

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
January 11, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 11, 2021** at 7:00 PM via Zoom webinar.

Board Attorney, Robert Simon, administered the oath of office to Craig Ploetner, Wolfgang Tsoutsouris, Amy Lawrence & Chandru Harjani.

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

The following members were present for the meeting:

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

Also present:

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

**ORGANIZATION OF THE BOARD**

Eileen Davitt asked for a nomination for Chairman of the Zoning Board.

A motion to nominate Joseph Steinberg for Chairman was made by Craig Ploetner, seconded by Jyoti Sharma, and carried with a roll-call vote as follows:

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

The meeting was turned over to Chairman Joseph Steinberg who asked for a nomination for Vice Chairman of the Zoning Board. A motion to nominate Jessica Glatt for Vice Chairwoman was made by Wolfgang Tsoutsouris, seconded by Craig Ploetner, and carried with a roll-call vote as follows:

Amy Lawrence – yes  
Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Joseph Steinberg – yes

A motion to appoint Eileen Davitt as Board Secretary was made by Craig Ploetner, seconded by Wolfgang Tsoutsouris, and carried with the following roll-call vote:

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

A motion to appoint Robert Simon as Board Attorney was made by Craig Ploetner, seconded by Jessica Glatt, and carried with the following roll-call vote:

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

Chairman Joseph Steinberg acknowledged Mary McNett for her years of dedicated service to the Township as both a member of the Township Committee and more recently as a devoted member of the Zoning Board since 2006.

### **ANNUAL NOTICE**

Upon a motion made by Jessica Glatt, a second by Joy Siegel, and with a unanimous voice vote, the 2021/22 Annual notice was adopted.

**APPROVAL OF MINUTES**

A motion to approve the minutes of October 19, 2020 was made by Craig Ploetner, seconded by Jessica Glatt, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3764-20, Behzad & Jennifer Soltani, 377 Wyoming Avenue, Millburn**

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

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

the following memorializing resolution was adopted:

**BEHZAD AND JENNIFER SOLTANI  
BLOCK 203, LOT 11**

**CALENDAR NO. 3764-20  
JANUARY 11, 2021**

Mister Chairman, I move the adoption of the following Resolution memorializing the denial of variance relief requested by the Applicants, Behzad and Jennifer Soltani, to permit the construction of an in-ground swimming pool, patio, pool equipment and air conditioning condensers in violation of the front yard setback, accessory supportive mechanical equipment placement and the air conditioning condenser placement on property located at 377 Wyoming Avenue, Millburn, New Jersey known and designated as Lot 11, Block 203 on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS**, the Millburn Township Zoning Board of Adjustment (the “Board”) has held a public hearing according to law on November 16, 2020 and December 7, 2020 in Calendar No. 3764-20 filed by Behzad and Jennifer Soltani (the “Applicants”) for permission to construct an in-ground swimming pool, patio, pool equipment and air conditioning condensers on property located at 377 Wyoming Avenue, Millburn, New Jersey; and

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

1. The application and service of notice were found to be in order. Matthew Coppolecchia, Esq. represented the Applicants. Millburn residents Eric and Shannon Welner of 87 Elm Street, Cynthia Burzynski of 371 Wyoming Avenue, David Saxl of 82 Elm Street, Michael Selan of 89 Elm Street, and Saul Palomo of 375 Wyoming Avenue, appeared and/or testified at the hearing as objectors or interested parties.

2. The subject property is a corner lot located in the R-5 zone, which requires that all accessory structures on corner lots shall not be located in the front yard and shall be no closer to any street line than two times the required front yard setback, which in this case requires an 80 foot accessory structure setback. Supportive mechanical equipment for accessory uses shall be located in rear yards only, and air conditioning condensers shall be located in side and rear yards only. The Applicants propose to install an in-ground swimming pool and patio on the property, which would result in a 66 foot accessory structure corner lot setback, as well as mechanical pool equipment and air conditioning condensers in the front yard. Therefore, the Applicants require variance relief to permit the proposed swimming pool, patio, mechanical pool equipment and air conditioning condensers.

3. The following documents were submitted in support of the application:

A. Plans prepared by Michael L. Jurist, P.E., consisting of two sheets, Sheets 1 and 2, dated July 15, 2019 and revised through August 22, 2020;

B. A landscaping plan prepared by Liquid Inc/Liquidscapes, consisting of one sheet dated February 20, 2020 and revised through November 21, 2020;

C. A three-page exhibit prepared by Liquid Inc/Liquidscapes, consisting of an aerial view of the property and two photo simulations;

D. Two photographs of the subject property prepared by John McDonough, Professional Planner, which were admitted into evidence as A-1.

4. Applicants Behzad and Jennifer Soltani, Michael L. Jurist, P.E., John McDonough, Professional Planner and Howard Roberts, Landscape Architect, testified in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Officer. David Saxl, of 82 Elm Street, Cynthia Burzynski, of 371 Wyoming Avenue, testified as interested parties.

5. After the Applicants purchased the property, the original single-family dwelling on the property was demolished and the current two-story home has been constructed. The Applicants now propose to construct an in-ground swimming pool and patio in the side yard of the property with a 66 foot front yard setback from Elm Street. The proposed in-ground swimming pool and proposed patio would be constructed at the rear of the newly constructed dwelling so they would not be visible from Elm Street. The Applicants also propose the installation of supportive mechanical pool equipment and proposed air-conditioning condensers in the front yard of Elm Street and Wyoming Avenue.

6. The subject property is a corner lot in the R-5 zone district at the intersection of Wyoming Avenue and Elm Street. The property has an oversized lot area of 20,000 square feet, whereas the R-5 zone requires a minimum 14,500 square foot lot area. The R-5 zone district requires a minimum 75 foot lot width and 125 foot lot depth. As a corner lot, the subject property has two front yards and two side yards, so the minimum lot width and lot depth

requirements are not applicable, but the subject property is regular in shape with dimensions of 100 feet by 200 feet. Although the placement of the newly constructed home meets the zone requirements of the R-5 zone district, it has been constructed in the northwest quadrant of the property.

7. John McDonough, the Applicants' professional planner, testified that the newly constructed dwelling has been oriented towards Elm Street and he offered his professional opinion that the shape of the lot and its dimensions limit the potential placement of accessory structures on the property, given the 80 foot accessory corner lot setback requirement. He testified that the proposed swimming pool and proposed patio would be concealed from view from Elm Street by the dwelling. The proposed swimming pool and proposed patio would be more than 100 feet away and at a higher elevation than Wyoming Avenue, which would serve to buffer the view of these improvements from Wyoming Avenue. As for the proposed location of the supportive pool equipment and air conditioning condensers, he testified that they would require a buffer, but their placement in any other location on the property would be more visible to the neighbors.

8. With respect to the front yard placement of the supportive pool equipment and air-conditioning condensers, Michael Jurist, P.E., the Applicants' engineer, testified that the air-conditioning condensers were originally designed to be in the Elm Street side yard in a conforming location, but the proposed pool equipment cannot meet a 36 foot accessory structure setback elsewhere on the property. As for the placement of the new dwelling, Mr. Jurist stated that it was designed by the Applicants' architect, Thomas Baio, and he did not know why the current placement for the new home was chosen. However, Mr. Jurist's testimony confirmed that the newly constructed home could have been constructed closer to Wyoming Avenue, which is more than 100 feet away, but the placement of the swimming pool would still require variance relief.

9. David Saxl, of 82 Elm Street, testified that he is the adjacent northwest uphill neighbor on Elm Street and he did not want the proposed pool equipment on the side that is adjacent to his property. He also testified that the original home which was demolished was much closer to Wyoming Avenue than the newly constructed dwelling. Eileen Davitt, Township Zoning Officer, confirmed that the plans for the proposed house and its placement met the zoning ordinance requirements, which specified the issuance of a building permit to allow its construction.

10. In response to concerns expressed by various Board members regarding the location of the proposed improvements, the Applicants submitted a landscaping plan and the testimony of their landscape architect, Howard Roberts. He testified that his firm, Liquid Inc/Liquidscapes is a full-service design/build firm which would install the proposed swimming pool and the landscaping. Mr. Roberts testified that the proposed pool equipment and proposed air conditioning condensers in the front yard would have two layers of buffering, a four foot high white solid panel fence, as well as a hedgerow of skip laurels, planted three feet on center at a height of five to six feet above the root ball at the time of planting on the outside of the fence. Mr. Roberts testified that noise would not be a factor as the proposed pool equipment would be

very quiet like many of the latest air conditioning condensers which are being installed at residential properties. He also testified to the additional landscaping of the property depicted on the landscaping plan. In response to questions regarding the placement of the proposed pool fence depicted on his landscaping plan as being located on the proposed pool coping itself, Mr. Roberts testified that was not accurate as the proposed pool fence would be located on the retaining wall, not on the proposed pool coping. He described his landscaping plan as a conceptual plan.

11. Subsequently, the Applicants' engineer, Michael Jurist, testified that his most recent grading plan revision, dated August 22, 2020, accurately depicts the pool fence as three feet from the retaining wall. He testified that if the application is approved, he would submit revised plans to reflect the location of the fence and landscaping around the pool equipment and air conditioning condensers in the front yard. Mr. Jurist confirmed that his plans do not depict the location of the existing gas line serving the property.

12. In addition, Mr. Soltani testified that he had the air conditioning condenser piping moved to the southeast side of the dwelling because his neighbor David Saxl objected to the original placement on the northwest side of the property. But Mr. Saxl clarified that he only asked the Applicants to move the air-conditioning condensers farther away from his property.

13. The Board concludes that the Applicants have not satisfied the statutory criteria required under N.J.S.A. 40:55D-70c(1) or c(2) to permit the granting of variance relief to permit the construction of the proposed in-ground swimming pool, proposed patio, mechanical pool equipment and air-conditioning condensers. Although the Applicants' planner has characterized the property as shallow, the Board specifically finds that the subject property is an oversized lot with a lot area well in excess of the minimum lot area required in the R-5 zone. In addition, the Board finds that the Applicants have not demonstrated any peculiar or exceptional practical difficulty or exceptional and undue hardship that uniquely affects the property or the lawful structures existing on the property which would warrant the variance relief requested by the Applicants. In this regard, the Board finds and concludes that when the Applicants built the newly constructed home on the property, they chose the size, configuration and placement of the dwelling. The Board is satisfied that any perceived hardship in locating an in-ground swimming pool and patio on the property is a self-created hardship of the Applicants' own making. As a result, the Board concludes that the Applicants have not demonstrated any peculiar or exceptional practical difficulty or exceptional and undue hardship that would warrant variance relief to permit the proposed construction of the in-ground swimming pool, patio, supportive pool equipment and air-conditioning condensers. The Board notes that the Township Zoning Ordinance provides that an air-conditioning condenser in the side yard shall be located so that it provides a minimum setback of two times the required 12 foot accessory side yard setback from the nearest off-site principal building, or no more than five feet from the building being served. No testimony was presented to demonstrate that the Applicants could not meet the 24 foot setback from the nearest neighbor's dwelling, or place the air-conditioning condensers within five feet of the Applicants' own dwelling. In fact, the Applicants' engineer testified that the air-conditioning condensers were originally designed to be constructed in a conforming location in the Elm Street side yard. As for the supportive pool equipment, while the Applicants' engineer

testified that the pool equipment could not meet the 36 foot accessory setback requirement, the Township Ordinance also allows supportive mechanical equipment to be located within five feet of the principal structure and in the rear yard. There was an absence of testimony to demonstrate that the supportive mechanical pool equipment could not be located in the side yard within five feet of the Applicants' dwelling, which would have mitigated the nature of the required variance relief and avoided the placement of supportive mechanical equipment and air-conditioning condensers in the front yard. The Board finds and concludes that the proposed deviations from the zoning requirements are simply too great and the testimony presented by the Applicants falls far short of the requisite proof required to establish the positive criteria required by N.J.S.A. 40:55D-70c(1). The Board is also satisfied that the Applicants have not demonstrated a right to variance relief under the standard set forth in N.J.S.A. 40:55D-70c(2). The Applicants have not offered any testimony or evidence to demonstrate that any of the purposes of the Municipal Land Use Law would be advanced by granting the requested variances and the Board concludes that the only benefits derived from the proposed in-ground swimming pool, mechanical pool equipment and air-conditioning condensers are personal to the Applicants. When the detriments associated with the granting of variance relief are balanced against the benefits of the application, which are purely personal to the Applicants, the Board finds that the detriments outweigh any benefit. Furthermore, no testimony was offered to reconcile the granting of the proposed variance relief with the intent and purpose of the zone plan and zoning ordinance. As a result, the Board concludes that the Applicants have not met their burden of proof on the negative criteria set forth in N.J.S.A. 40:55D-70.

**NOW, THEREFORE, BE IT RESOLVED** on this 11th day of January, 2021 that the variance relief requested by the Applicants to construct a proposed in-ground swimming pool and proposed patio, supportive mechanical pool equipment and air-conditioning condensers in violation of the accessory structure corner lot setback, as well as mechanical pool equipment and an air conditioning condensers in the front yard, denied by this Board at its meeting on December 7, 2020 be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 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 11th day of January, 2021.

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**APPLICATIONS**

**CAL#3766-20, JUSTIN & JENNA TICHAUER, 472 LONG HILL DRIVE, SHORT HILLS**

Justin & Jenna Tichauer appeared and were sworn. The applicants would like to install a fence on their property. Proposal is in violation of:

609.6a – Front yard fences are prohibited

Mr. Tichauer stated that they live on a corner property at the intersection of Long Hill Drive and Mohawk Road. They would like to install a fence in the Mohawk Road front yard of their property. The area in question is enclosed by trees and a fence will not be visible since they intend to install in on the interior of the tree line. They are proposing a 4 foot aluminum, estate style fence.

The Board had mixed opinions as to the applicants' request. Some felt that a conforming fence placement could be accommodated. Others felt that the fence would be sufficiently screened by the existing trees. Board members asked if the applicants would be agreeable to the planting of trees along the portion of the fence that extends from Mohawk Road to the house. The applicants agreed to that condition.

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

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

Cal#3766-20, Justin & Jenna Tichauer, 472 Long Hill Drive, was **APPROVED** with the condition that trees, 4 foot above the root ball at the time of planting, be planted along the driveway area fence.

**BUSINESS**

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

**ADJOURNMENT**

A motion to adjourn was made by Steve Togher, seconded by Craig Ploetner, and carried with a unanimous voice vote. (8:15 PM)

Eileen Davitt  
Board Secretary

Motion: JG  
Second: CP  
Date Adopted: 2/1/21