

Township of Millburn
Minutes of the Zoning Board of Adjustment
June 21, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 21, 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
Wolfgang Tsoutsouris
Amy Lawrence
Chandra Harjani
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of April 19, 2021 was made by Craig Ploetner, seconded by Amy Lawrence, and carried with a unanimous voice vote.

A motion to approve the minutes of May 3, 2021 was made by Wolfgang Tsoutsouris, seconded by Craig Ploetner, and carried with a unanimous voice vote

MEMORIALIZATIONS

Cal#3794-21, 90 Farley Road LLC, 90 Farley Road, Short Hills

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes

Amy Lawrence – yes
Joseph Steinberg – yes
the following memorializing resolution was adopted:

**90 FARLEY ROAD, LLC
BLOCK 2503, LOT 25**

**CAL. NO. 3794-21
JUNE 21, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, 90 Farley Road, LLC, (hereinafter the “Applicant”), in Calendar No. 3794-21 to permit the construction of a two-story residence on property located at 90 Farley Road, Short Hills, New Jersey, known and designated as Lot 25, Block 2503, 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 May 17, 2021, as to Calendar No. 3794-21 to permit the construction of a two-story residence on property located at 90 Farley Road, Short Hills, New Jersey, known and designated as Lot 25, Block 2503, 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 May 17, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared with Bart Sheehan, Esq., counsel, and together with Richard Keller, the Applicant’s Planner and Engineer, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicant is the owner of the subject property, which is located in the R-4 zone district. The Applicant proposes to construct a new two-story residence on the subject property.

3. The subject property is a 1.058 acre, fully conforming unimproved vacant lot that was created by the subdivision of a 2.55 acre lot into two lots. There are no existing nonconformities on the subject property. The proposed application would result in a steep slope disturbance of 6,268 square feet where 1,000 square feet is the maximum allowable steep slope disturbance, a 4 foot separation for a 6 foot tall retaining wall where a 6 foot separation for a 6 foot tall retaining wall is the required minimum, a 3 foot separation for a 4 foot tall retaining wall where a 4 foot separation for a 4 foot tall retaining wall is the required minimum, and a 3 foot tall retaining wall in a front yard where the maximum retaining wall height permitted in a front yard is 2 feet. Therefore, variance relief is required.

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

A. Photography Board, consisting of 6 photographs taken by Casey & Keller, Inc., on May 13 & 14, 2021, introduced into evidence as Exhibit A-1, on May 17, 2021;

B. Slope Layout and Disturbance Exhibit, consisting of one (1) sheet, prepared by Casey & Keller, Inc., introduced into evidence as Exhibit A-2, on May 17, 2021; and

C. Tree Replacement Plan, consisting of one (1) sheet, prepared by Brian S. Conway on January 29, 2021, introduced into evidence as Exhibit A-3, on May 17, 2021.

5. Bart Sheehan, Esq., counsel for the Applicant, provided an overview of the anticipated testimony to be presented by the Applicant's expert witnesses. Mr. Sheehan explained that the steep slopes on the property are man-made, have been modified over time, and do not constitute a forested steep slope area. Mr. Sheehan clarified that certain of the existing slopes have already been disturbed by a house that previously occupied the property but has since been demolished, as well as through the development of nearby Alan Drive.

6. The Applicant's Engineer and Planner, Richard Keller, was sworn and qualified before the Board as an expert in the fields of engineering and professional planning. Mr. Keller testified that the proposed construction would be placed partially within the man-altered steep slopes. Mr. Keller stated that 19.5% of the property is comprised of steep slopes (slopes of 20% and greater) predominantly located through the center of the subject lot. Mr. Keller stated that the location for the proposed construction was chosen due to an inability to locate the proposed residence closer to the rear of the property, as this would prevent the construction of structures typically accessory to the single family homes. Mr. Keller further opined that moving the first floor of the proposed home, as well as the proposed garage, closer to the rear of the property with its higher elevation would make the home appear taller to neighboring properties than in the proposed "nestled" house location within the lower area of the property. The proposed construction also cannot be moved closer to Farley Road without disturbing a similar amount of steep slopes. According to Mr. Keller, the proposed disturbance to the man-made steep slopes will not result in any degradation of soil erosion or water quality, any detrimental storm water runoff conditions, or any adverse impacts to neighboring properties.

7. Mr. Keller mentioned that the area between the proposed walls will be used for planting and to collect rainwater. Mr. Keller stated that a circular driveway would be most appropriate given the slopes on the property, and will allow the Applicant to retain mature trees in the front yard of the property. While Exhibit A-3 depicts the intended tree removal on the property, the Applicant will fully comply with the Township's Tree Replacement Ordinance inclusive of wall and foundation plantings. Mr. Keller further assured the Board that the Applicant will fully comply with all conditions from the April, 2015 and May, 2017 Planning Board Resolutions regarding the underlying subdivision of subject property.

8. Srinath Kotla, 61 Johama Way, Short Hills, was sworn in before the Board. Mr. Kotla testified that he is the Applicant's neighbor and supports the application.

9. 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[.]

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

11. Martha Callahan, P.E., Township Engineer, reviewed the underlying application and plans and issued a memorandum dated May 17, 2021 (the “Memorandum”). The Memorandum includes the following findings: a) the steepest area where disturbance is proposed is a slope of approximately 23%, where the ordinance’s threshold definition of a steep slope is 20%. This represents a de minimis deviation from the allowable limit, one that would not be visually discernable; b) the purpose or value of protecting steep slopes derives not from the inherent environmental benefit of a steep slope, but rather to avoid the possibility of creating unstable areas which may cause excessive soil erosion; c) the site plan submitted indicates that areas will be terraced through the use of retaining walls creating level areas, thereby minimizing the possibility of soil erosion. From an engineering standpoint, there is no concern with regard to the steep slope disturbance proposed; d) the applicant is also seeking variance relief with regard to the retaining wall separation. In addition to creating level areas, the retaining walls also stabilize the disturbed steep slopes. The wall separation requirement in the ordinance is good engineering practice to preclude the structural interaction between the walls. However, the engineering design of the walls can account for the possibility of wall interaction. The closer wall spacing also decreases the overall amount of slope disturbance. Ms. Callahan found that with enhanced soil erosion controls in place during construction (such as a double row of correctly installed silt fencing and hay bales), and stringent design of the retaining walls by a licensed professional engineer, she would have no issue with the proposed development.

12. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(c)(1) for steep slope disturbance, minimal wall separation in a steep slope area, and front yard wall height, and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed construction. The need for the requested variance relief is related to an existing condition affecting the property; namely, the man-altered steep slopes that comprise almost 20% of the subject property, and the inability to locate the proposed construction elsewhere on the property without adverse impacts on neighboring properties and the functionality of the site. The Board finds these conditions to be exceptional

circumstances affecting the property which result in practical difficulties and undue hardship to the Applicant. Although the proposed construction requires variance relief as set forth above, the deviation from the requirements are modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring additional variance relief, or without undermining the intent and purpose of the Township Zoning Ordinance. The proposed construction will only result in a 5,268 square foot deviation for steep slope disturbance, a 2 foot deviation for minimum wall separation in a steep slope area for a 6 foot high wall, a 1 foot deviation for a minimum wall separation in a steep slope area for a 4 foot high wall, and will only result in a 1 foot deviation for wall height in a front yard.

13. Variance relief can also be justified under N.J.S.A. 40:55D-70(c)(2). As to the positive criteria, numerous purposes of the MLUL under 40:55D-2 are advanced by the application – namely, subsections a (promoting the general welfare), c (providing adequate light, air and open space), g (providing sufficient space for residential use) and i (to promote a desirable visual environment). The variance relief requested provides a better zoning alternative for the property than if the proposed development conformed to the Ordinance requirements pertaining to steep slope disturbance, especially considering that the slopes to be disturbed are man-made and that siting the proposed home in an area of the property with less steep slope disturbance will be more detrimental to the surrounding properties. The benefits of the proposed deviation substantially outweigh any detriment, all for the reasons stated above. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from the proposed development is negligible and not a substantial detriment. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested 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 21st day of June, 2021 that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70(c)(1) and (2), to construct a single family residence, resulting in a steep slope disturbance of 6,268 square feet where 1,000 square feet is the maximum allowable steep slope disturbance, a 4 foot separation for a 6 foot tall retaining wall where a 6 foot separation for a 6 foot tall retaining wall is the required minimum, a 3 foot separation for a 4 foot tall retaining wall where a 4 foot separation for a 4 foot tall retaining wall is the required minimum, and a 3 foot tall retaining wall in a front yard where a 2 foot tall retaining wall is the maximum height permitted in a front yard, approved by this Board at its meeting of May 17, 2021, for the property at 90 Farley Road, Short Hills, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall continue to comply with all previous conditions listed in the above-referenced, April, 2015 and May, 2017 Planning Board Resolutions pertaining to the subject property.
2. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.

3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant in the application materials and 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.

4. 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.

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 21st day of June, 2021.

Cal#3796-21, Dean Kaufman, 367 Wyoming Avenue, Millburn

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

- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Chandru Harjani – yes

the following memorializing resolution was adopted:

**BETH & DEAN KAUFMAN
BLOCK 202, LOT 10**

**CAL. NO. 3796-21
JUNE 21, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Beth and Dean Kaufman (hereinafter the “Applicants”), in Calendar No. 3796-21 to permit the expansion of an existing patio and the construction of a second floor addition to an existing residence, on property located at 367 Wyoming Avenue, Millburn, New Jersey, known and designated as Lot 10, Block 202, 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 May 17, 2021, as to Calendar No. 3796-21 to permit the construction of a second floor addition to an existing residence, the expansion of an existing patio, and to permit the installation of an air conditioning unit within the front yard, on property located at 367 Wyoming Avenue, Millburn, New Jersey, known and designated as Lot 10, Block 202, 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 May 17, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel, and together with Danial Dubinett, the Applicants’ Architect, provided sworn testimony in support of the application. Robert and Jane Brauer, 369 Wyoming Avenue, Millburn, New Jersey, also provided sworn testimony as to the application.

2. The Applicants are the owners of the subject property, which is located in the R-5 zone district. The Applicants propose to construct a second floor addition measuring 8 feet 9 inches by 20 feet, constructed above the first floor of the existing residence at the subject property; enlarge an existing slate patio located in the rear yard of the subject property by 72 square feet; and install an air conditioning unit within the front yard of the subject property.

3. The subject property contains a single family residence with a detached garage. The subject property contains six (6) nonconforming conditions pertaining to the Township Ordinance for the R-5 zone district: (a) a minimum lot area of 14,500 square feet is required, and the subject property has an existing lot area of 9,300 square feet; (b) a minimum lot width of 75 feet is required, and the subject property has an existing lot width of 62 feet; (c) a minimum side yard setback of 12 feet is required, and the subject property has an existing side yard setback of 11.22 feet; (d) an additional side yard setback of 15.63 feet for a building over 18 feet but under 32 feet is required, and the subject property has an existing additional side yard setback of 11.22 feet for a building over 18 feet but under 32 feet; (e) a minimum combination side yard setback of 35 feet is required, and the subject property has an existing combination side yard setback of 27.7 feet; and (f) a maximum lot coverage area of 35% is required, and the subject property has an existing lot coverage area of 40.8%.

4. The proposed application would result in a lot coverage area of 42% where 35% is the maximum lot coverage permitted; a side yard setback of 11.22 feet where 12 feet is the required minimum side yard setback; an additional side yard setback of 11.22 feet for a building over 18 feet but under 32 feet where an additional side yard setback of 15.63 feet for a building over 18 feet but under 32 feet is required; a combination side yard setback of 27.7% where a minimum combination side yard setback of 35% is required; and an air conditioning unit located in a front yard where an air conditioning unit is only allowed to be located in a side yard or rear yard. Therefore, variance relief is required.

5. The Board received and considered the following document introduced by the Applicants to supplement the filed application materials: Slideshow prepared by Danial Dubinett, consisting of 13 slides of photographs, which was admitted into evidence as Exhibit A-1, on May 17, 2021;

6. The Applicants' Architect, Danial Dubinett, was sworn in and qualified before the Board as an expert in the field of architecture. Mr. Dubinett testified to the multiple existing nonconformities causing undue hardship to further develop the subject property, and that the shape of the property required a long driveway which largely contributes to the current excessive lot coverage at the subject property. Mr. Dubinett informed the Board that the air conditioning unit needed to be located in the front yard of the property because the area immediately outside the Applicants' home office contained an existing brick patio, and that the proposed second floor addition would be located above the Applicants' existing home office on the first floor of the residence on the subject property. Mr. Dubinett informed the Board that the home of the Applicants' closest neighbor was 24.7 feet away from the Applicants' residence. Mr. Dubinett believed that there was enough open air space between the two homes for the proposed development to not result in any shadowing or any negative impact to this adjacent neighbor or other neighboring properties. Mr. Dubinett also stated that the Applicants planned on planting three foot tall Skip Laurel evergreen trees to further assist with screening for the proposed air conditioning unit. Mr. Dubinett concluded his testimony by informing the Board that he believed locating the proposed air conditioning unit in the front yard would be a better location than in the property's side yard or rear yard.

7. At the May 17, 2021 meeting, the Applicants' neighbors, Robert and Jane Brauer (collectively, the "Brauers"), residing at 369 Wyoming Avenue, Millburn, New Jersey, expressed their concerns relative to the application, including those related to the appearance of the proposed second floor construction due to it having a side elevation with no windows. Due to the concerns expressed by the Board and the Brauers, the Applicants agreed to include two decorative horizontal trims on the side elevation facing the Brauers' home for the proposed second floor construction, to improve the aesthetic appeal of the proposed home. The Applicants also agreed to reduce the size of the proposed patio addition and the overall lot coverage from the 43% proposed in the application to 42%.

8. 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[.]

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

10. The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(c)(1) for lot coverage, side yard setback, additional side yard setback for a building over 18 feet but under 32 feet, and a combination side yard setback, and concludes that it is appropriate to grant this variance relief requested by the Applicants to permit the proposed second floor construction and patio expansion. The need for the requested variance relief is related to several already-existing nonconforming conditions affecting the property, dwelling and other site improvements, including the subject property being undersized for the R-5 zone as to both lot area and lot width. The Board finds these conditions to be exceptional circumstances affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants. Although the proposed construction requires variance relief as set forth above, the deviation from the requirements are modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring the same or additional variance relief, or without undermining the intent and purpose of the Township Zoning Ordinance. The Board concludes that the proposed development preserves the character of the subject neighborhood, addresses the concerns of the neighboring property owners most impacted by the proposed development, and that any negative impact from this proposed construction is negligible and not a substantial detriment to the area. Therefore, for the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

11. The Board finds that the Applicants have not satisfied the statutory criteria required by N.J.S.A. 40:55D-70(c)(1) for locating an air conditioning unit in a front yard, and concludes that it is not appropriate to grant this variance relief requested by the Applicants.

12. Notwithstanding the aforementioned nonconformities relative to the subject property and the structures located thereon, the location of the brick patio in front of existing office space within the Applicants’ residence, and the proposed landscaping, the Applicants have not demonstrated why they cannot locate the proposed air conditioning unit in the rear or side yards of the subject property. There was no testimony or evidence provided by the Applicants demonstrating that other residences in the neighborhood have air conditioning units located in the front yards of their respective properties. The Board further finds that given the proximity of the nearest home to the proposed location for the contemplated air conditioning unit, the Applicants failed to meet their burden of proof to demonstrate that the variance relief requested could be granted without substantial detriment to the neighborhood. Therefore, for all the reasons stated above, the Board concludes that the Applicants have not satisfied the statutory criteria required by N.J.S.A. 40:55D-70(c) for locating an air conditioning unit in a front yard.

NOW, THEREFORE, BE IT RESOLVED on this 21st day of June, 2021 that the variance relief requested by the Applicants pursuant to N.J.S.A. 40:55D-70(c), to construct a second floor addition measuring 8 feet 9 inches by 20 feet, to be constructed above an existing first floor, and to enlarge an existing patio by 72 square feet located in the rear yard of the subject property, resulting in a lot coverage of 42% where 35% is the maximum permitted, a side yard setback of 11.22 feet where 12 feet is the required minimum side yard setback, an additional side yard setback of 11.22 feet for a building over 18 feet but under 32 feet where an additional side yard setback of 15.63 feet for a building over 18 feet but under 32 feet is required, a combination side yard setback of 27.7% where a minimum combination side yard setback of 35% is required, approved by this Board at its meeting of May 17, 2021, and the variance relief requested by the Applicants pursuant to N.J.S.A. 40:55D-70(c), to allow an air conditioning unit in a front yard where it is required to be located in a side yard or rear yard, denied by this Board at its meeting of May 17, 2021, for the property at 367 Wyoming Avenue, Millburn, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicants shall include two decorative horizontal trim detail elements along the façade on the South side of the proposed second floor construction facing 369 Wyoming Avenue substantially similar to the trim elements depicted on Slide 4 of Exhibit A-1 presented during the hearing on this matter, with the elevation drawing submitted with the application to be revised accordingly.

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

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

4. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 21st day of June, 2021.

APPLICATIONS

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

The matter was carried to August 2, 2021.

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

*Jessica Glatt recused and left the meeting.

Gary Froshner, Attorney for the applicant, stated his appearance. Mr. Froshner explained the inefficient layout of the home for the applicant's growing family. The applicant is proposing to renovate the structure to make it more functional.

He addressed the Board's concerns regarding three River Birch trees in the rear of the property that would be removed. In response to an e-mail inquiry by the applicant, Township Forester, Tom Doty stated that the three River Birch trees will be exempt from Millburn Township's tree removal permit. He agreed that these trees are prone to snow load damage, weather events, and are not historic trees. These trees can be replaced by more river birch, which the applicant proposed to do.

The applicant is seeking building coverage, front yard setback and combined side yard setback variance relief. The proposed improvements are all single story improvements intended to maximize the interior circulation and functionality.

Brian Hirsch, Landscape Architect, appeared and remains sworn. Mr. Hirsch stated that he directly spoke with Tom Doty regarding the River Birch trees. They discussed that the three trees proposed to be removed are located within the proposed pool house and are exempt from any of the requirements for a tree removal permit. They concluded that the current trees there can be hazardous and a replacement of these trees would be of greater value.

Mr. Hirsch submitted a tree replacement plan as part of the application. In this plan the applicant is proposing to plant over 40 trees, and transplanting 15 to 20 of the existing trees.

Entered as Exhibit A-3: Tree replacement plan

Gary Froshner asked Brian Hirsch about the height of the proposed trees. According to Mr. Hirsch, the evergreens are 18 to 20 feet tall. The replacement River Birches would be about 14 to 16 feet tall.

Entered as Exhibit A-4: E-mail from Township Forester, Tom Doty.

*It was noted that Chairman Joseph Steinberg's connection was lost and he was absent from the virtual meeting.

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

Jyoti Sharma – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Chandru Harjani – yes

Craig Ploetner was appointed as interim Chairman of this application, given that Chairman, Joseph Steinberg, did not hear some of the testimony.

Richard Keller appeared and remains sworn. He briefly clarified his testimony from the previous meeting.

Entered as Exhibit A-5: Site photos

Mr. Keller presented photos of the site taken 3 days earlier. The photos show the high density of the existing landscaping, serving as screening around the property, indicating the little to no impact that the proposed construction would have on the surrounding neighbors.

Entered as Exhibit A-6: Aerial photo, marked

Mr. Keller emphasized that although it is possible to demolish the existing dwelling and construct a new home compliant with Township ordinances, the applicant chooses to work with the existing dwelling. It would be better for the community because tear downs can be intrusive to the neighborhood.

Rich Keller stated that the application advances several purposes of the Municipal Land Use Law in that it allows the resident to adapt their home to meet the needs of their family while increasing the functionality of the dwelling and contemporizing the home to be consistent with amenities that are not uncommon within the community. The applicant is also a non-conforming condition related to the existing pool. Finally, the applicant is promoting the conservation of valuable natural resources.

Mr. Keller stated the front yard setback is consistent with other homes in the neighborhood.

Wolfgang Tsoutsouris believed the application was well put together and that the proposal made by the applicant makes sense.

Craig Ploetner struggled to understand the hardships of the existing dwelling which was described by the applicant.

Joy Siegel and Jyoti Sharma agreed with Craig, and said they struggle to see the hardships of the existing dwelling.

Board Attorney, Rob Simon, reminded the Board that the key of the applicants' proposal is whether it provides a better zoning alternative or improved planning that is going to benefit the community, not just for the desires of the private property owner.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes

Cal#1791-21, Cori & Jason Wilf, 30 Montview Avenue, combined side yard setback variance relief was **APPROVED**.

Upon a motion to approve made by Chandru Harjani, seconded by Wolfgang Tsoutsouris, and with a roll-call vote as follows:

Craig Ploetner – no
Jyoti Sharma – no
Joy Siegel – no
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes

Cal#3791-21, Cori & Jason Wilf, 30 Montview Avenue, front yard setback variance relief was **DENIED**.

Robert Simon advised the applicants that if they wished to make changes, they may ask that the vote on the building coverage variance request be carried to a future date. Board members felt they were not in a position to make an informed decision regarding the building coverage variance.

The matter was carried to July 19, 2021.

CAL#3797-21, SHALEBROOK GROUP 2, 157 LONG HILL DRIVE, SHORT HILLS

Jonas Goldberg, applicant representing Shalebrook Group 2, appeared and was sworn. He stated that he is the owner of the property and would like to construct a deck. Proposal is in violation of:

609.5 – Accessory structure on a corner lot shall be no closer than 80 feet to the front lot line.

The property is a corner lot and the proposed deck will be setback from the front lot line, where 80 feet is required. The proposed deck will be 14 feet x 27 feet and will afford the

homeowner to exit the property from the kitchen/family room area. The deck would be located adjacent to the main usable yard on the property and will sit about 5 feet above grade.

Joseph Steinberg asked how close the nearest neighbors would be from the proposed deck. Mr. Jonas indicated that the distance between the edge of the deck and the neighboring property line would be about 55 feet.

Several members of the Board were concerned with the height of the deck as well as the visibility of the deck to adjoining property owners. Other felt there was sufficient screening on the property.

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

Craig Ploetner – no
Jyoti Sharma – no
Joy Siegel – no
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes
Amy Lawrence – yes

Cal#3797-21, Shalebrook Group 2, 157 Long Hill Drive, Short Hills, was **APPROVED**.

CAL#3799-21, ROLF BRUNNER, 78 KEAN ROAD, SHORT HILLS

The applicant, Nancy Grande, appeared and was sworn. She would like to install a generator on her property. Proposal is in violation of:

609.1f2 – Generator setback

The generator will be 8 feet off the property line where 12 feet is required.

Joy Siegel asked if the applicant will be screening the proposed generator. Ms. Grande stated that there already are a lot of plantings in the area of the proposed generator which can serve as screening.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3799-21, Rolf Brunner, 78 Kean Road, Short Hills, was **APPROVED** with the condition that the generator be sufficiently screened.

CAL#3803-21, PAUL HANSEN, 48 ELMWOOD PLACE, SHORT HILLS

The applicant, Paul Hansen, appeared and was sworn. The applicant proposes to install AC units. Proposal is in violation of:

609.1d – AC Setback

The ordinance requires that these units maintain a distance of 12 feet from the unit to the nearest portion of the neighbor’s dwelling. The proposed location will result in a distance of 8 feet.

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

- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

Cal#3803-21, Paul Hansen, 48 Elmwood Place, Short Hills, was **APPROVED**.

CAL#3802-21, JIKANG ZHOU, 12 RIDGE TERRACE, SHORT HILLS

Joseph Steinberg felt there was inconsistency in the application as to the distance to the property line. Attachment E has inaccurate information. Robert Simon felt, under the circumstances, the matter should be carried to a future date.

The matter was carried to July 19, 2021.

CAL#3805-21, SANJAY RAJAN, 1 WASHINGTON AVENUE, SHORT HILLS

Sanjay Rajan and Tanya Chaturvedi-Rajan appeared and were sworn. The applicants would like to install a fence on their property. Proposal is in violation of:

609.6 – Front yard fences are prohibited

Mr. Rajan stated that the property is a corner lot with 2 front yards.

Entered as Exhibit A-1: Arial of property and surrounding area.

Joseph Steinberg asked how tall the fence would be. The applicant stated that they are proposing a 6 foot tall fence.

Entered as Exhibit A-2: Photo of trees on the property

Chandru Harjani asked how far apart the trees are from each other. Mr. Rajan said they are about 20 feet apart.

Amy Lawrence asked how long the fence would extend along Old Short Hills Road. Mr. Rajan said it would run for approximately 100 feet.

Craig Ploetner asked the applicant if they considered a 4 foot tall fence instead of a 6 foot tall fence. Mr. Rajan stated that he would not be opposed to it, but would feel more comfortable installing a 6 foot fence, for the safety of his children as well as drivers on Old Short Hills Road.

Entered as Exhibit A-3: Street view of property, Old Short Hills Road

Although there are trees located near the proposed fence, several board members felt there should be more trees planted for the fence to be better screened. Several board members felt the height should be reduced to 4 feet. The applicant was told by experts that plants might not grow well in that area, but they will still attempt to plant something if that is what board thinks is necessary.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3805-21, Sanjay Rajan, 1 Washington Avenue, Short Hills, was **APPROVED** with the conditions of the fence height being reduced to four feet and that it will be screened with plantings.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Wolfgang Tsoutsouris, seconded by Craig Ploetner, and carried with a unanimous voice vote. (10:30 PM)

Eileen Davitt
Board Secretary

Motion: WT
Second: JSi
Date Adopted: 8/16/21