

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
August 1, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, August 1, 2022** 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:

Amy Lawrence  
Jyoti Sharma  
Steve Togher  
Wolfgang Tsoutsouris  
Chandru Harjani  
Ashley Avigdor  
Jessica Glatt, Vice Chairwoman  
Craig Ploetner, Chairman

Also present:

John Kaplan, Acting Board Attorney  
Eric Fishman, Court Reporter  
Eileen Davitt, Zoning Officer/Board Secretary

**APPROVAL OF MINUTES**

A motion to approve the minutes of June 20, 2022, was made by Wolfgang Tsoutsouris, seconded by Amy Lawrence and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3868-22, Murtaza Shikari, 33 Kean Road, Short Hills**

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

Amy Lawrence – yes  
Jyoti Sharma – yes  
Ashley Avigdor – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the approval of variance relief requested by the Applicant, Murtaza Shikari (hereinafter the “Applicant”), in Calendar No. 3868-22, to permit the construction of a pool, patio and other site improvements, on property located at 33 Kean Road, Short Hills, New Jersey, and designated as Lot 5, Block 4305, on the Official Tax Map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on May 16, 2022 and June 20, 2022, as to Calendar No. 3868-22, to permit the construction of a pool, patio and other site improvements, on property located at 33 Kean Road, Short Hills, New Jersey, and designated as Lot 5, Block 4305, on the Official Tax Map of the Township of Millburn; and

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

1. At the May 16, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared with Matthew G. Capizzi, Esq., together with Jeff Egarian, P.E., the Applicant’s civil engineer, who provided sworn testimony in support of the application. The Applicant is the owner of the subject property, which contains a single-family residence located in the Township’s R-4 Zone District (the “R-4 Zone”).
2. The application, as originally submitted, proposed construction that would result in impervious lot coverage of 41%, where the maximum permitted lot coverage is 35% in the R-4 Zone. Therefore, variance relief is required.
3. The Board received and considered the following additional documents submitted in support of the application:
  - a. Google Earth aerial photo, with an “imagery date” of April 19, 2016, introduced into evidence as Exhibit A-1, on May 16, 2022;
4. Jeff Egarian, P.E., the Applicant’s civil engineer, testified that the subject property, while not undersized, is a relatively small lot for the neighborhood. Referencing Exhibit A-1, Mr. Egarian testified as to the existing conditions of the property, including the 4,051 square foot circular driveway in the front yard, which he stated is consistent in size and shape to other circular driveways throughout the neighborhood.

5. Mr. Egarian testified that the Applicant proposes a see-through fence around the pool, as well as the removal of four trees on the property, which contains an existing rear yard wooded with trees.

6. Mr. Egarian testified that the Applicant proposes a 1,290 gallon drywell to address stormwater impacts associated with the proposed pool and patio, which will allegedly create a better drainage condition than what currently exists on the subject property.

7. The Applicant proposes to plant 12 to 15 Green Giant Arborvitae trees, 8 feet tall at the time of planting and separated by 6 feet, on the north and west sides of the property as set forth on the plans submitted with the application.

8. Irwin and Marlene Cohen, 29 Kean Road, Short Hills, provided sworn testimony as to the topography of their neighboring property, the slope to the rear of the properties, potential stormwater management issues, and the loss of trees in the rear of the properties, which they believe is the result of stormwater runoff from over development in the neighborhood. They expressed concerns as to the appearance of the proposed development from their deck. At the June 20, 2022 hearing, Mr. Egarian introduced a revised site plan, dated June 6, 2022, with revisions that include the removal of the pool patio, a revised retaining wall, revised grading, and additional arborvitae screening. Mr. Egarian testified that the revisions reduce the proposed impervious coverage from 41% to 36.9%, where a maximum impervious coverage of 35% is permitted in the R-4 Zone.

9. Mr. Egarian testified further that, with the proposed new drywell, which is more than 50 feet from the nearest common property line, there is an additional 2,000 square feet of drainage capacity (excess detention), where only 772 square feet of additional impervious coverage is proposed.

10. Mr. Egarian testified that stormwater from the roof area of the dwelling will also be captured by the new drywell; there will be an aluminum fence around the pool; the existing driveway makes up 17.6% of the subject property's 36.9% impervious coverage; and the proposed additional screening will help with soil stabilization.

11. Mr. and Ms. Cohen returned to the Board and provided sworn testimony that they met with their neighbor (the Applicant), and that changes to the Applicant's proposal addressed their concerns, as there will be screening for the pool equipment and a fence with additional shrubs to be installed around the pool, all of which will be approximately 48 feet from their property line as shared with the Applicant.

12. Ronald Dvorsky, 37 Kean Road, a neighboring property owner, expressed no objection to the Applicant's proposal, and stated that the pool will add value to the neighborhood.

13. 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[.]

14. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances where a deviation from the Zoning Ordinances would advance the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the “MLUL”), and the benefits of the deviation would substantially outweigh any detriment.

15. 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” (the so-called “negative criteria”).

16. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the bulk variance relief requested by the Applicant. The Board found that the need for such 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, including, *inter alia*, the subject property’s oversized driveway, and are hardships specific to the subject property. 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 Applicant.

17. The Board finds the deviation from the applicable requirement is relatively modest, as the application proposes a deviation from the impervious coverage requirement of 1.9%. The Board also finds the proposed construction can be accomplished without substantially undermining the intent or purpose of the Zone Plan or the Township Zoning Ordinance for the reasons set forth above and herein.

18. The Board also finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(2) for the requested variance relief. The application advances multiple goals of the Municipal Land Use Law, N.J.S.A. 40:44D-1 *et seq.* (the “MLUL”), specifically, goals (b) – to secure safety from flooding; (c) – to provide adequate light, air and open space; and, (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The Board finds the application’s proposed construction is consistent with the character of the subject neighborhood, while improving overall functionality of the Applicant’s property. The Board finds these goals and objectives are

furthered by the application's proposed construction which includes drainage and landscaping improvements.

19. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The subject property can accommodate the negligible impact of the application's proposed construction. The positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1) and (2). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 1<sup>st</sup> day of August, 2022, that the variance relief requested by the Applicant to permit the construction of a pool and other site improvements, all of which, including the existing conditions on the subject property, will have 36.9% lot coverage, where a maximum of 35% is permitted, on property located at 33 Kean Road, Short Hills, New Jersey, approved by this Board at its meeting of June 20, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, 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, the Applicant's Professional 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 1<sup>st</sup> day of August, 2022.

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**APPLICATIONS**

**CAL#3877-22, R. MAMIDI/P. SASTRY, 24 CANTERBURY LANE, SHORT HILLS**

Rahul Reddy Mamidi and Priyanka Shastry appeared and were sworn. The applicants would like to install a 10 foot by 12 foot patio in their rear yard. Proposal is in violation of:

606.2e1g – Rear yard unoccupied

Mr. Reddy stated that their lot is 105 feet deep but the house is set back much further than many of the adjacent properties. The dwelling was constructed such that the property is currently at the required 25% rear yard unoccupied rendering the installation of any type of accessory structure impossible without variance relief. The patio meets all the other bulk variances as they pertain to setbacks and lot coverage.

There were no questions from the Board or public.

Overall, Board members felt the request was modest in nature and supported the request.

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

- Amy Lawrence – yes
- Jyoti Sharma – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Chandru Harjani – yes
- Jessica Glatt – yes
- Craig Ploetner – yes

Cal#3877-22, R. Mamidi/P. Sastry, 24 Canterbury Lane, was **APPROVED**.

**BUSINESS**

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

**ADJOURNMENT**

A motion to adjourn was made by Wolfgang Tsoutsouris, seconded by Craig Ploetner, and carried with a unanimous voice vote. (7:15 PM)

Eileen Davitt  
Board Secretary

Motion: ST  
Second: CH  
Date Adopted: 8/15/22