

Township of Millburn
Minutes of the Zoning Board of Adjustment
August 2, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, August 2, 2021** at 7:00 PM via Zoom webinar.

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

The following members were present for the meeting:

Craig Ploetner
Jyoti Sharma
Joy Siegel
Steve Togher
Wolfgang Tsoutsouris
Amy Lawrence
Chandru Harjani
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

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

APPROVAL OF MINUTES

There were no minutes for approval.

MEMORIALIZATIONS

Cal#3790-21, Brian & Debra Lau, 80 Cypress Street, Millburn

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

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

Jessica Glatt – yes

the following memorializing resolution was adopted:

**BRIAN & DEBRA LAU
BLOCK 309, LOT 15**

**CAL. NO. 3790-21
AUGUST 2, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Brian and Debra Lau (hereinafter the “Applicants”), in Calendar No. 3790-21 to permit the construction of a second floor master bedroom, master bathroom, walk-in closet and laundry room; new deck stairs located at the existing deck location; renovation of the existing second floor hall bathroom, existing bedroom closets, kitchen and first floor bathroom; and expansion of the existing garage, on property located at 80 Cypress Street, Millburn, New Jersey, and designated as Lot 15, Block 309, 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 June 7, 2021 as to Calendar No. 3790-21 to permit the construction of a second floor master bedroom, master bathroom, walk-in closet and laundry room; new deck stairs located at the existing deck location; renovation of the existing second floor hall bathroom, existing bedroom closets, kitchen and first floor bathroom; and expansion of the existing garage, on property located at 80 Cypress Street, Millburn, New Jersey, and designated as Lot 15, Block 309, 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 7, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel, and together with John James, the Applicants’ Architect, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which is located in the R-6 zone district. Seeking a more functional living space for their growing family, the Applicants propose to construct a second floor master bedroom, master bathroom, walk-in closet and laundry room; new deck stairs located at the existing deck location; renovation of the existing second floor hall bathroom, existing bedroom closets, kitchen and first floor bathroom; and expand the existing garage.

3. The subject property, containing a single family residence, constitutes a corner lot per the Township zoning ordinance (the “Zoning Ordinance”), and is located at the intersection of Cypress Street and Myrtle Avenue. The subject property contains two pre-existing

nonconforming conditions: a front yard corner lot setback of 18.3 feet at Myrtle Avenue where the required minimum front yard setback for a corner lot in the R-6 zone is 40 feet; and a side yard setback of seven (7) feet for a building over 18 feet in height but under 32 feet in height, where the required minimum side yard setback is 9.5 feet for a building over 18 feet in height but under 32 feet in height. The proposed construction would result in a front yard setback of 21.7 feet at Myrtle Avenue where the required minimum front yard setback for a corner lot is 40 feet, and a 39.6% Floor Area Ratio (“FAR”) where 36% is the maximum allowable FAR. Therefore, variance relief is required pursuant to N.J.S.A. 40:55D-70d4 and N.J.S.A. 40:55D-70c.

4. In addition to the application materials filed by the Applicants, the Board received and considered the following additional documents submitted at the underlying hearing in support of the Application: Eight photographs of the property and the surrounding neighborhood taken on April 19, 2021, and an aerial site location plan sheet, introduced into evidence as Exhibit A-1, on June 7, 2021;

5. The Applicants propose to move the master bedroom upstairs, add a master bathroom and walk-in closet, and turn the existing first floor master bedroom into a family room. The Applicants stated that they wanted to relocate the master bedroom upstairs so that the Applicants’ bedroom could be located closer to the bedrooms of their children, and that the Applicants wanted to make sure that any proposed construction was consistent with the existing two-story residences in the subject neighborhood.

6. The Applicants’ Architect, John James, testified that the existing residence on the subject property consists of one story, with two bedrooms built into the existing attic. Mr. James compared the existing residence on the subject property to residences in the subject neighborhood, and stated that the current one-story configuration of the existing residence was not found anywhere else in the subject neighborhood. Mr. James also stated that the existing garage was not functional, as it is too small to open a car door when a vehicle is parked inside it, and that the existing home is in need of updating especially as compared to homes in the neighborhood.

7. Mr. James stated that the Applicants seek to expand the existing garage from 10 feet to 13.8 feet, and to construct the proposed second floor master bedroom above the garage. Mr. James opined that it is difficult for the Applicants to comply with the Zoning Ordinance provisions applicable to a corner lot, which require two setbacks of 40 feet, since the subject property is relatively narrow at only 60 feet wide. Mr. James stated that there was no conforming area on the subject property where the proposed, modest increase in square footage could occur within the existing footprint of the residence. Mr. James further stated that the height of the home after construction of the proposed additions would be well below the maximum height permitted in the R-6 Zone, and will be consistent with the heights and style of existing residences in the subject neighborhood. The subject property also benefits from mature screening along its perimeter.

8. In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70(d)(4), an applicant must demonstrate that the proposed site will accommodate any problems associated

with the proposed floor area larger than that permitted by the zoning ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999). The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(d)(4) for FAR variance relief, and concludes that it is appropriate to grant this variance relief requested by the Applicants to permit the proposed construction. The Board is satisfied that the proposed construction is modest in size, similar to other additions in the subject neighborhood, and will bring the residence more into conformity with residences in the subject neighborhood as a two story home. The proposed construction will also serve the Applicants' needs associated with a growing family. The deviation from the applicable FAR requirement set forth in the Zoning Ordinance is modest in light of the inability to perform any construction on the property without requiring the same or additional variance relief, or without undermining the intent and purpose of the Township Zoning Ordinance. The proposed construction will only result in a 238 square foot (3.6%) deviation from the FAR requirement, and will not negatively impact neighboring properties. The proposed construction will bring the residence more into conformity with the appearance of neighboring residences. The subject property will accommodate any perceived problems associated with the proposed FAR larger than that permitted by the Zoning Ordinance, so to establish special reasons under N.J.S.A. 40:55D-2, including promoting the general welfare and providing sufficient space in an appropriate location for residential use.

9. 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[.]

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

11. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70(c)(1), and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed construction. The need for variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the Application materials. The subject property is a narrow corner

lot with only 60 feet of width, and there is no useable location on the subject property where the proposed construction can be located that would not result in the same or additional variance relief.

12. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants. Although the proposed construction requires variance relief to permit a 21.7 foot front yard setback for a corner lot where 40 feet is the required minimum, the deviations from the requirements are modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring the same or additional variance relief, or without undermining the intent and purpose of the Zoning Ordinance and the Township Master Plan. In fact, the application reduces the extent of the existing nonconformance by 3.4 feet, where 18.3 feet currently exists and the application proposes a setback of 21.7 feet. 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.

13. The proposed development tastefully constitutes a material upgrade to the home on the somewhat undersized property. Therefore, for all the reasons stated above, the positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70, 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 zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 19th day of July, 2021 that the variance relief requested by the Applicants to construct a second floor master bedroom, master bathroom, walk-in closet and laundry room; new deck stairs located at the existing deck location; renovation of the existing second floor hall bathroom, existing bedroom closets, kitchen and first floor bathroom; and expand the existing garage, resulting in a front yard setback of 21.7 feet at Myrtle Avenue where the required minimum front yard setback for a corner lot is 40 feet, and a FAR of 39.6% where 36% is the maximum allowable FAR, on property located at 80 Cypress Street, Millburn, granted by this Board at its meeting of June 7, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

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

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

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

4. The Applicants shall 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 2nd day of August, 2021.

Cal#3801-21, Sanjeev Vinayak, 2 Rippling Brook Drive, Short Hills

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

- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**SANJEEV VINAYAK
BLOCK 4601, LOT 14**

**CAL. NO. 3801-21
AUGUST 2, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Sanjeev Vinayak (hereinafter the “Applicant”), in Calendar No. 3801-21 to permit the construction of a patio located at the rear of the residence on property located at 2 Rippling Brook Drive, Short Hills, New Jersey, known and designated as Lot 14, Block 4601, 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. 3801-21 to permit the construction of a patio on property located at 2 Rippling Brook Drive, Short Hills,

New Jersey, known and designated as Lot 14, Block 4601, 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 7, 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. There was no public opposition to the application.

2. The Applicant is the owner of the subject property, which is a corner lot at the intersection of Rippling Brook Drive and White Oak Ridge Road, located in the R-4 zone district. The Applicant proposes to construct a patio the shape of a quarter circle with a 21 foot radius, located in the rear yard of the subject property adjacent to an existing deck.

3. The subject property contains a single family residence. Beyond its condition as an undersized lot for the R-4 zone district, the subject property also contains two (2) additional nonconforming conditions pertaining to the Township Ordinance for the R-4 zone: (a) a minimum lot width of 100 feet is required, and the subject property has an existing lot width of 97.46 square feet; and (b) a minimum lot depth of 150 feet is required, and the subject property has an existing lot depth of 142 feet.

4. The proposed application would result in a 42.2 foot accessory structure setback from a street for a corner lot, where 80 feet is the minimum accessory structure setback from a street for a corner lot in the R-4 Zone. Therefore, variance relief is required. In addition to the application materials, the Board received and considered the following document submitted with the application: Photograph of the front of the existing residence on the subject property, taken on April 15, 2021, consisting of 1 sheet, introduced into evidence as Exhibit A-1 on June 7, 2021.

5. The Applicant desires to construct the approximately 300-400 square foot proposed patio as a place for outdoor passive recreation for his family. The proposed patio will be attached to the existing residence at the subject property. The back yard of the subject property does not directly face any residences, and has an existing white fence and tree line that is about 20 feet tall.

6. The Applicant testified that the existing deck on the subject property would be located closer to White Oak Ridge Road than the proposed patio, and that the existing deck would fully screen the proposed patio from view. The Applicant also stated that there are existing mature trees that will provide additional screening for the proposed patio (to be constructed with concrete pavers); the proposed patio would not be visible from White Oak Ridge Road due to the aforementioned existing trees and existing deck; and would not be visible to any neighbors as there are no residences to the rear of the subject property.

7. N.J.S.A. 40:55D-70(c)(1) states:

Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

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

9. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(c)(1) for accessory structure setback from a street for a corner lot, and that it is appropriate to grant this variance relief requested by the Applicant to permit the proposed construction. The need for the requested variance relief is related to several already-existing conditions affecting the property, dwelling and other site improvements, including the subject property’s non-conforming lot width and lot depth conditions for the R-4 zone. 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 Zoning Ordinance requirement is modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring the same or additional variance relief, or without undermining the intent and purpose of the Zoning Ordinance.

10. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed construction is negligible and not a substantial detriment especially given the large trees that block the view of the proposed patio. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 2nd day of August, 2021 that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70(c), to construct a patio the shape of a quarter circle with a 21 foot radius, located in the rear yard of the subject property adjacent to an existing deck, resulting in a 42.2 foot accessory structure setback to a street for a corner lot, where 80 feet is the 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 7, 2021, for the property at 2

Rippling Brook Drive, Short Hills, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

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

2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and at the public hearing, 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 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 2nd day of August, 2021.

APPLICATIONS

CAL#3798-21, JINBAO TONG, 14 REEVE CIRCLE, SHORT HILLS

Jinbao Tong appeared and was sworn. He would like to maintain a non-conforming patio on his property. Proposal is in violation of:

- 606.2e3a – Accessory structure side yard setback
- 606.2e1g – Maximum accessory coverage

Mr. Tong stated that he installed a patio in his rear yard without the necessary permits. The patio encompasses the majority of his rear yard area. He is proposing to remove some of the patio but is seeking variance relief to exceed the allowable rear yard coverage and to provide a side yard setback of 9 feet where 12 feet is required.

Mr. Tong stated that he has a hardship in that he has a very large front yard area and a smaller rear yard area which limits his ability to install an adequate area for outdoor entertaining and recreational use.

Jeffrey Cohn, 16 Reeve Circle, appeared and was sworn. He stated that he lives to the left of the subject property and is most affected by the proposal. He indicated that he has a concern with regard to the use of the area. He stated that although the proposal seems to be for a patio, he has photos that show that this is going to be a basketball court. There is an existing backboard in close proximity to his dwelling and he is concerned with the noise that will be generated with such a use. Mr. Cohn also stated his concern for the potential flooding due to the large size of this paved area.

Seth Monkarsh, former resident of 12 Reeve Circle, appeared and was sworn. He stated that the applicants are wonderful property owners and he does not feel their proposal will result in a negative impact to the surrounding property owners. He also stated that this area is not subject to flooding and he does not believe the paved area will cause flooding problems.

Mr. Tong summarized and stated that the existing topography of his property will prevent any flooding.

Overall, Board members felt that the applicant's request was excessive. There is no hardship and the applicant could easily bring the proposal into full conformance. Although the applicant presented personal circumstances, this is not something the Board can take into consideration. The benefits did not outweigh the detriments.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3798-21, Jinbao Tong, 14 Reeve Circle, Millburn, was **DENIED**.

CAL#3808-21, WILLIAM & JESSICA IRWIN, 51 UNDERCLIFF ROAD, MILLBURN

Daniel Dubinett, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. The applicants would like to construct a small addition on their property. Proposal is in violation of:

606.2e1f – Combined side yard setback

Daniel Dubinett gave a brief description of the applicants' proposal. The applicants are proposing a 2-story addition to accommodate a dining room and covered porch on the first floor and a bedroom on the second floor.

Entered as A-1: series of 10 slides

Danial Dubinett stated that the subject property is s 12,318 SF lot in the R-6 zone. It is an irregularly shaped lot with an 85.1 foot lot width as measured at the 40 foot front yard setback, resulting in a combined side yard setback requirement of 29.78 feet. The applicant is proposing a combined side yard setback of 24.6 feet or 28.9%. The existing combined side yard setback is 17.2%. The need for combined side yard setback variance relief is the result of the unusual lot configuration. The existing side yard setback on the left side is 8 feet which results in the need for 21.98 feet on the right side. The addition will be 16.63 feet off the right side property line.

Danial Dubinett summarized and stated that there is no negative impact on the neighbors or the streetscape.

Overall, Board members felt the unusual lot configuration created a hardship and felt the proposal was a modest addition.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg --- yes

Cal#3808-21, William & Jessica Irwin, 51 Undercliff Road, was **APPROVED**.

CAL#3809-21, BRUCE & RANDI MEISELES, 528 WYOMING AVENUE, MILLBURN

Bruce Meiseles appeared and was sworn. The applicant would like to construct a 2nd floor addition. Proposal is in violation of:

606.2e1e1a – Side yard setback
606.2e1e1b – Additional side yard setback
606.2e1f -- Combined side yard setback

Bruce Meiseles gave a brief description of the proposal. The addition will be above the existing garage and will create a bathroom adjacent to the master bedroom on the second floor. He referred to the existing front elevation plan and indicated that the dwelling is existing non-conforming as it relates to side yard setback.

Entered as A-1: 2nd floor existing floor plan
Entered as A-2: proposed bathroom floor plan

Mr. Meiseles spoke to the proposed front elevation and stated that they propose to extend the existing roof line over the left side of the existing dwelling. The addition of a master bathroom will help bring the dwelling up to a more functional standard.

Entered as A-3: marked up survey showing area of addition

Overall, Board members felt the variances being requested were modest in nature.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3809-21, Bruce & Randi Meiseles, 528 Wyoming Avenue, was **APPROVED**.

CAL#3811-21, THOMAS BARRETT, 32 PINE TERRACE EAST, SHORT HILLS

*Amy Lawrence recused and left the meeting.

Thomas Barrett appeared and was sworn. He would like to install a generator on the property. Proposal is in violation of:

609.1f2 – Generator setback

Mr. Barrett indicated that the location proposed is the only logical placement for the generator. There is a distance of 7 feet from his dwelling to the property line. The generator is proposed to be 3 feet off the property line where the ordinance requires 12 feet. It will be behind a cluster of trees and will be barely visible.

The Board was divided over the applicant's request. Some felt this was the only location that could support the placement of the generator. Others felt that a 3 foot setback is very close to the property line and they were concerned with the noise associated with the generator.

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

Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – no
Wolfgang Tsoutsouris – yes
Jessica Glatt – no
Joseph Steinberg – yes

Cal#3811-21, Thomas Barrett, 32 Pine Terrace East, was **APPROVED**.

*Amy Lawrence returned to the meeting.

CAL#3813-21, ANKUR & SHIVANI MAKHIJA, 45 MOUNTAINVIEW ROAD, MILLBURN

James Foerst, attorney for the applicant, stated his appearance. The applicants would like to construct a patio on their property. Proposal is in violation of:

606.2e3a – Accessory structure side yard setback
609.1c – Accessory structure front lot line setback on a corner lot

Ankur & Shivani Makhija and Barry Greenberg appeared and were sworn.

Entered as A-1: photo or rear/side yard area
Entered as A-2: photo of side yard area
Entered as A-3: front of property as seen from Mountainview Road

Barry Greenberg, Landscape Architect, presented his credentials which were accepted by the Board. He described the proposed patio plan. He stated that he designed a space that will allow for the applicants' outdoor enjoyment for the applicants while maintaining a sense of privacy for the adjoining neighbors. The patio is proposed to be 50 feet off the Mountainview Road front lot line and has been placed next to the adjacent property's garage and driveway areas. Mr. Greenberg stated that he has proposed an eating area in close proximity to the kitchen and grill. The other area is more of a seating/entertaining space.

Several Board members were concerned with the 1 foot setback proposed between the eating area and the property line. The applicants agreed to modify their plan to provide a 2 foot setback for the eating area patio.

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

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

Steve Togher – no
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3813-21, Ankur & Shivani Makhija, 45 Mountainview Road, was **APPROVED**.

CAL#3814-21, PETER VAN SANT, 322 TAYLOR ROAD SOUTH, SHORT HILLS

The applicant did not appear. The matter was carried to August 16, 2021.

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

*Jyoti Sharma recused and left the meeting.

Rob Simon, Board Attorney, recused and left the meeting. Jon Drill acted as Board Attorney in the matter. Mr. Drill indicated that the applicant has returned to present a screening that they hope is more appealing to the Board than the initially submitted screening.

Paul Ricci, P. P., appeared and remains sworn. He stated that a revised exhibit dated 6/23/21 shows the proposed antenna behind a concealment panels made to replicate the existing exterior of the building.

The applicant's engineer, Colleen Connolly, appeared and remains sworn. She referred to the revised plans. She explained that in the revised plans, her team consolidated ATT's installations at the front of the building. Three sector of antennas, the equipment cabinets, and emergency generator will now be at the front of the building within the penthouse screening area. In addition, the fourth section that was previously in the center was moved to the rear of the building. This would be attached to the elevator bulkhead and be painted to match the screening.

Jonathan Drill asked what the screening material would be made of. Ms. Connolly stated it would be made from a fiberglass material, but molded into a brick shape to be compatible with the existing structure.

Entered as Exhibit A-1: Photo of concealment example

Ms. Connolly presented an example of work done by the concealment company which will be constructing the screening for the applicant. It shows how closely the fiberglass resembles the brick of the existing structure.

In Paul Ricci's opinion as a planner, the benefits of this application outweigh the detriment and meets the burden of proof under the traditional D1 use variance test.

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

Craig Ploetner – yes
Joy Siegel – no
Steve Togher – no
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes
Amy Lawrence – yes

CAL#3776-20, New Cingular Wireless, 340 Millburn Ave, Millburn, was **APPROVED** with the condition that there be a protective sidewalk bridge constructed.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Joseph Steinberg, seconded by Wolfgang Tsoutsouris, and carried with a unanimous voice vote. (10:18 PM)

Eileen Davitt
Board Secretary

Motion: WT
Second: JSh
Date Adopted: 9/20/21