Katz, Architect, and Rio Slaven appeared and were sworn. Jonathan Katz' credentials were presented and accepted by the Board. The applicant would like to expand the existing 1-car garage to a 2-car garage. Proposal is in violation of:

606.2e1e2b – Side yard setback
606.2e3d – Front facing garage is prohibited

Entered as A-1: photoboard of existing conditions
Entered as A-2: photoboard of proposed construction

Jonathan Katz gave a brief description of the applicant's proposal. The proposal is to expand the existing 1-car attached garage to a 2-car garage. The current garage faces front and the expanded garage will also face front. The side yard setback required is 15 feet and at the closest point (at the rear of the garage), the proposed side setback will be 8.25 feet. The setback at the front of the proposed garage expansion will be 11.2 feet. The expanded garage will have no negative impact on the adjoining property or the streetscape.

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

Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3695-19, Rio Slaven, 75 Farley Road, was **APPROVED**.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Kevin Wenzel, seconded by Steve Togher, and carried with a unanimous voice vote. (9:25 PM)

Eileen Davitt
Board Secretary

Motion: WT
Second: JSh
Date Adopted: 7/15/19