

Township of Millburn
Minutes of the Zoning Board of Adjustment
February 3, 2020

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, February 3, 2020** 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
Steve Togher – arrived 7:55 PM
Wolfgang Tsoutsouris
Kevin Wenzel
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of January 13, 2020 was made by Wolfgang Tsoutsouris, seconded by Mary McNett, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3690-19, Bing Shen, 332 Lupine Way, Short Hills

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

Mary McNett – 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, Bing Shen, in Calendar No. 3690-19 for permission to construct a new single family dwelling on property located at 332 Lupine Way, Short Hills, known and designated as Lot 13, Block 1903 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 24, 2019, October 21, 2019 and January 13, 2020 in Calendar No. 3690-19 filed by Bing Shen (hereinafter referred to as the “Applicant”) for permission to construct a new single family dwelling on property located at 332 Lupine Way, Short Hills, New Jersey known and designated as Lot 13, Block 1903 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. No objectors or interested parties appeared or testified at the hearing.
2. The Applicant is the owner of the subject property which is located in the R-6 zone district. The R-6 zone requirements include the following: minimum 40 foot front yard setback and 50.6 foot front yard setback based on the average front yard setback within 500 feet on the same side of the street, and maximum front yard coverage of 30%. The proposed new single- family dwelling would result in a 49 foot front yard setback based on the average front yard setback within 500 feet on the same side of the street and 43.2% front yard coverage. Therefore, the Applicant require variance relief. Previously, the Applicant also required variance relief for accessory front yard setback, accessory coverage and front yard retaining wall height. During the course of the hearing, the Applicant revised the plans to eliminate the need for those variances.
3. The Board received and considered the following in support of the application:
 - A. Plans prepared by Asral Architect, consisting of two sheets, Z-1 and Z-2, dated January 7, 2019 and revised through May 7, 2019;
 - B. Plans prepared by Korzen Engineering consisting of five sheets, Sheets 1 through 5, dated December 21, 2018 and revised through May 3, 2019;
 - C. Plans prepared by Asral Architect, consisting of two sheets, Z-1 dated January 7, 2019 and revised through July 25, 2019 and Sheet Z-2 dated January 7, 2019 and revised through November 21, 2019;

D. Plans prepared by Korzen Engineering consisting of five sheets, Sheets 1 through 5, dated December 21, 2018 and revised through July 23, 2019;

4. Applicant Bing Shen, Peter Korzen, Professional Engineer and Professional Planner, and Douglas Asral, Registered Architect, testified in support of the application.

5. The subject property is an oversized lot in the R-6 zone district, which is located on a bend in the road of Lupine Way. Because the property is located on a curve in the roadway of Lupine Way, it technically has two front yards on Lupine Way. The property is also an irregularly shaped lot, which steeply slopes downward towards the street. The Applicant proposes to demolish the existing dwelling and construct a new two-story single-family dwelling in roughly the same location as the original dwelling. The shape, location and topography of the lot present a challenge in designing a home which does not require variance relief. During the course of the hearing, the Applicant revised the plans to present a more traditional architectural style in keeping with the neighborhood. The size of the dwelling was reduced and a proposed front yard patio was eliminated. Although the revised plans demonstrate that the proposed dwelling would satisfy the minimum 40 foot setback, the Applicant cannot meet the 50.6 foot average front yard setback at its northernmost corner of the proposed dwelling at the curvature in the roadway. The Applicant cannot shift the proposed dwelling any farther to the side property lines and still provide conforming side yard setbacks. In addition, there are existing steep slopes along the easterly side property line and further disturbance of additional steep slopes would require additional variance relief.

6. The Board concludes that the variance relief requested by the Applicant may be granted. The Board is satisfied that the need for variance relief is the result of the irregular shape of the property, its topography and location on the curve in the roadway of Lupine Way. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The Board notes that the proposed dwelling will satisfy the minimum 40 foot front yard setback, but the placement results in a 49 foot front yard setback at the curve in the roadway which does not meet the 50.6 foot average front yard setback. The Board is satisfied that it would be impossible for the Applicant to revise the plans to provide a conforming average front yard setback without triggering the need for additional variance relief for side yard setback or disturbance of steep slopes. As a result of the corner lot placement of the property on a curve in the roadway, the driveway necessary for access to the attached two-car garage triggers the need for front yard coverage variance. Reservation to eliminate any impact on the nearest neighboring residential lot to the west. The Board is satisfied that the proposed single-family dwelling will be in keeping with the other homes in this established residential neighborhood. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 3rd day of February, 2020 that variance relief to permit the construction of a new single-family home resulting in a 49 foot average front yard setback and 43.2% front yard coverage, granted by this Board on January 13,

2020 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Asral Architect, consisting of two sheets, Z-1 dated January 7, 2019 and revised through July 25, 2019 and Sheet Z-2 dated January 7, 2019 and revised through November 21, 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 Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.
3. 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.
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 hearing, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
5. The 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 3rd day of February, 2020.

Cal#3706-19, Zhuping Liu/Jie Xu, 31 Elmwood Place, Short Hills

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

- Mary McNett – yes
- Wolfgang Tsoutsouris – 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 Applicants, Zhuping Liu and Jie Xu, in Calendar No. 3706-19 for permission to construct an addition on the dwelling on property located at 31 Elmwood Place, Short Hills, New Jersey, known and designated as Lot 32, Block 1804 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 September 16, 2019, November 4, 2019 and January 13, 2020 in Calendar No. 3706-19 filed by Zhuping Liu and Jie Xu (hereinafter the “Applicants”) for permission to construct an addition on the dwelling on property located at 31 Elmwood Place, Short Hills, New Jersey, known and designated as Lot 32, Block 1804 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 Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The Applicant and his wife are the owners of the subject property, which is located in the R-6 zone district. The Applicants proposes to construct an addition on the existing dwelling. The following standards apply in the R-6 zone: maximum 36% floor area ratio, maximum 23% building coverage and minimum 35% combined side yard setback. The Applicants’ proposed addition would result in 37.5% floor area ratio, 25.9% building coverage and 31.0% combined side yard setback. Therefore, variance relief is required. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an applicant must demonstrate that the proposed site will accommodate the 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).
3. The Board received and considered the following documents in support of the application:
 - A. Plans prepared by SIH Architectural Design Services, LLC, consisting of two sheets, Sheets A-1 and A-2, dated February 23, 2019 and revised through May 1, 2019;
 - B. A survey of the property prepared by David A. Stires Associates, LLC, dated July 2, 2018, marked up to depict the proposed additions;

C. Plans prepared by SIH Architectural Design Services, LLC, consisting of two sheets, Sheets A-1 and A-2, dated February 23, 2019 and revised through October 14, 2019;

D. A survey of the Stires survey dated July 2, 2018, marked up to depict the October 14, 2019 revised addition;

E. A series of photographs of the subject property consisting of three sheets, which was admitted into evidence as Exhibit A-1;

F. A series of four photographs of the subject and adjacent properties, consisting of two sheets, which was admitted into evidence as Exhibit A-2;

G. A group of four photographs of adjacent properties and their floor area ratio, consisting of two sheets, which was admitted into evidence as Exhibit A-3;

H. An enlarged, color version of the Casey & Keller survey, which was admitted into evidence as Exhibit A-2.

4. Initially, the Applicants also sought variance relief to permit a 29.5 foot front yard setback, and a 7 foot side yard setback. During the course of the hearing, the Applicants revised the proposed plans to eliminate the need for front yard and side yard setback variances.

5. The Applicants, Zhuping Liu and Jie Xu, and Scott Hoffman, Registered Architect, testified in support of the application. The existing dwelling on the property has not been updated in decades and the living spaces on the first floor of the existing dwelling are extremely small. There is simply no way to expand the first floor to provide useful living spaces without the construction of an addition to the dwelling. In addition, the dwelling has very little storage space and the master bathroom is currently only 4 feet wide. The Applicants wish to construct an addition to the dwelling to provide additional living space, as well as an enlarged master bathroom and closet space.

6. The subject property has a 5,587 square foot lot area and 50 foot lot width, which are less than the minimum 6000 square foot lot area and 60 foot lot width required in the R-6 zone district. The existing dwelling has a pre-existing nonconforming 35.5 foot front yard setback, pre-existing nonconforming 31% combined side yard setback and pre-existing nonconforming seven foot side yard setback. In addition, while the existing building coverage is conforming at 22.5%, any addition to the footprint of the dwelling greater than 25 square feet would require variance relief for building coverage. The proposed addition would be L-shaped on the first floor, extending the rear façade of the dwelling an additional four feet seven and one-half inches farther to the rear on the left side of the dwelling and fourteen feet on the right side of the dwelling, which would increase the building footprint by 187 square feet, a deviation of 160 square feet greater than the maximum permitted building coverage. With respect to combined side yard setback, the proposed addition would provide conforming westerly and easterly side yard setbacks of 8.4 feet and 8 feet. However, due to the undersized 50 foot lot width and the pre-existing nonconforming combined side yard setback of 31%, or 15.5 feet, the construction of

the proposed addition would continue to maintain the 31.% combined side yard setback which requires variance relief. If this property had a conforming 60 foot lot width, in all likelihood, the need for combined side yard setback variance relief would be reduced or eliminated.

7. The proposed second story master bathroom and closet addition would measure nine feet, ten and one-half inches by five feet eleven and one-half inches and it would be located at the northeast corner of the dwelling. The home with the proposed first and second floor additions to the dwelling would result in a 37.5%, or 2,094.5 square foot floor area, a deviation of 83.18 square feet over the maximum allowable 36%, or 2,011.32 square foot floor area based on the undersized lot area of the property. However, the entire addition would be located at the rear of the existing dwelling where it would not be visible from the street and it would be no closer to the adjoining properties than the existing dwelling. Moreover, if this lot had a lot area with a conforming 6,000 square foot lot area, the home with the proposed addition would provide a conforming floor area ratio.

8. While the floor area ratio would increase from 32.0% to 37.5%, the proposed addition is located at the rear of the dwelling where it will not be visible from the street. The Board finds and concludes that the property with the proposed addition to the dwelling can accommodate the problems associated with the increased floor area, which is a deviation of 83.18 square feet over the permitted floor area ratio. If this property had a conforming lot area, floor area ratio variance relief would not be required to permit the proposed addition. The Board finds that the need for the remaining two variances is the result of the undersized lot area and lot width, the placement of the existing dwelling, as well as several pre-existing nonconforming conditions. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The Board finds that the proposed increases are modest in light of the pre-existing 31% combined side yard and 22.5% building coverage. The proposed addition to the dwelling would not have any impact on the neighbors or the streetscape because the proposed addition would provide conforming easterly and westerly side yard setbacks from the adjacent properties, and the addition would be concealed from view from the street by the existing dwelling. The home with the proposed addition would be an improvement to the property and the neighborhood. 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 3rd day of February, 2020 that variance relief to permit an addition to the dwelling resulting in in 37.5% floor area ratio, 25.9% building coverage and 31.0% combined side yard setback, granted by this Board on January 13, 2020 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 SIH Architectural Design Services, LLC, consisting of two sheets, Sheets A-1 and A-2, dated February 23, 2019 and revised through October 14, 2019.

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 3rd day of February, 2020.

Cal#3717-19, Ahmed Aly, 32 Whitney Road, Short Hills

Upon a motion made and seconded by Joseph Steinberg the following memorializing resolution was adopted:

**AHMED ALY
BLOCK 1207, LOT 26**

**CALENDAR NO. 3717-19
FEBRUARY 3, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of floor area ratio variance relief pursuant to N.J.S.A. 40:55D-70d(4) and bulk variance pursuant to N.J.S.A. 40:55D-70c to the Applicant, Ahmed Aly, in Calendar No. 3717-19 for the construction of an addition to the dwelling on property located at 32 Whitney Road, Short Hills, New Jersey, known and designated as Lot 26, Block 1207 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 November 4, 2019 and December

16, 2019 in Calendar No. 3717-19 filed by Ahmed Aly (hereinafter referred to as the Applicant) for floor area ratio variance relief pursuant to N.J.S.A. 40:55D-70d(4) and bulk variance relief to permit the construction of an addition to the dwelling on property located at 32 Whitney Road, Short Hills, New Jersey, known and designated as Lot 26, Block 1207 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. No objectors or interested parties appeared or testified at the hearing.
2. The Applicant is the owner of the subject premises located in the R-6 residence zone district. The R-6 zone permits a maximum 36% floor area ratio, minimum 40 foot front yard setback, minimum 8 foot side yard setback and minimum 35% combined side yard setback. The Applicant seeks variance relief to permit the construction of an addition to the dwelling resulting in a 37.0% floor area ratio, 24.8 foot front yard setback, 7 foot side yard setback and 22.8%, or 16 foot, combined side yard setback. Therefore, the Applicant requires variance relief.
3. In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an applicant must demonstrate that the proposed site will accommodate the 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).
4. The Applicant Ahmed Aly and Lawrence Bennett, home designer, testified in support of the application.
5. The Board received and considered the following documents in connection with this application:
 - A. Plans prepared by Lawrence Alan Home Design Studio, LLC, consisting of nine sheets, Sheet 1 dated May 28, 2018 and revised through June 12, 2019, Sheets 2 through 8 dated May 23, 2018, and Sheet 9 dated May 28, 2018;
 - B. An enlargement of the site plan depicted on Sheet 1 of the Lawrence Alan plans, which was admitted into evidence as A-1;
 - C. A photo board with seven photographs, which was admitted into evidence as A-2;
 - D. A photo board with nine photographs, which was admitted into evidence as A-3;

- E. Photographs of nine homes in the area, which were admitted into evidence as A-4;
- F. Sheet 5 of the Lawrence Alan plans, which was admitted into evidence as A-5
- G. Sheet 6 of the Lawrence Alan plans, which was admitted into evidence as A-6;
- H. An enlarged photograph of the existing dwelling on the property, which was admitted into evidence as A-7;
- I. A photographic rendering of the proposed dwelling after the addition, which was admitted into evidence as A-8;
- J. An exhibit including revised portions of the application, including attachments E and F, Rider and elevations, which was admitted into evidence as A-9;
- K. A tax map enlargement depicting floor area ratios of surrounding homes, which was admitted into evidence as A-10.

6. The subject property is an oversized lot in the R-6 zone with an 8,400 square foot lot area, 70 foot lot width and 120 foot lot depth. The existing home on the property has a conforming 24.8%, or 2,089 square foot, floor area ratio and a conforming 40%, or 27.9 foot combined side yard setback. The dwelling has a pre-existing nonconforming 29.8 foot front yard setback and pre-existing nonconforming seven foot side yard setback. The existing dwelling is a one and one-half story Tudor home with three bedrooms and two and one-half bathrooms. The Applicant wishes to construct alterations and additions to the dwelling which would reorient the front entry, create a decorative stone wall courtyard enclosure along the front façade of the dwelling, expand the interior living spaces and allow for additional bedrooms and bathrooms so that the home would become a five bedroom three and one-half bathroom home.

7. The proposed alterations and additions result in an additional 935 square feet of floor area ratio, which is a deviation of 94 square feet from the maximum 36% floor area ratio. The proposed new front portico entry would reduce the front yard setback to 24.8 feet, which is a five foot increase over the pre-existing nonconforming 29.8 foot front yard setback and a 15.2 foot deviation from the required 40 foot front yard setback. The combined side yard setback as a result of the proposed additions would be reduced to 16 feet instead of the required 35%, or 24.5 foot, combined side yard setback, and the proposed decorative stone wall enclosure at the southerly side of the front façade would maintain the pre-existing nonconforming seven foot side yard setback. In support of the request for variance relief, the Applicant and his designer testified that the Applicant's lot width and dwelling are small in relation to the neighboring properties and homes on those properties. They opined that the home with the proposed additions would be a larger, stylized Tudor home, more in keeping with the homes in the neighborhood than the existing dwelling.

8. The Board finds that the applicant has not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c and d(4) and concludes that it is not appropriate to grant the variances requested by the Applicant to permit the construction of the proposed alterations and additions. The Applicant offered no expert planning testimony whatsoever in support of the requested variances. Although the Applicant and his designer testified that the Applicant's lot is small in relation to the neighboring lots, the Board finds that the Applicant's property is an oversized lot in the R-6 zone district with an 8,400 square foot lot area, which is 2,400 square feet greater than the minimum lot area required. In addition, the 70 foot lot width of the Applicant's property is 10 feet wider than the minimum 60 foot lot width required in the R-6 zone. The oversized lot area and lot width already allow the Applicant to maintain a greater floor area ratio and combined side yard setback than a smaller property with a conforming 6,000 square foot lot area and 60 foot lot width. The Board finds and concludes that the home with the proposed alterations and additions proposed by the Applicant cannot accommodate the problems associated with the greater floor area ratio as the 94 square foot deviation from the allowable floor area ratio is simply too great given the oversized lot area of this property. As for the remaining variances, the Board finds and concludes that the rationale presented in support of the front yard setback, side yard setback and combined side yard setback variances is not related to any hardship associated with the property or the improvements on the property. While the Applicant's property and dwelling may be smaller in relation to the neighboring properties, the subject property has an oversized lot area and lot width and the Applicant has not presented any justification associated with the property which would warrant the grant of variance relief to permit an increase in the pre-existing nonconforming deviations from the zoning ordinance requirements for the R-6 zone, or to allow a combined side yard setback which is substantially less than the required 36%. Therefore, the Board also finds and concludes that the Applicant has not met its burden of proving the proposed alterations and additions satisfy the positive and negative criteria under N.J.S.A. 40:55D-70c.

NOW, THEREFORE, BE IT RESOLVED on this 3rd day of February, 2020 that the denial of variance relief pursuant to N.J.S.A. 40:55D-70d(4) and bulk variance pursuant to N.J.S.A. 40:55D-70c requested by the Applicant in connection with property located at 32 Whitney Road, Short Hills, approved by this Board at its meeting of December 16, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g).

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 3rd day of February, 2020.

Cal#3733-19, Matthew & Rachel Beck, 9 E. Beechcroft Road, Short Hills

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

Mary McNett – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**MATTHEW AND RACHEL BECK
BLOCK 2803, LOT 2**

**CALENDAR NO. 3733-19
FEBRUARY 3, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Matthew and Rachel Beck, in Calendar No. 3733-19 for permission to construct an addition to the dwelling on property located at 9 East Beechcroft Road, Short Hills, known and designated as Lot 2, Block 2803 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 December 16, 2019 in Calendar No. 3733-19 filed by Matthew and Rachel Beck (hereinafter referred to as the “Applicants”) for permission to construct an addition to the existing single family home located at 9 East Beechcroft Road, Short Hills, New Jersey known and designated as Lot 2, Block 2803 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. Lisa John-Basta, Esq. represented the Applicants. No objectors or interested parties appeared or testified at the hearing.
2. The Applicants are the owners of the subject property which is located in the R-4 zone district. The R-4 zone requirements include the following: maximum 26% floor area ratio, maximum 14% building coverage and minimum 40 foot front yard setback. The proposed addition to the dwelling would result in a 31.3% floor area ratio, 17.6% building coverage and 37.7 foot front yard setback. Therefore, the Applicants require variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an applicant must demonstrate that the proposed site will accommodate the 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).

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

A. Plans prepared by MC Architecture + Design, consisting of nine sheets, Sheets A-1 through A-9, dated June 20, 2019 and revised through September 18, 2019;

B. A Site Development Plan prepared by ABC Surveys, LLC, dated September 27, 2019 and revised through October 25, 2019;

C. A photograph of the existing dwelling, which was admitted into evidence as A-1;

D. An exhibit containing Photo Board #1 and an Aerial Photo prepared by Casey & Keller, dated December 16, 2019, which was admitted into evidence as A-2.

5. The Applicants, Matthew and Rachel Beck, Meredith Colon-Reiman, Registered Architect and Richard Keller, Professional Planner and Professional Engineer, testified in support of the application.

6. The existing dwelling on the property is a center hall colonial built circa 1937. The interior of the existing dwelling retains much of the original trim and there is a grand entry and staircase. Over the years, prior owners have expanded the dwelling with a variety of incongruous additions. The floors do not align between the original dwelling and the additions constructed on the dwelling in the past. Moreover, some of the interior living spaces are irregularly configured. For example, their son's bedroom can only be reached by going through an existing study and then down a few steps to his room. Some of the closets in the bedrooms have sloped ceilings that prevent clothes from hanging properly in the closets. In addition, while the existing rear-facing garage has two garage doors, an existing chimney inside the garage prohibits its use for parking two vehicles and there is no interior connection between the garage and the house. The Applicants wish to construct an addition to the dwelling which would provide one-story and two-story components that improve or correct several of the existing internal irregularities and allow for additional living space. In conjunction with the proposed improvements, the Applicants propose to remove an existing shed and a portion of the existing driveway which currently encroach on the adjacent property to the north.

7. The proposed addition to the dwelling would replace the existing rear-facing garage with a two-car side facing garage which would provide interior parking spaces adequate for parking two modern vehicles and an internal connection between the garage and a new mudroom. Eliminating the rear-facing garage would also result in a reorientation of the driveway, which would result in the removal of some of the existing paved driveway which currently contributes to the impervious coverage in the rear yard. In addition, the existing roof overhang to the rear stairway and the shed in the rear yard would be removed. Although the number of bedrooms would remain the same, the second floor of the proposed two-story

component of the addition would provide bedroom and bathroom spaces that are all on the same level and reachable directly from the hallway without the need to pass through other rooms. The proposed one-story component of the addition at the front of the dwelling would provide a reoriented dining room and office space which allows for an expanded kitchen with a butler's pantry.

8. Because the lot width of this property is oversized at 148.4 feet, the existing dwelling appears to be a large stately home on a large lot when viewed from the street. However, the property has an undersized 15,510 square foot lot area and a 105.8 foot lot depth instead of the minimum 20,000 square foot lot area and 150 foot lot depth required in the R-4 zone district. The shallowness of the property is apparent upon entering the property. In addition to the shallow lot depth, the property is an irregular trapezoidal-shaped lot and the existing dwelling has a pre-existing nonconforming 14.3% building coverage, pre-existing nonconforming 11.0% rear yard unoccupied and the rear façade of the dwelling is located at the maximum 21.1 foot rear yard setback.

9. As a result of the shallowness of this undersized lot and the placement of the existing dwelling, the Applicants cannot construct a conforming addition at the rear of the existing home and the placement of an addition is limited to the side and front of the existing dwelling. The proposed addition to the dwelling has been designed to be compatible with the existing dwelling while breaking down its massing so that the home with the proposed addition will remain in keeping with the other homes in the neighborhood.

10. The Applicants' Professional Planner, Richard Keller, testified that the subject property is the smallest lot on the block with a lot depth that is 29.5% less than the minimum lot depth required in the zone. Mr. Keller testified that the home after the proposed addition would be in keeping with the floor area ratio and building coverage of other homes in the neighborhood. To illustrate, he specifically identified Lot 7, the property to the rear of the subject property, as one with a floor area ratio larger than that proposed by the Applicants and he testified that the homes on the block have a large range of building footprints, with some of the homes on the opposite side of East Beechcroft as large as 4,600 square feet or greater.

11. Mr. Keller also testified that the average front yard setback on the street is 34.0 feet and almost all of the homes violate the minimum 40 foot front yard setback requirement. Because of the skewed placement of the Applicants' dwelling in relation to the curve of the front property line along East Beechcroft Road, the front yard setback of the Applicants' dwelling after the construction of the proposed addition will range from 45.7 feet at the southeasterly corner to 37.7 feet at the closest point of the addition. Although the Applicants require variance relief to permit the 37.7 foot front yard setback, the home with the addition will still satisfy the 34 foot average front yard setback.

12. Mr. Keller testified that the reorientation of the garage from rear-facing to side-facing, will turn the existing nonfunctional garage into a functional one. He also testified that an additional benefit would be the removal of a substantial portion of paved driveway in the rear yard, which will reduce impervious coverage and result in an aesthetic improvement to the rear

neighbor whose dwelling is 17.2 feet off the shared rear property line. The proposed addition will provide conforming side yard setbacks so there will be no negative impact on the adjacent neighbors. Mr. Keller also testified that the irregular trapezoidal shape and placement of the dwelling on this property makes it difficult to construct an addition without variance relief. He opined that floor area ratio is a measure of intensity of use and the Applicants' property with the proposed addition would accommodate the increase in floor area ratio without any negative impact on the light, air and open space of the neighboring properties because the Applicants' Architect's design breaks up the home's massing by the use of a central design element with the wings set back from the front façade of the central portion of the home.

13. The Board concludes that the variance relief requested by the Applicants may be granted. The Board finds that the property can accommodate the proposed increase in floor area ratio. Floor area ratio is already a pre-existing nonconforming condition. The addition will provide the Applicants with an expanded kitchen and allow for adequate closet space and a second full bath on the second floor of the home. While the proposed addition results in 316 square feet of new floor area, the proposed addition is modest in size and brings this 80 year old home up to modern standards. The Board is also satisfied that the remaining variances are the result of the undersized lot width, as well as the skewed placement of the existing dwelling, which results in several pre-existing nonconforming conditions, including building coverage. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. Because building coverage already exceeds the maximum 14% building coverage permitted in the zone, any addition, no matter how modest, would require variance relief from this condition. The Board finds that if this property had a conforming lot area, the need for building coverage variance relief, as well as floor area ratio, would be eliminated. As for the proposed 37.7 foot front yard setback variance, the home with the proposed addition will be no closer to the front property line than the front porch of the dwelling. The front yard setback of the home after construction of the addition will continue to satisfy the 34 foot average front yard setback along this block of East Beechcroft Road. The Board is satisfied that the home with the proposed addition will not result in any substantial negative impact on the light, air or open space of the adjoining neighbors and the home will be in keeping with the other homes in the neighborhood. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 3rd day of February, 2020 that variance relief to permit the construction of an addition to the dwelling resulting in a 31.3% floor area ratio, 17.6% building coverage and 37.7 foot front yard setback, granted by this Board on December 16, 2019 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by MC Architecture + Design, consisting of nine sheets, Sheets A-1 through A-9, dated June 20, 2019 and revised through September 18, 2019.

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 3rd day of February, 2020.

Cal#3738-19, Alison Feldman/Alex Benjamin, 376 Wyoming Avenue, Millburn

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

Mary McNett – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**ALISON FELDMAN AND ALEX BENJAMIN
BLOCK 209, LOT 1**

**CALENDAR NO. 3738-19
FEBRUARY 3, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Alison Feldman and Alex Benjamin, in Calendar No. 3738-19 for permission to construct a fence in the front yard of property located at

376 Wyoming Avenue, Millburn, New Jersey, known and designated as Lot 1, Block 209 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 January 13, 2020 in Calendar No. 3738-19 filed by Alison Feldman and Alex Benjamin (hereinafter referred to as the “Applicants”) for permission to construct a fence in the front yard of property located at 376 Wyoming Avenue, Millburn, New Jersey known and designated as Lot 1, Block 209 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. No objectors or interested parties appeared or testified at the hearing.
2. The Applicants are the owners of the subject property which is located in the R-5 zone district. Under the Township Zoning Ordinance, fences are prohibited in the front yard. The Applicants propose to construct a four foot high fence in the Elm Street front yard. Therefore, the Applicants require variance relief.
3. In support of the application, the Board received and considered a survey of the property prepared by Morgan Engineering & Surveying, dated July 23, 2019, which was marked up by the Applicants to depict the location of the proposed fence and two photographs of the subject property.
4. The Applicants, Alison Feldman and Alex Benjamin testified in support of the application. The subject property is a corner lot, which fronts on Wyoming Avenue and Elm Street. The dwelling faces Wyoming Avenue, but the driveway entrance to the rear facing attached garage is from Elm Street. The Applicants wish to enclose the area of their property which serves as their backyard with a four foot high fence. A portion of the fence would be located in the Elm Street front yard of the property. Although the Applicants could construct a conforming fence by aligning it with the dwelling’s setback from Elm Street, doing so would cut off close to 900 square feet of their useable lawn area in their backyard because a portion of their yard is already covered by the driveway and turnaround area. The Applicants propose that the portion of the fence in the Elm Street front yard would be a four foot high black aluminum estate fence constructed inside the existing hedges along the Elm Street property line. The existing hedges would screen the fencing from view of pedestrians and vehicles travelling in a northwesterly direction along Elm Street, although the 15 foot length of fencing along the driveway would be visible to pedestrians and vehicles travelling in a southeasterly direction along Elm Street. In response to comments and questions from the Board, the Applicants agreed the 15 foot length of fencing along the driveway will be stepped back to allow for planting of additional evergreen hedges to conceal the view of the fence from a southeasterly direction along Elm Street.

5. The Board concludes that the variance relief requested by the Applicants may be granted. The Board is satisfied that the need for variance relief to permit the fence in the front yard of the property is the result of the location of the property, which is a corner lot fronting on Wyoming Avenue and Elm Street. The Board finds that although the property is technically a corner lot, the Elm Street frontage of this property functions as the Applicants' useable back yard because the property is constrained by the paved driveway and turnaround area necessary for ingress and egress from the rear facing attached garage. The Board is satisfied that existing and proposed landscaping will serve to screen the view of the proposed four foot high fence from view from the street. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 3rd day of February, 2020 that variance relief to permit the construction of a four foot high black aluminum estate fence in the Elm Street front yard of the property, granted by this Board on January 13, 2020 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. The approved fence shall consist of a four foot high black aluminum estate fence in the Elm Street front yard in accordance with the testimony at the hearing and the marked up survey, except that the fifteen feet of fencing along the driveway shall be stepped back from the driveway to allow for the planting of an evergreen hedge at a height of four feet above the root ball at the time of planting between the driveway and fence at a density sufficient to screen the view of the fence from vehicles travelling along Elm Street.

2. This approval is contingent upon the Applicants maintaining the existing and proposed landscaping hedge to screen the fence from view from both directions of Elm Street for so long as a fence remains in the Elm Street front yard of the property. Such maintenance shall include the replacement of any dead, dying or diseased shrubbery which serve to screen the fence from view from the street.

3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall record a copy of this Resolution as a deed restriction in the Essex County Register's Office and provide the Board Secretary with a conformed copy of the document which bears the recording information.

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

5. The Applicants shall be bound to comply with the representations made before this Board by the Applicants 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.

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 3rd day of February, 2020.

APPLICATIONS

CAL#3735-19, BRIAN & STEPHANIE ABRAHAMS, 15 PARK ROAD, SHORT HILLS

*Mary McNett recused and left the meeting room.

Danial Dubinett, Architect, and Brian Abrahams appeared and were sworn. Mr. Dubinett's credentials were presented and accepted by the Board. The applicants would like to construct a small addition to their dwelling. Proposal is in violation of:

606.2e1e2b – Side yard setback

Mr. Dubinett gave a brief description of the proposal. The applicants are proposing a 1-story addition to the rear of their split-level dwelling. The dwelling has a pre-existing non-conforming side yard setback of 11.5 feet where 15 feet are required. The construction will have no negative impact on any adjoining properties.

Entered as A-1: photo of subject property

There is dense landscaping on the side of the property most impacted by the construction. There is also a 6 foot fence on the inside of the landscaping. The applicants were agreeable to a condition that the fence be maintained.

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

Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3735-19, Brian & Stephanie Abrahams, 15 Park Road, was **APPROVED**, with the condition that the fence be maintained in perpetuity.

*Mary McNett returned to the meeting room.

CAL#3736-19, JANE WOLK, 96 MOUNTAIN AVENUE, MILLBURN

Douglas Miller, Architect, and Jane Wolk appeared and were sworn. Mr. Miller's credentials were presented and accepted by the Board. The applicant would like to construct a deck on her property. Proposal is in violation of:

609.5 – Accessory structure front setback on a corner lot

Mr. Miller gave a brief description of the applicant's proposed construction. The proposal is to construct a deck. The ordinance requires accessory structures to have a minimum front yard setback of 80 feet. The proposed deck will be set back 67.5 feet from the Mountain Avenue front lot line and 65 feet from Sagamore Road. The deck will not be visible from Sagamore Road and the applicant is proposing evergreen screening along the Mountain Avenue elevation at the request of a neighboring property owner. The evergreens will be 6 feet above the root ball at the time of planting.

Entered as A-1: 3 sheets of revised plans
Entered as A-2: photoboard of 9 neighboring dwellings

Richard Keller, 96 Sagamore Road, appeared and was sworn. He indicated that the 80 foot setback requirement is very difficult to meet on many of these properties. He was pleased that the applicant agreed to the installation of lattice under a porch and landscaping in the area of the deck.

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

Mary McNett – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3736-19, Jane Wolk, 96 Mountain Avenue, was **APPROVED** with the condition that a minimum of 5 evergreens be planted and planting maintained in perpetuity.

CAL#3737-19, GUISEPPE/ANTONINA MARTINO, 264 MAIN STREET, MILLBURN

The matter was carried to March 2, 2020 with no further notice required

CAL#3739-19, VIKAS SHETTY, 80 HILLSIDE AVENUE, SHORT HILLS CAL#3675-19,

Vikas Shetty appeared and was sworn. He would like to maintain the play set on his property and install a front yard fence. Proposal is in violation of:

609.5 – Accessory structure front setback on a corner lot/front yard location

609.6 – Front yard fences are prohibited

Mr. Shetty stated that he installed the play set and was not aware of the requirement to obtain a permit. He received a notice of violation and is seeking relief from the Board in order to keep the play set in its current location.

The fence proposed will be 5 feet in height and will be estate style fencing.

Board members were concerned with the applicant's request. There are no dimensions of the play set or photos of fence style. They felt it would be in the applicant's best interest to come back with a photo of the proposed fence as well as dimensions of the play set and the distances from the front lot line.

The matter was carried to March 16, 2020 with no further notice required.

*Steve Togher arrived at this time (7:55 PM)

NJ ENERGY, 132 MILLBURN AVENUE, MILLBURN

*Wolfgang Tsoutsouris recused and left the meeting room.

Matthew Posada, Esq., stated his appearance as attorney for the applicant

Jay Delaney stated his appearance and indicated that he is appearing on behalf of Rob Simon, attorney for objector Millburn Mall, who is unable to be here tonight.

David Hals, applicant's engineer, appeared and remains sworn. Jay Delaney questioned David Hals on the testimony he provided on December 16, 2019. He questioned Mr. Hals on his designation of the flood hazard area. Mr. Hals stated that the entire property is located in the flood hazard area. Through Mr. Delaney's questioning, David Hals stated that the proposed reduction in impervious surface would result in a reduction to the stormwater run-off. Mr. Delaney asked if the stormwater run-off could be reduced with the removal of the convenience store. Mr. Hals indicated that the removal of the convenience store would result in a decrease in impervious coverage but that is not the scenario that the applicant is proposing.

Mr. Delaney questioned the potential noise associated with the proposed convenience store. Mr. Hals stated that the noise associated with the convenience store is the same as any other commercial or office use.

Entered as A-3: revised lighting details

Harold Maltz, Traffic Engineer, appeared and was sworn. His credentials were presented and accepted by the Board. He provided testimony with regard to traffic associated with the application.

Entered as A-4: aerial Google map

Mr. Maltz explained that the Traffic Study dated 12/4/19 was prepared by his firm. He stated that the report addresses any potential traffic impacts of this project at the intersection of Millburn Avenue and Vauxhall Road as well as each of the proposed site drive intersections with Millburn Avenue and Vauxhall Road.

Based on data that was gathered, traffic projections and directional assignments, the subject intersections were analyzed as to capacity and levels of service during weekday AM & PM peak hours. Capacity analyses were based on signalized and un-signalized intersection procedures, as outlined in the 2010 Highway Capacity Manual.

Harold Maltz concluded that based on the analysis performed, the proposed 1,820 SF convenience store with gas station will have no significant or detrimental traffic impacts at the Millburn Avenue & Vauxhall Road intersection. The capacity analysis indicated that the delay impacts at the Millburn Avenue & Vauxhall Road intersection were less than 1 second to 2.5 seconds in the AM peak hour, and less than 1 second to 1.6 seconds in the PM peak hour. These delay increases are essentially imperceptible to motorists and reflect the small volume of trips generated by the proposed project.

Due to the lateness of the hour, the matter was carried to March 16, 2020 with no further notice required at which time Rob Simon, objector's attorney, will be given the opportunity to cross-examine Mr. Maltz regarding the testimony he presented tonight.

BUSINESS

Chairman Steinberg spoke to Board members with regard to retaining the services of a traffic professional for the NJ Energy matter. He informed the Board that Gary Dean, whom the Board had retained as their expert, advised him that he was going to have to withdraw from the matter due to a perceived conflict of interest. Chairman Steinberg stated that the Board Secretary has contacted another professional and is currently awaiting a fee proposal.

Chairman Steinberg reviewed with the Board member absences during calendar year 2019. The best attendance record included that of Board member Joy Siegel. He stated that he

was informed by Ms. Siegel, of her need to be out of the country for the months of March, April and May, and therefore will be missing 5 consecutive meetings. He further explained that New Jersey statute provides that “whenever a board member, without being excused by a majority of the authorized members of such body, fails to attend and participate at meetings of such body for a period of eight consecutive weeks, or for four consecutive regular meetings...the office shall be deemed to be vacant.” He explained that Joy Siegel is an important member of the Board and he asked that the Board vote to excuse Joy Siegel’s absence.

A motion to excuse Joy Siegel’s attendance in the months of March, April and May, 2020 was made by Jessica Glatt, seconded by Mary McNett, and carried with a unanimous voice vote.

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

ADJOURNMENT

A motion to adjourn was made by Mary McNett, seconded by Jessica Glatt, and carried with a unanimous voice vote. (10:15 PM)

Eileen Davitt
Board Secretary

Motion: MM
Second: LW
Date Adopted: 3/2/20