

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

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, July 19, 2021** at 7:00 PM via Zoom webinar.

Board Secretary, Eileen Davitt, opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Jyoti Sharma
Joy Siegel
Steve Togher
Wolfgang Tsoutsouris
Amy Lawrence
Chandru Harjani
Joseph Steinberg, Chairman

Also present:

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

MINUTES

A motion to approve the minutes of May 17, 2021, was made by Wolfgang Tsoutsouris, seconded by Joy Siegel, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3797-21, Shalebrook Group 2, 157 Long Hill Drive, Short Hills

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

Jyoti Sharma – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Jonas Goldberg on behalf of The Shalebrook Group 2, LLC (hereinafter the “Applicant”), in Calendar No. 3797-21 to permit the construction of a deck on the side of the residence on property located at 157 Long Hill Drive, Millburn, New Jersey, known and designated as Lot 1, Block 3606, 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 June 21, 2021, as to Calendar No. 3797-21 to permit the construction of a deck on the side of the residence on property located at 157 Long Hill Drive, Millburn, New Jersey, known and designated as Lot 1, Block 3606, 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 June 21, 2021 hearing, the Application and service of notice were found to be in order. The Applicant appeared without counsel and provided sworn testimony in support of the application. No members of the public testified in opposition to the Application.

2. The Applicant is the owner of the subject property, which is a corner lot located in the R-4 zone district on the corner of Long Hill Drive and White Oak Ridge Road. The single family home on the property is currently being renovated. The Applicant proposes to construct a 459 square foot deck adjacent to the home’s kitchen and family room. The proposed deck will not be located within the 40 foot front yard setback from White Oak Ridge Road nor any closer to White Oak Ridge Road than the existing residence on the subject property.

3. The subject property contains an existing nonconforming condition for side yard setback for a building over 18 feet in height but under 32 feet in height, where 22 feet is the required minimum side yard setback, and the existing residence has a side yard setback of 15.9 feet. The Township zoning ordinance (the “Zoning Ordinance”) requires an accessory structure on a corner lot in the R-4 Zone to be a minimum of 80 feet (or two times the required front yard setback) from any street line. The proposed deck is to be located 55 feet from White Oak Ridge Road. Therefore, variance relief is required.

4. The Applicant testified that the proposed deck is sized to accommodate a seating area, a table, a grill, chairs, and stairs leading down to the yard. The Applicant further stated that the height of the proposed deck would be five (5) feet above existing grade. The Applicant testified that existing mature plantings and trees would completely screen the proposed deck from White Oak Ridge Road. The Applicant stated that due to the narrowness of the subject

property and a side yard setback for accessory structures of 12 feet, there was only a very narrow area where an accessory structure could be built in compliance with the Township zoning ordinance. It would be impracticable to construct a deck or similarly sized accessory structure within this limited area of the property. Further, constructing a very narrow, awkwardly shaped deck within this area would impair the utilization and enjoyment of this area of the property as the property's effective rear yard.

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

6. 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 Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

7. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c for the requested variance relief as to the accessory structure setback on a corner lot, and concludes that it is appropriate to grant this variance relief requested by the Applicant to permit the proposed construction. As set forth above, the need for the variance relief requested by the Applicant is related to several already-existing conditions affecting the property, existing dwelling and other site improvements. The Board finds these conditions to be exceptional circumstances affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant. Although the proposed construction requires variance relief as set forth above, the deviation from the applicable ordinance requirement is modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring comparable or additional variance relief and rendering the proposed construction inefficient and impractical.

8. The proposed deck will not be visible from Long Hill Drive, and will be concealed from view from White Oak Ridge Road by existing trees and vegetation. The proposed deck will be a considerable distance from the closest neighboring homes. Outdoor living space such as decks and patios exist throughout the subject neighborhood.

9. The Board concludes that the proposed construction preserves the character of the subject neighborhood, and that any negative impact from the proposed improvements is

negligible and not a substantial detriment. For the reasons set forth above, the positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c, including 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 Township zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 19th day of July, 2021 that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70c, to construct a 459 square foot deck, five feet above grade, resulting in a 55 foot side yard accessory structure setback from a street for a corner lot, where 80 feet is the required minimum accessory structure setback to a street for a corner lot in the R-4 zone, approved by this Board at its meeting of June 21, 2021, for the property at 157 Long Hill Drive, 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 Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicant shall be bound to comply with the application submissions and the representations made before this Board by the Applicant at the public hearing, and 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.
3. The Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicant shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

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

Cal#3799-21, Rolf Brunner, 78 Kean Road, Short Hills

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

- Jyoti Sharma – yes
- Joy Siegel – yes

Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**ROLF BRUNNER
BLOCK 4304, LOT 3**

**CALENDAR NO. 3799-21
JULY 19, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Rolf Brunner (hereinafter the “Applicant”), in Calendar No. 3799-21, to permit the installation of a generator in the side yard of the property located at 78 Kean Road, Short Hills, New Jersey known and designated as Lot 3, Block 4304 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) held a public hearing according to law on June 21, 2021 in Calendar No. 3799-21 to permit the installation of a generator in the side yard of the property located at 78 Kean Road, Short Hills, New Jersey, known and designated as Lot 3, Block 4304 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 June 21, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel and provided sworn testimony in support of the application. No objectors or interested parties appeared or testified at the hearing.

2. The Applicant and Nancy Grande are the owners of the subject property, which contains a single-family residence located in the R-4 zone. The Applicant desires to install a generator in the side yard of the subject property. Pursuant to Section 609.1(f)(2) of the zoning ordinance of the Township of Millburn (the “Zoning Ordinance”), generators are required to be located a minimum of 12 feet from the side yard setback. The proposed generator would be located eight (8) feet from the side yard setback of the property. Therefore, variance relief is required pursuant to N.J.S.A. 40:55D-70c.

3. The Applicant testified that due to a medical issue, the generator is needed to provide power to the dwelling at the property at times when there is a loss of electric power. There is an existing air conditioning unit located on the side yard of the property where the generator is proposed to be installed. According to the Applicant, the proposed location of the generator coincides with an existing gas line that is connected to the home on the subject property. The Applicant stated that locating the generator anywhere else on the property would result in a tremendous increase in installation cost. The Applicant further testified that he would

install shrubbery and plantings around the generator to sufficiently screen it from view from the Applicant's neighbor's property and from any public right of way. The Applicant stated that the location of the proposed generator is already screened by existing evergreen plantings, and is not an exposed area on the property. The Applicant further noted that the most affected neighbors, Robert & Liane Steele, 80 Kean Road, Short Hills, are installing a generator that is the same distance from the Applicant's residence as the Applicant's proposed generator would be from the Steele's residence.

4. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c1 and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the installation of a generator in the side yard of the subject property. The Board is satisfied that the need for variance relief to permit the proposed generator is due to the conditions affecting the subject property, the placement of the dwelling on the property, and the existing gas line on the property. Although the proposed construction requires variance relief as set forth above, the deviation from the applicable requirement is modest in light of the practical inability to relocate the proposed generator elsewhere on the property without requiring the same or additional variance relief, or without undermining the intent and purpose of the Township Zoning Ordinance.

5. The proposed installation will only result in a four foot deviation from the minimum side yard setback requirement. The proposed generator will be facing a driveway and garage on the neighboring property. The proposed generator will be effectively buffered from view from the Applicant's neighbor's property by the Applicant's planting of landscaping. All proposed landscaping shall be maintained by the Applicant. The Board finds these combined factors present an exceptional situation uniquely affecting the property and justifying the requested variance relief. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed use is negligible and not a substantial detriment. For all the reasons stated above, the positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c1, including that the granting of the variance relief requested can be accomplished 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 19th day of July, 2021 that the variance relief requested by the Applicant to install a generator eight (8) feet from the side yard of the property where 12 feet is the required minimum side yard setback, located at 78 Kean Road, Short Hills, granted by this Board at its meeting of June 21, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The proposed generator shall be adequately screened from street view and the neighboring properties by the Applicant's installation of landscaping, including evergreen plantings.

2. The Applicant shall insure that all new plantings, as well as existing trees and landscaping, shall be maintained in order to block the view of the generator from the street and from neighboring properties.

3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, including those 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 approval set forth herein. Such representations are hereby made conditions of such approval.

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 19th day of July, 2021.

Cal#3803-21, Paul Hansen, 48 Elmwood Place, Short Hills

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

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

the following memorializing resolution was adopted:

**PAUL HANSEN
BLOCK 1807, LOT 8**

**CALENDAR NO. 3803-21
JULY 19, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Paul Hansen (hereinafter the "Applicant"), in Calendar No. 3803-21, to permit the installation of two air conditioning compressors in the

side yard of the property located at 48 Elmwood Place, Short Hills, New Jersey, known and designated as Lot 8, Block 1807 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on June 21, 2021 in Calendar No. 3803-21 to permit the installation of two air conditioning compressors in the side yard of the property located at 48 Elmwood Place, Short Hills, New Jersey, known and designated as Lot 8, Block 1807 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 June 21, 2021 hearing, the Application and service of notice were found to be in order. The Applicant appeared without counsel and provided sworn testimony in support of the application. No objectors or interested parties appeared or testified at the hearing.
2. The Applicant is the owner of the subject property, which contains a single-family residence located in the R-6 zone. In 2013, the Applicant received approval from the Board to install a standby generator along the side of the home on the subject property within 12.5 feet from the nearest off-site principal building. The Applicant currently wishes to install two air conditioning compressors in the side yard of the subject property to provide central air conditioning to two zones within the existing residence on the subject property. The proposed installations would be located adjacent to the existing backup generator approved in 2013. Pursuant to Section 609.1(d) of the zoning ordinance of the Township of Millburn (the “Zoning Ordinance”), air conditioning units are required to be located a minimum of two times the required side yard setback from the nearest off-site principal building, which in this case would require a 16 foot setback. The proposed air conditioning compressors would be located 12 feet from the nearest off-site principal building. Therefore, variance relief is required pursuant to N.J.S.A. 40:55D-70c.
3. The Applicant testified that he is unable to place the air conditioning compressors in a conforming side yard location because the Applicant’s neighbor’s residence is 16 feet away from the Applicant’s residence. The Applicant further testified that many neighbors in the subject neighborhood have generators and compressors in similar side yard locations, and that placing the air conditioning compressors in the rear yard was not a viable alternative due to an existing drainage stream in the rear of the subject property. According to the Applicant, locating the proposed installations in a compliant location in the rear yard would place them in the area where the existing drainage stream overflows during heavy storms, making this location unsuitable. Various existing improvements to the single family home on the property preclude placing the proposed air conditioning compressors in an alternative location on the property. The proposed installations would be located directly across from a compressor located on a neighboring home. The Applicant agreed to install plantings and hedges to screen the proposed installations and the existing generator from the Applicant’s neighbor’s view.

4. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the installation of two air conditioning compressors as proposed. The Board is satisfied that the need for variance relief to permit the installation of the proposed compressors is due to the existing conditions affecting the subject property and the placement of the dwelling on the property, including the other points of ingress to and egress from the home. The location of the neighboring property further contributes to this condition given the relief sought by the Applicant. Although the proposed installation requires variance relief as set forth above, the deviation from the applicable requirement is modest in light of the inability to practically relocate the proposed compressors elsewhere on the property, and without undermining the intent and purpose of the Township Zoning Ordinance. The proposal will only result in a four foot deviation from the minimum side yard setback from the nearest off-site principal building requirement. The Board finds these combined factors present an exceptional situation uniquely affecting the property and justifying the requested variance relief.

5. The proposed compressors and the existing generator will be effectively buffered from view by landscaping to be installed and maintained by the Applicant. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed use is negligible and not a substantial detriment. For all the reasons set forth above, the positive and negative criteria for variance relief have been met by the Applicant pursuant to N.J.S.A. 40:55D-70c, including that the granting of the variance relief requested relating to the Application 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 19th day of July, 2021 that the variance relief requested by the Applicant to install two air conditioning compressors 12 feet from the side yard of the property where 16 feet is the required minimum side yard setback, located at 48 Elmwood Place, Short Hills, granted by this Board at its meeting of June 21, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The proposed air conditioning compressors and the existing generator shall be screened from street view and the nearest neighbor's view by the Applicant's installation and maintenance of landscaping and hedges adjacent to the air conditioning compressors.

2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, including 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 approval set forth herein. Such representations are hereby made conditions of such approval.

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

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

CLERK CERTIFICATION

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

Cal#3805-21, Sanjay Rajan, 1 Washington Avenue, Short Hills

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

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

the following memorializing resolution was adopted:

**SANJAY RAJAN
BLOCK 2305, LOT 1**

**CAL. NO. 3805-21
JULY 19, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Sanjay Rajan (hereinafter the “Applicant”), in Calendar No. 3805-21 to permit the construction of a proposed black aluminum fence within a front yard, on property located at 1 Washington Ave., Short Hills, New Jersey, known and designated as Lot 1, Block 2305, 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 June 21, 2021, as to Calendar No. 3805-21 to permit the construction of a proposed black aluminum fence within a front yard, on property located at 1 Washington Avenue, Short Hills, New Jersey, known and designated as Lot 1, Block 2305, on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel, and together with his wife, Tanya Chaturvedi-Rajan, 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 on a corner lot in the R-5 zone district at the intersection of Washington Street and Old Short Hills Road. The Applicant proposes to construct a six foot tall, 100-foot long black aluminum fence behind existing mature trees along Old Short Hills Road. The Applicant's desire to install the fence is driven by safety concerns associated with vehicles traversing along Old Short Hills Road at times when the Applicant's children play outside in the front yard on the subject property adjacent to Old Short Hills Road.

3. Pursuant to Section 609-6(a) of the zoning ordinance of the Township of Millburn (the "Zoning Ordinance"), fences are prohibited in the front yard. The subject property is a corner lot, and the fence is proposed to be constructed in a front yard along Old Short Hills Road. Therefore, variance relief is required to permit the proposed fence.

4. In addition to the Board reviewing and considering the filed application materials and plans, the Board received and considered the following additional documents submitted by the Applicant at the June 21, 2021 hearing:

A. Google Maps Aerial Picture of the Subject Property and Surrounding Area, introduced into evidence as Exhibit A-1;

B. Photograph taken by the Applicant on April 24, 2021, introduced into evidence as Exhibit A-2; and

C. Photograph taken by Tanya Chaturvedi-Rajan on April 24, 2021, depicting the view of the subject property from across Old Short Hills Road, introduced into evidence as Exhibit A-3.

5. The Applicant testified that the proposed fence would be constructed between the two existing rows of trees located along the Old Short Hills Road frontage on the subject property. The Applicant initially considered installing shrubbery to provide additional screening, but ultimately decided against doing so as its growth would be limited due to the existing mature trees on the property. Further, any such shrubbery would be insufficient to prevent children playing in the yard adjacent to Old Short Hills Road from chasing balls into the street. The Applicant testified he would be willing to plant evergreen trees four (4) feet above the root ball along the exterior of the proposed fence in lieu of other plantings which would not receive sufficient sunlight in the proposed location to serve as effective natural screening.

6. As a result of comments and concerns expressed by the Board, the Applicant agreed to reduce the height of the proposed fence to four (4) feet tall and relocate the proposed fence to 10 feet from Old Short Hills Road beginning at the point where the slate walk to the side of the Applicant's home forms a right angle with the home, at the 52.2' front yard setback measurement to Old Short Hills Road as depicted on the Applicant's August 28, 2020 survey

submitted with the application, and extending from that location to the north to where it meets the subject property's rear lot line adjacent to Lot 2. The Board notes that a four (4) foot tall fence would be permitted within the property's front yard as of right if the property was located two blocks away on Old Short Hills Road, as the property would then be located on a County road. The Applicant also agreed as a condition of approval to install shrubs designed to grow in shade for attempted screening of the proposed fence.

7. The Board finds that the Applicant has satisfied the statutory criteria required by N.J.S.A. 40:55D-70c and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed fence. The Board is satisfied that the need for variance relief to permit the proposed fence is due to the corner lot status of the subject property and the placement of the dwelling on the property. The utility of the Applicant's effective rear yard would be unreasonably constricted if the fence were placed in a conforming location on the property. Instead, the proposed location of the fence allows the Applicant to maximize the useable yard area for his and his wife's children while ensuring their safety. No existing trees are proposed to be removed in connection with the fence installation.

8. The proposed four foot high aluminum fence will serve to create the necessary safety barrier between Old Short Hills Road and the Applicant's yard. The streets abutting the subject property are busy roads with a difficult intersection, and safety concerns are paramount and can be accomplished while preserving the ambiance of the subject neighborhood. If the subject property were not a corner lot, the proposed fence would not require any variance relief. The proposed fence will be effectively buffered from view from Old Short Hills Road by existing, mature landscaping, to be supplemented with the planting of additional evergreen trees (a minimum of four feet tall from the root ball at the time of planting) and shrubbery to screen the fence from Old Short Hills Road and Washington Avenue. All existing and proposed landscaping shall be maintained by the Applicant. The Board finds these combined factors present an exceptional situation uniquely affecting the property and justifying the requested variance relief. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed fence installation is negligible and not a substantial detriment.

9. For all of the reasons set forth above, the positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c1, including that the granting of the variance relief requested relating to the Application can be accomplished 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 19th day of July, 2021 that the variance relief requested by the Applicant to construct a fence in a front yard for the property at 1 Washington Avenue, Short Hills, granted by this Board at its meeting of June 21, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The proposed fence shall be a four foot high black aluminum fence located 10 feet from Old Short Hills Road (between two lines of existing trees) beginning at the point where the

slate walk to the side of the Applicant's home forms a right angle with the home, at the 52.2' front yard setback measurement to Old Short Hills Road as depicted on the Applicant's August 28, 2020 survey submitted with the application, and extending from that location to the north to where it meets the subject property's rear lot line adjacent to Lot 2, all as agreed to by the Applicant during the Application hearing.

2. Prior to the issuance of a Certificate of Approval for the proposed fence installation, the Applicant shall install additional shrubs and landscaping that thrive in shade, as agreed to by the Applicant, to be planted starting from the existing trees parallel to Old Short Hills Road and continuing parallel to Old Short Hills Road to the house on the property (with the additional landscaping consisting of evergreen trees a minimum of four feet tall from the root ball at the time of planting) to block the view of the fence from Old Short Hills Road and Washington Avenue.

3. The Applicant shall insure that all new plantings, as well as existing trees and landscaping, shall be maintained in order to block the view of the proposed fence from Old Short Hills Road and Washington Avenue

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

5. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, including 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 approval set forth herein. Such representations are hereby made conditions of such approval.

6. 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.

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

CLERK CERTIFICATION

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

APPLICATIONS

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

*Steve Togher recused from the matter.

The applicant, Jikang Zhou, appeared and was sworn. Mr. Zhou is seeking a variance for a shed he installed along the edge of his fence. The installation is in violation of:

606.2e3a – Accessory structure side yard setback

Board attorney, Rob Simon, asked if there is any electricity that runs to the shed. Mr. Zhou responded that there is no electricity in the shed. Rob Simon also asked if there is a foundation to the structure, to which Mr. Zhou responded that the shed was placed on stones to level it. Mr. Zhou stated that the shed is approximately 6 feet tall.

Joy Siegel asked Mr. Zhou if he was aware of the need for the variance before installing the shed. Mr. Zhou said he did not know until after installing the shed when it was pointed out to him by an adjoining property owner.

Joy Siegel asked if there is any location on the site that the shed could be placed that would comply with zoning. Mr. Zhou answered that a different location which meets the 12 foot requirement would not be ideal because it would be in the middle of his backyard and would be more visible to the adjoining property owners.

Steve Togher, 15 Ferncliff Terrace, appeared and was sworn. Mr. Togher stated that he supports the application and fully understands the applicant's need for this variance.

Wolfgang Tsoutsouris and Joseph Steinberg both agreed that the current location of the shed is the most logical location for it to be in.

Upon a motion made by Amy Lawrence, 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
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3802-21, Jikang Zhou, 12 Ridge Terrace, Short Hills, was **APPROVED**.

*Steve Togher returned to the meeting.

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

*Jessica Glatt recused and left the meeting.

Gary Forshner, applicants' attorney, stated his appearance.

Mr. Forshner stated that the applicant has agreed to withdraw all of the relief that is necessary with the exception of the relief that the board has already granted, which is the combined side yard setback. This means they will comply with the front yard setback along with the coverage requirements.

Entered as A-7: Withdrawal letter from applicant's attorney

In this letter sent by the applicant's attorney it is stated that the applicant will be reducing the length of the garage which would conform to the front yard setback requirements. The applicants will rely on the approval that was granted for combined side yard setback and will modify the plans such that the garage will no longer extend further into the front yard. The request for building coverage variance relief has been withdrawn.

Entered as A-8: revised Casey & Keller plot plan updated 7/8/21

Mr. Forshner explained the revised plan which shows the elimination of the need for building coverage variance relief.

* Jessica Glatt returned to the meeting.

CAL#3792-21, SCOTT DOREMAN, 19 RANDALL DRIVE

* Craig Ploetner recused and left the meeting.

The applicant's attorney, James Foerst, stated his appearance. He stated that the applicant hired a new engineer after the last Board appearance. The property is in need of repairs. The applicant is proposing an addition and installation of an in-ground pool. The applicant has eliminated the need for lot coverage and is now proposing a Hampton-style pool.

Nikki Louloudis, P. E., appeared and was sworn. Her credentials were approved by the Board.

Entered as A-1: Aerial photo of site, prepared by Bowman July 16, 2021

Entered as A-2: Concept plan rendering, prepared by Bowman July 16, 2021

Entered as A-3: 5 photos of existing conditions

Ms. Louloudis stated that the applicant is proposing to renovate the structure as it is not in great condition and needs some work. The property is a 24,652 SF lot located in the R-4 zone. The property has a lot depth of 119.2 feet where 150 feet is the required depth in the R-4 zone.

Entered as A-4: 3 sheet revised zoning calculation form dated 6/28/21

Board members were finding it difficult to follow the applicant's new plan and it was discovered that the plans that were being discussed were different than the original plans that the Board had. The revised plans were not received 10 days prior to the meeting and were not available to Board members.

The matter was carried to August 16, 2021.

* Craig Ploetner returned to the meeting.

CAL#3804-21, SHERRIE POTASH, 32 GREAT HILLS TERRACE, SHORT

Sherris & Laurence Potash, and Jonathan Bob, Architect, appeared and were sworn. The applicants are proposing to install a pool/patio/fence on the property. Proposal is in violation of:

609.1b – Accessory structures shall be in rear yard only

609.1e – Pool equipment location

609.6a – Front yard fences are prohibited; Front yard wall height shall not exceed 2 feet

Jonathan Bob indicated that the property is a thru-lot with its main frontage on Great Hills Terrace. The portion of the property that serves as the applicants' rear yard has partial frontage on Tall Pine Lane. As such, it is considered front yard area.

Upon questioning by Board Attorney, Rob Simon, Mr. Bob stated that to his knowledge, there was a change to the property behind that of the applicant's. Apparently it was a physical extension of the roadway behind them that encompasses about half of their rear property line. Currently on the applicant's rear property line there stands a 4-6 foot high retaining wall that goes up to the property behind them.

The applicant is seeking a variance for a pool to be installed in the Tall Pine Lane front yard along with a fence to surround this pool. The applicant is also seeking a variance for pool equipment that does not meet the ordinance requirement of 36 feet from the property line. They are proposing to place the pool equipment on the side of the house where the generator and AC units are. The equipment will have a setback of 10 feet. However, it is approximately 80 feet from the neighbor's dwelling.

Inderepreet Batra, owner of lot 65, asked if there would be any disturbance or detriment to his driveway. Mr. Bob stated that the proposal would have no impact on his driveway.

Steve Togher commented that some type of plantings around the pool equipment would be beneficial. The applicant agreed to the planting of evergreens of at least 4 feet in height to screen the pool equipment.

Joseph Steinberg added that these plantings should be evergreens and be at least four feet high.

Overall, Board members felt the unusual lot configuration created a hardship for the applicant. They felt the proposal would have no negative impact on the surrounding properties.

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
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3804-21, Sherrie Potash, 32 Great Hills Terrace, Short Hills was **APPROVED**.

CAL#3807-21, ROBERT IOMMAZZO, 75 WELLINGTON AVENUE

Robert and Dana Iammazzo, and John James, applicants' architect, appeared and were sworn. John James' credentials were presented and accepted by the Board. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

606.2e2d – Floor area ratio

John James explained that the applicant wants to expand the existing second floor area to add a master bathroom and a master closet. They are proposing to add 160 SF which will result in a floor area ratio which exceeds the allowable. John James stated that the property can adequately accommodate this floor area ration and the proposal will no negative impact on the streetscape, the zone plan or surrounding properties.

Board members felt the applicants; proposal was well designed and voiced their support of the applicants' request.

Rob Simon reminded Board members that the relief being requested by the applicant is for a "d" variance for floor area ratio, thereby requiring 5 affirmative votes.

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

Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Amy Lawrence – yes
Jessica Glatt – yes
Joseph Steinberg – yes

CAL#3807-21, Robert Iommazzo, 75 Wellington Avenue was **APPROVED**.

CAL#3810-21, MBK HOLDINGS LLC, 688-700 MORRIS TURNPIKE

Gregory Meese, applicant's attorney, stated his appearance. The applicant is proposing to operate a Jersey Mikes Sub Shop in the existing shopping center on Morris Turnpike.

The applicant is seeking a conditional use variance to allow a fast food restaurant that is less than 125 feet to the closest residential property line. A parking variance is also required to allow for 43 parking spaces where 50 spaces are required by the ordinance standard. No loading space exists on site and that condition will remain, requiring variance relief. Sign variance relief is also required for wall graphics that exceed the allowable size. Finally, site plan approval is required. .

Evan Mayer, franchisee, appeared and was sworn in. He gave a brief description of the proposed operation.

Joseph Steinberg asked if the applicant would be agreeable to a condition that loading would be only through the front of the store. Mr. Mayer stated that he would be amenable to this condition.

Wolfgang Tsoutsouris asked if there is any venting that comes out of the restaurant. Mr. Mayer stated that there is a grill hood that vents the heat and scents of the grill. The air circulating through this vent travels vertically through the roof.

Richard Keller, P. E, P. P, appeared and was sworn. His credentials were presented and accepted by the Board. He spoke to the proposed site plan as well as the variances being requested.

Entered as Exhibit A1: Site and neighborhood photos

Mr. Keller stated that the only proposed changes to the site are to remove the dumpsters along the back of the building and to corral them over onto a concrete pad with a fence around it.

Entered as Exhibit A-2: Aerial site photo

The site will have no deep fryers or open flame cooking which typically generates most of the odor in food establishments. There would also be no early morning hours, no late night hours, no drive through and no window to the rear.

Mike Shepherd asked if the applicant is familiar with the Millburn Township ordinances as they pertain to noise, odors, waste, rodent control and environmental impact. He also asked if Jersey Mike's has a compliance department that monitors compliance of individual stores to local regulations. Evan Mayer stated that Jersey Mike's provides extensive training to all their operators and team members, and that a 9-week training course is provided for employees. Mr. Mayer added that there is a standards and training department that monitors store activities in order to ensure that the establishment is being operated in accordance with corporate standards and within local regulations.

Mark Bigos, property owner, appeared and was sworn. He stated that Mattress Firm and T-Mobile, other businesses located in the same plaza are open until 9:00 PM, which is the typical closing time for Jersey Mike's. He stated that he monitors his properties closely and visits the sites frequently in order to ensure that they are kept clean.

The matter was carried to August 16, 2021.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Wolfgang Tsoutsouris, seconded by Amy Lawrence, and carried with a unanimous voice vote. (11:00 PM)

Eileen Davitt
Board Secretary

Motion: JSi
Second: ST
Date Adopted: 10/18/21 (re-adoption)