

Township of Millburn
Minutes of the Zoning Board of Adjustment
June 24, 2019

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 24, 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:

Mary McNett
Craig Ploetner
Jyoti Sharma
Joy Siegel
Steve Togher
Kevin Wenzel
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

Gail Fraser, Board Attorney
Eileen Davitt, Zoning Officer/Board Secretary

APPROVAL OF MINUTES

A motion to approve the minutes of May 20, 2019, was made by Craig Ploetner, seconded by Joy Siegel, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3691-19, Frank Landi, 1 Nottingham Road, Short Hills

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

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was approved:

**FRANK LANDI
BLOCK 2303, LOT 1**

**CALENDAR NO. 3691-19
JUNE 24, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Frank Landi, to permit the construction of an addition on the dwelling on property located at 1 Nottingham Road, Millburn, New Jersey known and designated as Lot 1, Block 2303 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on May 20, 2019 in Calendar No. 3691-19 filed by Frank Landi (hereinafter the “Applicant”) for permission to construct an addition on the dwelling on property located at 1 Nottingham Road, Millburn, New Jersey; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. Lynne Ranieri of 94 Oakview Terrace, Short Hills appeared and testified at the hearing as an interested party in favor of the application.
2. The property is located in the R-5 zone district. The R-5 zone district requires a minimum 40 foot front yard setback. The Applicant proposes to construct an addition that would result in a 19.5 foot front yard setback from Washington Avenue and a 19 foot front yard setback from Nottingham Road. Therefore, variance relief is required.
3. The Board received and considered the following documents:
 - a. Plans prepared by Klesse Architects, consisting of five sheets, BOA-1 through BOA-5, dated February 20, 2019.
 - b. A survey of the property prepared by Morgan Engineering & Surveying, dated August 9, 2018, and a copy of the survey marked up by the Applicant’s Architect to depict the proposed addition.
 - c. A photograph of the existing dwelling, which was admitted into evidence as A-1.
4. Applicant Frank Landi and Timothy Klesse, Licensed Architect, testified in support of the application. The Board also heard testimony from Lynne Ranieri, an interested party.
5. The property is not located in one of the Township’s historic districts, but the existing structure is nearly one-hundred years old. It was designed and built by a significant

American architect, Bernhardt Muller in the 1920's. Research indicates the existing home served as the sales office for the Nottingham section of the Township when it was first developed. The dwelling is in the English Tudor style with a roof constructed of Vermont slate, weighing more than 25 tons. The existing dwelling also has pre-existing nonconforming front yard setbacks of 18 feet from Washington Avenue and 19 feet from Nottingham Road.

6. The property has three front yards and one side yard as it is located at the point of intersection between Nottingham Road and Washington Avenue. The Applicant purchased the property approximately six months ago. Although the second floor of the home contains two bedrooms, they are very small and do not meet modern living standards. In addition, the dwelling only has a one-car garage which fronts on Washington Avenue. Due to the unusual shape of the property, its location on Nottingham Road and Washington Avenue and the placement of the dwelling on the property, cars parked on the Washington Avenue driveway are in close proximity to vehicles traveling along Washington Avenue and the Applicant wishes to construct a second garage bay to provide an interior parking space. Because of the age and history of the existing dwelling, the Applicant and his Architect consulted with Lynne Ranieri, a Member of the Board of Directors of the Millburn-Short Hills Historical Society, and Barton Ross, who serves as consultant to the Millburn Historic Preservation Commission, regarding the most architecturally appropriate way to construct an addition to the dwelling which would provide additional living space and garage space, while preserving the most significant architectural features of the home. As a result of those consultations, the Applicant and his Architect designed an addition which would leave the easterly portion of the dwelling which contains the front door, chimney and living room, unchanged because it faces the prominent point of intersection of Nottingham Road and Washington Avenue. The Applicant proposes to construct a second floor addition over a portion of the remainder of the dwelling, as well as an attached second garage bay west of, and adjacent to, the existing one-car attached garage.

7. Because the property has three front yards and the existing dwelling has pre-existing nonconforming front yard setbacks, it is not possible to construct an addition to the home without the need for variance relief. The proposed garage addition would be stepped back from the existing one-car garage, so the proposed new garage bay would provide a 19.5 foot front yard setback from Washington Avenue, which is slightly greater than the 18 foot front yard setback of the existing dwelling. The proposed second floor addition would extend the dwelling vertically and it would be no closer to Washington Avenue or Nottingham Road than the existing dwelling.

8. In conjunction with the proposed renovation and addition, the Applicant proposes to remove and reuse an existing turret on the dwelling, and provide additional dormers to reinforce the English Tudor style of the home. The Applicant proposes to use exterior stucco, staggered shake siding and cedar clapboard to match the existing dwelling. A portion of the roof over the addition would be slate to match the existing slate roof, but the roof over the main, or central portion of the home would be aluminum. In response to questions from the Board regarding the use of an aluminum roof over the main portion of the home, rather than slate, Lynne Ranieri testified that one of the principles associated with historic restoration is that new additions should be compatible, but not identical to the original structure. As a result of the

Board's concern that a vertical standing seam aluminum roof would be too contemporary in appearance, the Applicant agreed to use an aluminum roof in a diamond pattern to be more in character with the English Tudor architecture of the existing dwelling.

9. The Board concludes that variance relief may be granted to permit the proposed addition on the dwelling. The need for variance relief is the result of the unusual shape of the property, its location with three front yards and one side yard, and the placement of the existing dwelling on the property which results in pre-existing nonconforming front yard setbacks from Nottingham Road and Washington Avenue. The Board is satisfied that these conditions present exceptional circumstances uniquely affecting the property that justify variance relief. The proposed garage addition on the west side of the dwelling would extend into the Washington Avenue front yard, requiring variance relief, but it would be stepped back to provide a 19.5 foot front yard setback, which is slightly greater than the 18 foot front yard setback of the existing dwelling. The second-story addition would extend the facades of the existing dwelling vertically and the second-story of the home would be no closer to Nottingham Road or Washington Avenue than the existing dwelling. As a result, the Board is satisfied that the proposed addition will make the home functional for a modern family while preserving the architectural aspects of the home which represent an earlier era and provide a priceless contribution to the community. Therefore, the Board 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 24th day of June, 2019 that variance relief granted by this Board on May 20, 2019 to permit the construction of an addition that would result in a 19.5 foot front yard setback from Washington Avenue and a 19 foot front yard setback from Nottingham Road, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Klesse Architects, consisting of five sheets, BOA-1 through BOA-5, dated February 20, 2019. Provided, however, that the aluminum roof shall be a diamond pattern instead of a vertical standing seam.

2. The Applicant shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

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

4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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 24th day of June, 2019.

Cal#3692-19, Performers Theatre Workshop, Inc., 131 Millburn Avenue, Millburn

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

- Mary McNett – yes
- Craig Ploetner – yes
- Joy Siegel – yes
- Kevin Wenzel – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was approved:

**PERFORMERS THEATRE WORKSHOP, INC.
BLOCK 402 LOT 2**

**CALENDAR NO. 3692-19
JUNE 24, 2019**

Mister Chairman, I move the adoption of the following Resolution granting waivers from the Environmental Impact Statement (“EIS”) and stormwater runoff requirements, variance relief pursuant to N.J.S.A. 40:55D-70c(1) and N.J.S.A. 40:55D-70d(1), and preliminary and final site plan approval to the Applicant, Performers Theatre Workshop, Inc., in Calendar Number 3692-19, to permit use of the basement and first floor for a performing arts studio and school and the conversion of one existing second-floor residential apartment in the structure into an office for the performing arts studio and school on property located at 131 Millburn Avenue, Millburn, New Jersey; known and designated as Lot 2, Block 402 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 public hearings according to law on May 20, 2019 in Calendar No.

3692-19, filed by Performers Theatre Workshop, Inc. (hereinafter referred to as the "Applicant") for permission to use the basement and first floor of the existing structure for a performing arts studio and school and convert a second floor residential apartment in the structure into an office for the performing arts studio and school on property located at 131 Millburn Avenue, Millburn, New Jersey; and

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

1. The application and service of notice were found to be in order. Anthony Cerciello, Esq. represented the Applicant. Moor Management, LLC, the owner of the subject property, consented to the application. Jeffrey Braverman and Rachel Braverman of 242 Hartshorn Drive, Short Hills, Zeynep Allyn of 7 Robbins Lane, Short Hills, Sheri Friedman of 162 Hartshorn Drive, Short Hills, Thomas McCauley of 112 Kingman Road South, South Orange and Wendy Lee of 115 Fairfield Drive, Short Hills appeared and testified as interested parties in favor of the application.

2. The subject property is located in the R-O Zone District. The principal permitted uses in the R-O zone are single family dwellings, medical professional offices which do not exceed 50% of the floor area of the structure provided that there is no more than one licensed medical professional, and up to one residential apartment in the same structure as a medical professional office provided the residential dwelling unit occupies a minimum of 50% of the floor area of the structure. The Applicant wishes to use the basement and first floor of the structure as a performing arts studio and school, and convert an existing second floor residential apartment into an office for use in conjunction with the performing arts studio and school. A performing arts studio and school is not a permitted use in any zone district in the Township. Therefore, the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed use of the basement, first floor and second floor space for performing art studio and school purposes.

3. Pursuant to Section 607.2 of the Township Zoning Ordinance, the proposed use of the property for a performing arts studio and school, an office associated with the performing arts studio and school, and two pre-existing residential apartments requires 22 on-site parking spaces. In addition, Section 607.1 of the Township Zoning Ordinance requires one on-site loading space. The Applicant proposes 13 on-site parking spaces and no on-site loading space, which requires variance relief pursuant to N.J.S.A. 40:55D-70c.

4. The Applicant also requires preliminary and final site plan approval and waivers from the checklist requirement for the submission of an EIS and design waiver from the stormwater runoff requirement.

5. The property is not constrained by steep slopes or wetlands, is not located in a flood hazard area and it is already served by sewer and water utilities. Because the property is a fully developed site, the Board determined the Applicant's requests for a waiver of the checklist requirement for the submission of an EIS and design waiver from the stormwater runoff

requirement were reasonable and appropriate and granted the EIS checklist waiver and stormwater runoff design waiver.

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

- A. Plans prepared by Buchholz Architects, consisting of one sheet, A-1, dated April 4, 2019;
- B. A Use Variance Site Plan consisting of one sheet, Sheet 1, prepared by Casey & Keller, dated February 9, 2019;
- C. Photo board #1 prepared by Casey & Keller dated March 6, 2019, which was admitted into evidence as A-1; and
- D. The following reports from Township Officials and Departments: Millburn Township Police Department Traffic Bureau dated May 10, 2019, Millburn Township Fire Marshal dated May 8, 2019, Millburn Township Engineer dated May 10, 2019 and the Millburn Township Forester dated May 3, 2019.

7. Dean and Elizabeth Kravitz of Performers Theatre Workshop, Inc., John Buchholz, Licensed Architect, and Richard Keller, P.E./P.P. testified in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Office. Jeffrey Braverman, Rachel Braverman, Zeynep Allyn, Sheri Friedman, Thomas McCauley and Wendy Lee testified in favor of the application.

8. Dean Kravitz, President of Performers Theatre Workshop, Inc., testified that his expertise in music, the arts and education derive from his degree in Music from Yale University, his NJ teaching certificate and from his parents, who were graduates of the Julliard School and who created and operated the Performers Theatre Workshop, Inc. performing arts studio and school for 38 years. Elizabeth Kravitz has a degree in engineering and education, and is presently taking classes towards a Masters in Special Education. When Mr. Kravitz's mother created the performing arts studio and school, it was first operated from their family home.

9. Currently the Applicant's performing arts studio and school is located in a building in Maplewood. The proposed location would replace the Maplewood facility. The performing arts studio and school provides several artistic offerings, including acting, dancing and singing lessons, as well as a professional track designed to train students for television and Broadway productions, which it would continue to provide at the proposed location. Lessons include a combination of private one-on-one lessons and small group classes which would be held at the property from Monday through Saturday. Hours of operation Monday through Friday commence at 2:45 p.m. and end no later than 8:45 p.m., while Saturday hours would be from 10:45 a.m. to 12:45 p.m. Group classes would consist of two to ten students, at most, depending on the nature of the class. In addition, four-hour Master Classes, where the Applicant brings in

top experts in the performing arts from New York City, would be offered at the school approximately six times per year.

10. The Applicant's school operates on a ten-week Fall and Spring schedule, serving approximately 150-200 students, primarily on Saturdays, a six-week semester that serves approximately 60 students with staggered classes, as well as shorter semesters in the summer which accommodate approximately 10-20 students. Most of the Applicant's students participate in back-to-back classes. At the Applicant's current location, the highest percentage of their students, 26%, are from Millburn Township, with the next largest percentage from the Maplewood/South Orange area. The Applicant has also conducted after-school programs for Deerfield and Hartshorn Elementary Schools in the Township. All public performances and vocal recitals, which occur on Saturdays, would continue to take place off-site at St. George's Church in Maplewood because it has a parking lot and building large enough to accommodate the performance and the audience.

11. In addition to Mr. and Mrs. Kravitz, staff would consist of seven instructors, from either Bloomfield College or New York City, all of whom have multiple years of experience.

12. The average number of persons on-site at any one time would be six teachers and two to eight students, while the largest number of persons on-site at any time would occur at the Applicant's Monday evening class at 6:45 p.m., which would consist of six teachers and sixteen students. Although the property only has 13 existing on-site parking spaces, the current Maplewood facility only has seven parking spaces, which has functioned satisfactorily without a parking problem due to staggered class schedules resulting in staggered drop-offs and pickups. The Applicant anticipates the existing 13 on-site parking spaces would be sufficient at the subject property because most of the students are dropped off by their parents, who do not stay for the length of the lesson or class. Moreover, many of the Applicant's teaching staff do not have vehicles. At least two of the teaching staff, possibly more, presently arrive at the Maplewood facility by train and the Applicant anticipates the teaching staff would continue to arrive at this location by train or other modes of transportation, including carpools from Bloomfield College.

13. The Applicant's Registered Architect, John Buchholz, testified that the subject property is an irregularly-shaped through lot which fronts on Millburn Avenue and Ridgewood Road. There is an existing two-story building on the property, which gives the exterior appearance of a two-family dwelling. The basement and first floor of the structure are currently vacant, but a medical office previously occupied both spaces. The second floor contains two pre-existing residential apartments and the attic contains a third pre-existing residential apartment. Presently, one of the second floor apartments is occupied by a residential tenant, while the remaining two apartments in the building are vacant. The Applicant proposes to convert the vacant second floor apartments into an office space for use in conjunction with the performing arts studio and school and retain the pre-existing residential use of the other two apartments in the building. The Applicant proposes interior renovations of the building to permit the proposed performing arts studio and school use, while exterior improvements to the property would be limited to paint, landscaping, re-striping of the parking lot and installation of a sign

which conforms to the Township Ordinance requirements. The building façade facing Millburn Avenue includes a front stoop with an entry door to the building. Although that front entry would be preserved to maintain the appearance of a dwelling consistent with other structures in the neighborhood, the front entry door would serve as an emergency exit only. The primary entrance to the building would be at the rear of the building which is accessible from the on-site parking lot at the rear of the building.

14. In order to preserve the peace and quiet of the neighborhood, Mr. Buchholz testified that the Applicant proposes larger group activities within the performing arts studio and school would take place in the basement space, which faces Millburn Avenue and is partially underground with stationary glass block windows. Use of the basement space for group activities would serve the dual purpose of keeping sounds associated with the performing arts activities within the structure and keeping out street noise. Mr. Kravitz testified that percussion instruments are only used during their off-site performances.

15. The Applicant's Professional Planner, Richard Keller, testified that the existing uses approved for this building required 22 parking spaces because the prior doctor's office use of the basement and first floor space required one space for every 160 square feet of space, or 10 spaces, and the three residential apartments required four parking spaces, whereas the required parking for the proposed performing arts studio and school use is undefined in the Township Ordinance and is calculated based on the retail parking requirement of one space for every 200 square feet of space in the basement, first and second floors, or 18.8 spaces, and 2.5 parking spaces for the remaining two residential apartments, a net decrease of two spaces less than the existing uses. The requirement for 22 parking spaces is nine spaces less than the 13 existing parking spaces in the on-site parking lot. Mr. Keller testified that based upon the staggered classes and staggered student drop-offs and pickups, the teaching staff's use of public transportation and carpooling opportunities, and the projected number of maximum staff and students on site at any one time, he calculated the Applicant's potential parking needs could be accommodated by the existing on-site parking lot. There is currently no loading space on the property, a pre-existing nonconforming condition that the Applicant proposes would be maintained if this application is approved. The Applicant's Planning expert, Richard Keller, testified that a large on-site designated loading zone could not be created without eliminating existing on-site parking spaces. He stated that there is no need for a large designated on-site loading space because deliveries to the property would be minimal and via delivery vans which would be able to utilize an on-site parking space. Therefore, there would be no benefit from eliminating any of the 13 on-site parking spaces to provide a loading space.

16. Mr. Keller also testified that the Applicant requires variance relief because the proposed performing arts studio and school use is not permitted in any zone in the Township. Mr. Keller testified that the proposed use is particularly suitable for the subject property and that the proposed use satisfies several purposes of zoning as set forth in the Municipal Land Use Law, including specifically: purpose (a), promotion of the general welfare as the proposed use is artistic and educational in nature, in a home-like environment; purpose (g), promotion of a commercial and educational use to meet the needs of the community, as the largest segment of the Applicant's students are from Millburn Township and the program would complement the

Millburn High School and Papermill Playhouse offerings; and purpose (i) promotion of a desirable visual environment as it would improve the exterior appearance of the structure and eliminate the vacancy which has existed at this property since 2016, which would benefit the streetscape. Mr. Keller testified that the proposed use is particularly suitable for the subject property for several reasons. The Township's R-O zone district was created at a time when it was popular for medical practitioners to maintain their solo medical practice and residence in the same building. However, that use is no longer a viable use for modern medical professionals, as evidenced by the property owner's attempt to lease the vacant space in this structure as a medical office for more than three years. Moreover, although single family residential dwellings are a permitted use in the zone district, such a use is not realistic in this neighborhood, which has two-family homes approved by the Board in the past, other non-residential uses and is located across the street from the OR-2, Office-Research zone district, which permits offices and financial institutions and retail services. In addition, the use of the property for a permitted single family use is constrained by the placement of the structure on the property, fronting on Millburn Avenue and the paved driveway that occupies the majority of space that would ordinarily be used by a family as their back yard. Mr. Keller testified that the proposed use would not result in any detriment to the neighborhood as it is compatible with the surrounding commercial uses. He also stated that the building's placement and configuration, which is biased towards Millburn Avenue, allows large group activities to be conducted in the partially underground basement without any impact on the quiet enjoyment of the neighboring properties. He also testified that the proposed use would promote and enhance one of the goals set forth in the Township's Master Plan to meet the educational and cultural needs of the community by replacing an outdated use of the building with a new use, not contemplated or permitted anywhere in the Township on a vacant property located at the gateway to the community, with an existing 13 space on-site parking lot, which would provide more than adequate parking for the existing uses in the building and the proposed use.

17. Several interested parties testified regarding the exceptional performing arts program offered by the Applicant. They advised the Board of the numerous benefits their children have received from attending lessons and classes at the Applicant's Maplewood location, including but not limited to improved self-esteem and confidence as well as numerous professional television and theatrical opportunities and achievements. They expressed their strong support of the Applicant's relocation to Millburn Township.

18. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d (1) and concludes that it is appropriate to grant the use variance requested by the Applicant to permit the use of the property for a performing arts studio and school in the basement and first floor with a second floor office space. The Board finds and concludes that the Applicant has met its burden of proving the proposed use on this property satisfies the positive and negative criteria under N.J.S.A. 40:55D-70d (1). The Board accepts and adopts the testimony of the Applicant's planner that the proposed use advances the purposes of zoning set forth in the MLUL at N.J.S.A. 40:55D-2(a), (g) and (i). The Board is satisfied that the proposed use advances the public health, safety and general welfare and promotes a unique educational and cultural use that meets the needs of the residents of Millburn Township and the surrounding communities. It also serves to eliminate an existing vacancy in the R-O zone

district, which serves as one of the gateways to the community. The Board is also satisfied that the subject property is particularly suitable for the proposed use. The subject property is already developed with an existing building and on-site parking lot. The Board finds that the proposed performing arts studio and school use is a unique educational and cultural use that will continue to serve the residents of Millburn Township and the surrounding areas in a home-like environment. The proposed use in this location is particularly suitable as it is within walking distance from the train station for the teaching staff and high school students. The Board is satisfied that the proposed use will benefit the residents of the Township and surrounding areas, which already serve as the largest demographic portion of the Applicant's student population.

19. With respect to the negative criteria required under the MLUL, The Board is satisfied that the proposed use would not have any substantial impact on the zone plan or zoning ordinance. The Township Master Plan and Reexamination Reports continue to emphasize the goal of meeting the educational and cultural needs of the community. The Board finds the proposed performing arts studio and school is such a use. It will serve to eliminate a vacant space in an existing building in the R-O zone district. In addition, the Board finds that the proposed use will not result in any detriment to the zone plan or zoning ordinance. In balancing the benefits of the proposed use against the detriments, the Board concludes that the benefits of the proposed use at this site substantially outweigh any detriment. Therefore, the Board finds and concludes that the granting of use variance relief to permit the proposed performing arts studio and school would not result in a substantial detriment to the public good, nor would it result in a substantial impairment of the intent and purpose of the established zone plan and zoning ordinance of the Township under the enhanced burden required by Medici v. BPR Co., 107 N.J. 1 (1987).

20. The Board also finds and concludes that variance relief may be granted to permit no on-site loading space and 13 on-site parking spaces. The absence of an on-site loading space is a pre-existing nonconforming condition. The proposed use is such that it will not generate deliveries requiring a large, dedicated loading space. Therefore, the Board finds and concludes that the granting of variance relief to permit no on-site loading space will not result in a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance. The Board is also satisfied that the existing 13 space on-site parking lot will serve to provide safe and adequate on-site parking for the existing uses and the proposed use, despite the absence of nine additional parking spaces necessary to meet the 22 space parking requirement, due to the staggered classes resulting in staggered student drop-offs and pickups, as well as the proximity and use of public transportation for teaching staff. The Board is also satisfied that the elimination of one or more on-site parking spaces to create a loading space would result in a greater negative impact than the preservation of the existing on-site parking.

21. The Board also finds that the Applicant has satisfied the requirements for preliminary and final major site plan approval.

NOW, THEREFORE, BE IT RESOLVED, on this 24th day of June, 2019, that use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed use of the basement and first floor and one second floor office space for performing art studio and school purposes,

bulk variance relief to permit no on-site loading space and 13 on-site parking spaces, and preliminary and major site plan approval requested by the Applicant for property located at 131 Millburn Avenue, Millburn, granted by this Board at its meeting of May 20, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. The approved use consists of a performing arts studio and school use of the basement and first floor and one second floor office space for the performing arts studio and school as described in the testimony at the hearing and the plans prepared by Buchholz Architects, consisting of one sheet, A-1, dated April 4, 2019 and Use Variance Site Plan consisting of one sheet, Sheet 1, prepared by Casey & Keller, dated February 9, 2019.

2. The Applicant shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Township Land Development Ordinance shall provide otherwise.

3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant and/or Property Owner, as appropriate, shall comply with conditions (1) through (4) of the Township Fire Marshal's report dated May 8, 2019 and the Township Forester's report dated May 3, 2019.

4. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals and other witnesses at the public hearings, if any, 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. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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

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 24th day of June, 2019.

APPLICATIONS

CAL#3678-19, ROBERT REDDEN/XIAO XIAN LI, 4 ROSEDALE AVENUE, MILLBURN

Robert Redden and Xiao Xian Li, appeared and were sworn. The applicants would like to maintain a fence on their property. Proposal is in violation of:

609.6a – Front yard fences are prohibited

Mr. Redden indicated that he installed a fence at the rear of the property, unaware that he needed a permit. The fence extends into the front yard of the property. The fence is a 6 foot wooden, picket fence that helps block the view of the neighbor’s garbage cans.

The applicant has already replaced several dead and dying trees in the subject area and they intend to replace other trees.

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

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – no
- Jessica Glatt – yes
- Joseph Steinberg – yes

Cal#3678-19, Robert Redden/Xiao Xian, 4 Rosedale Avenue, Millburn, was **APPROVED** with the following conditions: 1) prior to the issuance of a Certificate of Occupancy/Approval, the applicants shall reverse the sections of the fence so that the good side faces the neighbors’ properties; 2) prior to the issuance of a Certificate of Occupancy/Approval, the applicants shall replace all dead and/or dying trees which screen the fence from view.

CAL#3690-19, BING SHEN 332 LUPINE WAY, SHORT HILLS

Bing Shen, Douglas Asral, Architect, and Peter Korzen, P. E., appeared and were sworn. The applicant would like to demolish the existing dwelling on the property and build a new dwelling on the site. Proposal is in violation of:

- 606.2e1d – Front yard setback
- 608.5 – Steep slope disturbance
- 609.5 – Accessory structure front setback on a corner lot
- 607.3 – Front yard coverage

Peter Korzen's credentials were presented and accepted by the Board. He gave a brief description of the proposal and spoke to the variance relief required. The property is a corner lot in the R-6 zone district. Front yard setback relief is required in order to permit a setback of 37 feet where 40 feet is required. Steep slope disturbance variance relief is required to permit disturbance of 1,460 SF where the ordinance allows 1,000 SF of disturbance. Accessory structure setback on a corner lot is 80 feet from both front lot lines. The applicant's proposal is to have a patio area 20 feet from the front lot line and in the front yard area. Subsequent to the zoning officer's letter of denial, the applicant reduced the patio area to be compliant at 6.9%. In addition, the height of the front yard walls has been reduced to 2 feet in height.

Douglas Asral's credentials were presented and accepted by the Board. He spoke to the design of the house. He spoke to the architectural elements of the proposed construction. This house is on an isolated corner, is opposite a wooded area and does not face any existing residence.

Several Board members were concerned with the architecture of the construction and felt that it was not in keeping with the neighborhood characteristic. The existing homes in the neighborhood are Cape Cods and this proposed dwelling seems to be overshadowing the surrounding dwellings. Other Board members were concerned with the patio area in the front yard.

Peter Korzen felt the c(1) variance relief could be granted due to the unusual lot shape, the corner lot status as well as the topographic conditions of the lot. There is no detriment to the public good and there is no detriment to the zone plan or zoning regulations.

Overall, Board members were not in favor of the applicant's proposal.

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

CAL#3689-19, CHRISTOPHE & ALISON REIBAUD, 30 SOUTHERN SLOPE DRIVE, MILLBURN

Christophe & Alison Reibaud, and Gregory Kolodeny, Architect, appeared and were sworn. Mr. Kolodeny's credentials were presented and accepted by the Board. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

- 606.2e1e1a – Side yard setback
- 606.2e1f – Combined side yard setback
- 606.2e2d – Floor area ratio

Mr. Kolodeny gave a brief description of the proposed construction. Side yard setback variance relief is required to permit 7.2 foot setback where 8 feet is required. This is an existing non-conforming condition. The required combined side yard setback is 17.5 feet and 16.4 feet is proposed. The proposed construction will have no effect on the neighbor since the dwellings are

separated by the neighbor's driveway. The addition will not extend any further than the dwelling of the neighbor to the right.

Overall, Board members felt the proposed addition was modest in nature and blended well with surrounding properties.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3689-19, Christophe & Alison Reibaud, 30 Southern Slope Drive, Millburn, was **APPROVED**.

CAL#3696-19, C2 EDUCATION, 720 MORRIS TURNPIKE, SHORT HILLS

Lisa Lomelo, Attorney for the applicant, stated her appearance. The applicant would like to operate a tutoring service on the property located at 720 Morris Turnpike. The previous tenant was Verizon. Proposal is in violation of:

606.6b – Not a permitted use
607.2 – Required parking

In addition, site plan approval is required.

Ms. Lomelo indicated that the proposed use is currently not permitted in the zone. However, the Millburn Township Committee had a first reading on June 18, 2019, which proposes to permit this proposed use in this zone. The applicant is confident that the Board will find this a good use for the proposed site.

Rick Smith, C2 Education vice president of real estate, appeared and was sworn. He gave a brief description of their proposal. He stated that they provide SAT/ACT preparation classes as well as subject specific tutoring. They typically have a 3-1 student/teacher ratio with clients meeting twice a week for 2 hour sessions. Their usual hours of operation are Monday – Thursday from 1 PM – 9 PM; 9 AM – 5 PM on Saturday. They are closed on Friday and Sunday. The peak times are after school. Parents do not stay on site. Students are dropped off and picked up. Approximately once a month parents will come in with their students for a diagnostic update. The tutors are part-time employees. The staff consists of 8 tutors with 5-6 on

site at any one time. Mr. Smith stated that he chose this location due to the reputation of the schools.

Richard Keller, P. E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. The property is a 4.87 acre property located on the north side of Morris Turnpike. The property is located in the B-2 zone district, which does not specifically permit tutoring services. There is no exterior change proposed to the site and the applicant is seeking a waiver from the requirement to submit an Environmental Impact Statement. The B-2 zone permits a maximum lot coverage of 65%. In addition, a requirement of 286 parking spaces is required for the combined uses on the property. The existing property has a non-conforming lot coverage of 94% and 282 parking spaces exist on site. Therefore, the applicant is seeking variance relief for these conditions.

Richard Keller stated that the proposed use is particularly suitable for the subject property. The site is fully developed with an existing multi-tenant shopping center. Although the proposed use is not expressly permitted, it will be a complimentary use to the other uses in the shopping center. There is sufficient on-site parking to service the parking demands of the tenants of the shopping center since they all have different peak parking needs.

He continued by stating that the proposed use promotes the general welfare as it is educational in nature. It also promotes a commercial and educational use to meet the needs of the community. Finally, it promotes a desirable visual environment by occupying a vacant storefront.

Lisa Lomelo summarized and respectfully requested a favorable vote by the Board.

Overall, Board members felt the testimony presented spoke to the positive and negative criteria. They were supportive of the applicant's proposal.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3696-19, C2 Education, 720 Morris Turnpike, Short Hills, “d” use variance was **APPROVED**.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3696-19, C2 Education, 720 Morris Turnpike, Short Hills, waiver of EIS was **APPROVED**.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3696-19, C2 Education, 720 Morris Turnpike, Short Hills, site plan approval/parking variance was **APPROVED**.

CAL#3697-19, KELLY SOLOMON, 65 WESTVIEW ROAD, SHORT HILLS

Danial Dubinett, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He has provided a limited power of attorney, which has been reviewed and approved by Board Attorney Gail Fraser. The applicant would like to install a patio. Proposal is in violation of:

609.5 – Accessory structure front setback on corner lot

The dwelling is currently under renovation. The applicant would like to install a patio which will have a 70.8 foot setback, where the ordinance requires 80 feet. The patio will not be visible from the street. Much of the old concrete patio closest to Mohawk Road is being removed.

Jessica Glatt asked if the applicant is proposing any landscaping along the Mohawk Road side of the patio. Danial Dubinett indicated that the applicant has not proposed any landscaping due to the 103 foot setback and the topography of the land. However, the proposed patio will be concealed from view from Westview Road by the existing dwelling.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3697-19, Kelly Solomon, 65 Westview Road, Short Hills, was **APPROVED**.

CAL#3698-19, TCS SHORT HILLS, LLC, 507 MILLBURN AVENUE, SHORT HILLS

Anthony Cerciello, Attorney for the applicant, stated his appearance. The applicant would like to operate a STEM related educational instruction studio. Proposal is in violation of:

606.6.1b – Not a permitted use
607.1 – Loading requirement
607.2 – Parking requirement

Although the applicant was seeking a waiver from the requirement to provide an Environmental Impact Statement as well as preliminary and final site plan approval, it was determined that the applicant requires only minor site plan approval, thereby not requiring an Environmental Impact Statement.

Noreen Kazi, Zubair Kazi, Nisha Bhalla, members of the LLC, and Richard Keller, P. E., P. P., appeared and were sworn. Zubair Kazi, Architect, presented his credentials, which were accepted by the Board. He gave a brief description of the operation as well as the floor plan.

Richard Keller’s credentials were presented and accepted by the Board.

Entered as A-1: aerial photo 4/5/16 of subject site
Entered as A-2: 2-page photo handout

The property is located in the B-3 zone district. The use of the property for an educational instruction studio is not a permitted use in the zone. There are 9 parking spaces on site; 1 encroaches into the public right-of-way and another encroaches slightly onto the adjoining property. Mr. Keller stated that the property is an 8,629 SF lot at the intersection of Millburn Avenue and Campbell Road. It is a fully developed 4-tenant building in which the applicant proposes to lease a vacant 1,194 SF space at the corner of the building. The parking requirement for the applicant is 6 spaces, which is identical to the parking requirement of the prior use of the space. Mr. Keller stated that the property is particularly suitable for the proposed use since it is only a short distance from Millburn High School as well as the Glenwood Elementary School.

Richard Keller stated that the proposed use satisfies the purposes of zoning in that it promotes the general welfare and promotes the commercial and educational needs of the community. He added that the proposed use will not result in a substantial detriment to the public good because it is located in the B-3 zone district, which encourages small-scale commercial uses such as the proposed.

The Board discussed the merits of the application and felt that the existing 9-space parking lot, as well as the applicant's purchase of 3 municipal parking permits, will provide sufficient parking to meet the needs of the existing and proposed tenants. The Board also felt the use satisfied the positive and negative criteria for the granting of use variance approval.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3698-19, TCS Short Hills, LLC, 507 Millburn Avenue, “d” use variance was **APPROVED** with the following conditions: 1) the applicant shall purchase 3 municipal parking permits on an annual basis; 2) the applicant shall comply with the recommendations in the Fire Marshal's report.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3698-19, TCS Short Hills, LLC, 507 Millburn Avenue, parking/loading variance and site plan 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 Steve Togher, seconded by Jessica Glatt, and carried with a unanimous voice vote. (10:10 PM)

Eileen Davitt
Board Secretary

Motion: MM
Second: KW
Date Adopted: 8/5/19