

Township of Millburn
Minutes of the Zoning Board of Adjustment
February 1, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, February 1, 2021** at 7:00 PM via Zoom webinar.

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

The following members were present for the meeting:

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

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of December 21, 2020 was made by Craig Ploetner, seconded by Jyoti Sharma, and carried with a unanimous voice vote.

A motion to approve the minutes of January 11, 2021 was made by Jessica Glatt, seconded by Craig Ploetner, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3675-19 NJ Energy, 132 Millburn Avenue, Millburn

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

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

Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**NJ ENERGY CORP.
BLOCK 409, LOT 13**

**CALENDAR NO. 3675-19
FEBRUARY 1, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of variance relief pursuant to N.J.S.A. 40:55D-70d(1), bulk variance relief, preliminary and final major site plan approval, and design waivers to the Applicant, NJ Energy Corp., in Calendar No. 3675-19 for a convenience store and gas station use of property located at 132 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 13, Block 409 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held public hearings according to law on October 21, 2019, December 16, 2019, February 3, 2020, September 21, 2020, October 19, 2020, November 16, 2020 and December 21, 2020, in Calendar No. 3675-19 filed by NJ Energy Corp. (hereinafter the “Applicant”) for variance relief pursuant to N.J.S.A. 40:55D-70d(1), bulk variance relief, preliminary and final major site plan approval, and design waivers to permit a convenience store and gas station use on property located at 132 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 13, Block 409 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. Matthew Posada, Esq., and Sean Monahan, Esq. represented the Applicant. During the course of the hearing, the Applicant consented to an extension of time for decision through December 31, 2020.

2. Merrily Riesebeck of 91 Whittingham Terrace, Millburn, Ann Rosenthal of 25 Reeve Circle, Millburn, Fiona Phillips of 15 Reeve Circle, Millburn, Alex Moaba of 17 Reeve Circle, Millburn, Sherry Barr Shokrieh of 12 Reeve Circle, Judith Rosenthal of 97 Main Street, Millburn, Bonnie Wolfsy of 21 Reeve Circle, Millburn and Henry Bloom of 4 River Lane, Millburn, appeared and/or testified as objectors. Robert F. Simon, Esq. and John J. Delaney, Esq. appeared on behalf of the adjacent property owner/objector Millburn Mall Holdings, LLC.

3. The Applicant is the owner of the subject premises, which is located in the OR-2 Office Research zone district. The site is currently developed with an unutilized, vacant gas

station with repair building which formerly operated on the property until damaged by a fire in 2009. The Applicant seeks variance relief and other approvals to redevelop the property for use as a convenience store and gas station. The Applicant proposes that all existing structures and impervious surfaces would be removed from the property. A new 1,820 square foot convenience store is proposed for construction in the northwesterly portion of the property adjacent to the intersection of Millburn Avenue and Vauxhall Road. A proposed new gas fueling canopy covering 1,204 square feet, which would contain three gas pump islands with a total of six gas pumps would be constructed in the southeasterly portion of the property.

4. Pursuant to Section 606.8b of Township Ordinances, convenience stores and gas stations are not principal permitted uses in the OR-2 zone. In addition, Section 609.9 of the Township Ordinances prohibits more than one principal permitted use on a lot. Therefore, the Applicant requires relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed convenience store and gas station uses of the property. In addition to use variance relief, the Applicant also requires bulk variance relief to permit the proposed front yard setback, lot coverage, pole-mounted ground graphic area, accessory canopy structure, canopy signs, wall graphic height and sign surface colors, and various lighting design waivers.

5. The Applicant requested a waiver from the checklist requirement for an Environmental Impact Statement (“EIS”), which the Board waived for completeness purposes only and required its submission during the hearing.

6. The Board received and considered the following documents in connection with the application:

A. Plans prepared by David A. Halls, of Schwanewede/Hals Engineering, consisting of seven sheets, Sheets 1 through 7, dated April 16, 2019;

B. Architectural Plans for the proposed convenience store prepared by Kamlesh Shah, of Kamlesh Shah Designs, Inc., consisting of three sheets, Sheets SK-1 through SK-3 dated November 15, 2018;

C. Landscape Plans prepared by Lauren Kovacs, LLA of Spiezle Architectural Group, Inc. consisting of two sheets, L.1 Landscape Plan and L.2 Construction Details, dated June 6, 2019;

D. Environmental Impact Statement prepared by Schwanewede/Hals Engineering, dated November 27, 2019;

E. A Traffic Study prepared by Hamal Associates, Inc. dated December 4, 2019;

F. A colorized version of Sheet 4, Lighting and Existing Condition Plan, prepared by David A. Halls, of Schwanewede/Hals Engineering, which was admitted into evidence as A-1;

G. A colorized version of Sheet 2, Site Plan, prepared by David A. Halls, of Schwanewede/Hals Engineering, which was admitted into evidence as A-2;

H. A lighting detail, prepared by Schwanewede/Hals Engineering, which was admitted into evidence as A-3;

I. A Google Earth aerial photo of the Millburn Avenue and Vauxhall Road intersection, prepared by Harold Maltz, P.E., which was admitted into evidence as A-4;

J. An exhibit with tax/parcel maps, prepared by John McDonough, P.P., which was admitted into evidence as A-5;

K. Township Ordinance 2528-19, which was admitted into evidence as O-1;

L. Maplewood Township Police Department Incident Reports at various properties, which was admitted into evidence as O-2;

M. A summary of crime statistics at 7-11 convenience stores in Maplewood Township, which was admitted into evidence as O-3;

N. Maplewood Township Police Department Incident Reports at various properties, which was admitted into evidence as O-4;

O. Maplewood Township Police Department Incident Reports at various properties, which was admitted into evidence as O-5a and O-5b;

P. The reports of the following Millburn Township officials: Township Forester dated October 16, 2019, Township Fire Marshal dated October 18, 2019, Township Police Department Traffic Bureau dated October 18, 2019; Township Engineer dated October 21, 2019 and January 30, 2020; Township Planner dated September 18, 2020, and Board Traffic Expert, Jay Troutman, P.E., dated September 21, 2020.

7. David Hals, P.E.; Scott Parker, Director of Facilities for NJ Energy Corp.; Harold Maltz, P.E., traffic expert; Kamlesh Shah, Registered Architect; Jack Carman, Licensed Landscape Architect; and John McDonough, P.P. testified in support of the application. Michael J. Pessolano, P.P., testified on behalf of the Reeve Circle objectors. The Board also heard testimony from its traffic expert, Jay Troutman, P.E.

8. The following Millburn residents testified in opposition to the application: Fiona Phillips of 15 Reeve Circle, Henry Bloom of 4 River Lane, Judith Rosenthal of 97 Main Street,

Merrily Rieseback of 91 Whittingham Terrace, Sherry Barr Shokrieh, of 12 Reeve Circle, Alex Moaba, 17 Reeve Circle, and Ann Rosenthal of 25 Reeve Circle.

9. The subject property is a 16,402 square foot triangular lot in the OR-2 zone district, at the intersection of Millburn Avenue and Vauxhall Road. The entire lot lies within the flood hazard area of the East Branch of the Rahway River, which borders the southern edge of the property. The property is currently occupied by a closed gasoline service station which has been vacant and unused since a fire at the property in 2009. Existing site improvements include the canopy over three gasoline pumps with six fueling positions and the remnants of the foundation of the automobile service shop building damaged by the 2009 fire. The existing automobile service shop building is located within the floodway of the East Branch of the Rahway River. Any redevelopment of the property would require approval of the New Jersey Department of Environmental Protection due to the placement of the proposed canopy and building in the flood hazard area and within the required 50 foot riparian buffer.

10. The Applicant's engineer, David Hals, testified. He stated that three existing underground fuel storage tanks are located at the northeast corner of the property and the property currently has two existing access drives on Vauxhall Road, and two existing access drives on Millburn Avenue. Lot coverage is a pre-existing nonconforming 92% and building coverage is a pre-existing nonconforming 22.3%. Mr. Hals testified regarding the history of the property as an automobile service station and prior Board approvals associated with the now vacant and closed gasoline service station, which included a 1970 approval to permit a new building, and a 1996 approval to permit the erection of the existing gas canopy with pump island modifications and existing sign, lighting and landscaping improvements as an expansion of a pre-existing nonconforming use.

11. Mr. Hals testified regarding the Applicant's plan to demolish the existing improvements and construct proposed new improvements on the property, which would include a new 1,820 square foot one-story convenience store to be located at the Millburn Avenue and Vauxhall Road intersection and a new fuel island canopy to be located in the middle of the lot. The Applicant proposes that the proposed convenience store building would provide an eight foot front yard setback from Vauxhall Road and an eight foot front yard setback from Millburn Avenue. In order to elevate the building above the flood hazard area, the building would be constructed on piers with architectural features intended to give it the appearance of being constructed at ground level. The proposed access drives would be limited to one full-movement access driveway on Millburn Avenue and one full-movement access drive on Vauxhall Road with both driveways situated as far as possible from the intersection. The proposed gasoline pump island under the proposed fuel island canopy would provide six fueling stations. The proposed site improvements also include 11 parking spaces, including eight spaces at the front of the proposed convenience store building, which would face the proposed fuel island canopy at the interior of the property, one parallel parking space north of the underground tanks and two

parking spaces to the east of the canopy. Mr. Hals testified that the proposed new construction would result in 76.7% lot coverage, which requires variance relief because it exceeds the maximum 65% permitted in the zone district, but is more conforming than the pre-existing nonconforming 92.2% lot coverage of the existing structures. Building coverage after the construction of the proposed structures would conform to the zone district requirements.

12. Mr. Hals also testified regarding the proposed signs, which include a canopy and wall graphic signs and a freestanding pylon sign. The three proposed wall graphic signs on the building facades require variance relief because the proposed 2.5 foot wall graphic height exceeds the maximum permitted 2 foot wall graphic height. Although the Township Ordinance permits a pole mounted ground graphic sign not larger than 15 square feet in area, the Applicant's proposed freestanding pylon sign has a sign area of 75 square feet, which requires variance relief. In addition, canopy signs are not permitted in the OR-2 zone, whereas the Applicant proposes a canopy structure with a canopy sign which exceeds the maximum allowable 60 foot sign area. Additionally, the Applicant proposes sign colors consisting of white plus three additional colors, whereas the Township Ordinance permits white plus a maximum of two additional colors. Therefore, the proposed surface colors of the sign also require variance relief. Mr. Hals also testified regarding the proposed site lighting, which includes wall mounted lights on the building, pole mounted lights and lighting on the gas canopy. The proposed pole mounted lighting and canopy lighting exceed the maximum foot-candle requirements in Section 512.1 of the Township Ordinance, which would require design waivers. Although the Applicant originally requested design waivers to permit LED lighting, a subsequent amendment to the Township Ordinance now permits LED lighting. Mr. Hals testified that the proposed convenience store building would screen the view of the canopy from Ridgewood Road residents. The proposed fuel island canopy would be visible to the residents on Reeve Circle, but the proposed fuel island canopy would be farther away from Reeve Circle than the existing gas canopy on the property.

13. In response to questions from the Board and objectors, Mr. Hals testified that the proposed access drives were located as far from the Millburn Avenue and Vauxhall Road intersection as possible. He stated that his design of the site was based on his general observations of the site and traffic at the intersection in a site visit during peak morning hours in July 2017. He confirmed that his turning template plan does not depict six vehicles at the fuel pumps. Mr. Hals also testified that a WB-50 fuel delivery truck would block the Millburn Avenue access lane while making a fuel delivery, and that the Applicant can control the timing of fuel deliveries, estimated to occur once per week for a period of about 10-15 minutes necessary to fill the tanks. Mr. Hals confirmed that the proposed loading area at the rear of the property would be for vendors making deliveries to the convenience store, and he opined that such deliveries would be made by single unit trucks, which are approximately 30 feet in length with fixed wheels. He acknowledged that his turning template for a single unit truck reveals that

parking spaces 10 and 11 may be impacted, but he opined those spaces would be used by employees not customers. Mr. Hals agreed that loading areas are typically close to the building, but in this case, the site is irregular in shape and constrained by its location in the floodway, riparian buffer, and other issues. He confirmed that there would be no restrictions on landscapers with trailers, or tractor-trailer drivers patronizing the convenience store, but the proposed loading space was not designed for those purposes. Mr. Hals testified that the proposed hours of operation would be from 6:00 a.m. to 11:00 p.m., seven days per week. Proposed trash pick-up would be during off-hours, either early morning or in the evening, once per week initially, which might increase to twice per week if needed. Mr. Hals testified that there would be no electric charging, air-pump or vacuum stations. He was not able to address questions concerning nighttime lighting of the site, hours of peak traffic, any proposed outdoor display of products for sale, or the nature of food and other sale items in the proposed convenience store.

14. Mr. Hals also prepared the Environmental Impact Statement and testified regarding his findings. He confirmed that the site is already fully developed with a pre—existing nonconforming 92.2% impervious coverage, so the environmental quality of the property is presently poor due to the amount of pavement as well as prior on-site contamination which impacted on soils and water quality, which continues to be monitored. While the Applicant proposes to modify the impact on the riparian buffer, proposed new construction will result in impervious coverage to approximately 77%, and the vegetation along the river will be enhanced, Mr. Hals testified that the beneficial impact of these changes is nominal.

15. Scott Parker, Director of Facilities for the Applicant, testified regarding the history of the site remediation. He advised the Board that in 1990 contamination was identified. The underground storage tanks were removed and replaced with the underground storage tanks which now exist at the property. Remedial action was undertaken, including the installation of groundwater monitoring wells. All remediation activity is conducted under the direction of a Licensed Site Remediation Professional (“LSRP”), who continues to monitor the site and submits the required reports to the New Jersey Department of Environmental Protection (“NJDEP”). The LSRP in this matter has sought an extension of time to submit the Remedial Action Report. Mr. Parker testified that the determination of whether the existing tanks may be placed back in service for use at the site would be at the discretion of the NJDEP. However, prior to the conclusion of the hearing, the Applicant’s attorney advised the Board that the Applicant proposes to replace the existing underground storage tanks with new double-walled underground fuel storage tanks.

16. The Applicant’s traffic expert, Harold Maltz, P.E., testified concerning his report dated December 4, 2019. Mr. Maltz testified that the property is located at the signalized intersection of Millburn Avenue with Vauxhall Road and Ridgewood Road. He stated that four existing access drives service the property, two on Millburn Avenue and two on Vauxhall Road. One existing access drive on each roadway is located at the curblineline point of curvature at the

intersection with the two remaining access drives situated at the opposite ends of the frontage on each street. Mr. Maltz testified that Millburn Avenue and Vauxhall Road are both Essex County roadways, while Ridgewood Road is a two-way, two-lane municipal street, which widens at Millburn Avenue to accommodate two approaches, both right turns, and through/left turn lanes. Reeve Circle, a cul-de-sac local Millburn road, with single family homes, intersects the north side of Millburn Avenue, opposite the subject property's proposed Millburn Avenue easterly driveway. Mr. Maltz testified that the Applicant's proposed plan provides for the closure of the two existing site access drives located at the point of curvature at the roadways' intersection. The remaining Millburn Avenue access drive at the easternmost end of the Millburn Avenue frontage would continue to be a two-way full movement access drive. The existing two-way, full movement access drive at the southeastern end of the Vauxhall Road frontage would be shifted farther to the southeast and restricted to right turns in/out only.

17. Mr. Maltz advised the Board that Millburn Avenue is 54 feet wide with a posted speed limit of 25 mph east of Vauxhall Road and a posted speed limit of 35 mph west of Vauxhall Road. On its westbound approach to Vauxhall Road, Millburn Avenue has two through lanes and a separate left turn lane to Vauxhall Road and the eastbound portion of Millburn Avenue in front of the property has two travel lanes. On its eastbound approach to Vauxhall Road, Millburn Avenue has a separate right turn lane to Vauxhall Road and two through lanes, which include left turn movements. The intersection operates on a three phase, 120 second cycle and all intersection approaches are posted "No Turn on Red" except for Ridgewood Road.

18. Mr. Maltz obtained yearly background traffic growth rates from the NJDOT for Millburn Avenue, Vauxhall Road and Ridgewood Road, as well as signal timing directive obtained from Essex County, in addition to performing his own field surveys and manual traffic counts on November 14, 2019, a normal business day while school was in session, weather was good and all roadways open. Based on his surveys and traffic counts, Mr. Maltz determined a weekday a.m. peak traffic hour of 7:45-8:45 and a weekday p.m. peak traffic hour of 4:30-5:30 and his testimony outlined the existing traffic volumes at the intersection. Specifically, Mr. Maltz testified that during the a.m. peak hour, eastbound Millburn Avenue conveyed the largest volume of vehicles at any intersection approach, 856 vehicles, with 76% of those vehicles performing a right turn to Vauxhall Road southbound. Long traffic queues on eastbound Millburn Avenue were frequent in relation to this large right turn movement. During the a.m. peak hour, the northbound Vauxhall Road approach left turn movement had a large traffic flow of 79% of the 773 vehicles travelling northbound on Vauxhall Road, and traffic queues frequently extended to, or beyond, the subject property's Vauxhall Road access drives until the green signal phase for Vauxhall Road. Mr. Maltz testified that these two traffic movements comprise almost 60% of the intersection's entire a.m. peak hour volume, with the westbound Millburn Avenue approach lightly traveled with no long vehicle queues observed. In addition,

the southbound Ridgewood Road approach was not heavily traveled and all vehicles cleared the approach to the intersection in each green signal phase.

19. Based on his analysis, Mr. Maltz concluded that the proposed convenience store with gas station would not have a significant or detrimental traffic impact on the intersection. He testified that the net increase in peak hour trip generation for the proposed convenience store with gas station use, over the peak hour trip generation of the prior use of the property as a gas station with service bay, is a nominal increase, too small to have a notable traffic impact at any approach to the intersection. Mr. Maltz also testified that his capacity analyses indicated the magnitude of any delays in the level of service at the approaches to the intersection ranged from 1 second to 1.6 seconds. He stated that the magnitude of these delay increases would be imperceptible to motorists such that no mitigation would be required at the intersection due to the Applicant's proposed project. Mr. Maltz testified that based on his vehicle gap study analysis, traffic counts and field observations during peak hours, a prohibition on left turns in and eastbound approach left turns out of the proposed Vauxhall Road access drive would be appropriate. However, at the proposed Millburn Avenue access drive, according to Mr. Maltz, more than adequate gaps in traffic exist to accommodate the project volume of traffic from a two-way full movement Millburn Avenue access drive. Mr. Maltz expressed no opinion on the internal site circulation, which was evaluated by David Hals, P.E., the Applicant's site engineer and he offered no traffic testimony regarding proposed on-site conditions.

20. The Board's traffic expert, Jay Troutman, P.E., testified that he verified the calculations in Mr. Maltz's traffic report. Mr. Troutman testified that the traffic impacts of the proposed convenience store and gas station use is similar to the traffic impacts of the prior use of the property for a gas station with repair service building. He advised the Board that the elimination of two of the four existing curb cuts on this substandard site, as well as the proposed prohibition on left turns in/out of the Vauxhall Road access drive are appropriate. Mr. Troutman testified that based on his review and evaluation of the application, trucks delivering fuel to the underground storage tanks on the property would block the access drive, requiring fuel deliveries to occur when the convenience store and gas station are closed.

21. The Applicant's architect, Kamlesh Shah, also testified. Mr. Shah explained the elevations and floor plans submitted in connection with the proposed convenience store building. The façade of the proposed convenience store would be two colors of brick, with wood plank banding, mullions on the windows and an asphalt roof. Mr. Shah testified that the proposed 1,820 square foot convenience store building has been designed with a residential scale to be consistent with residential uses on Millburn Avenue and the commercial building to the east. He confirmed that access to the proposed convenience store would be from the front façade of the building, which is located on the interior of the property facing the proposed fuel island canopy, while the rear façade would face the intersection of Millburn Avenue and Vauxhall Road. Real windows are proposed on the front façade facing the proposed fuel island canopy, but faux

windows are proposed to the side and rear façades. The interior of the proposed convenience store would include a coffee bar, an eight-door beverage cooler vault, retail shelving, a rest room, sales and back office areas. Mr. Shah testified that other than the preparation and sale of hot dogs for consumption, there would be no cooking of foods on the premises. Because the property is located within the flood zone, the proposed convenience store building has been designed to be constructed on raised concrete piers, with the area below the building open to allow water to pass through the property without impacting the proposed building. Signs on the proposed convenience store building would be constructed of carved letters on wood plank. The signs would not contain any interior illumination, only gooseneck lighting. Mr. Shah confirmed his proposed building design was based on the footprint he received from the Applicant's professional engineer. He acknowledged that the history of the site confirms that there was previously no convenience store on the property. In response to questions from the Board and the public, Mr. Shah testified that the open area beneath the building was designed with a decorative architectural grill between the concrete piers to deter people from going under the building. He also confirmed that the placement of the restroom in the proposed convenience store was not the best location but dictated by the size of the building footprint provided by the Applicant and its professional engineer.

22. Jack Carman, Landscape Architect, also testified. He testified that he is employed by Spiegle Architectural Group, which prepared the landscape plan. Mr. Carman testified that the Landscape Architect who prepared the plans submitted to the Board, Lauren Kovacs, is no longer with his firm. He reviewed the plans with Ms. Kovacs before she left the firm, but he did not visit the site. Mr. Carman testified that the landscaping plan proposes the installation of nine new trees, 104 shrubs as well as 288 perennials and ornamental grasses, in order to reflect the residential character of the neighborhood and increase the greenspace of the property which is now primarily asphalt. He confirmed that when the trees mature in approximately five years, they would help block off-site light spillage and the proposed landscaping would soften the look of the property from the intersection. In response to questions concerning the impact of flooding and water mixed with gasoline on the plantings' survival rate, Mr. Carman testified that no plants could survive an impact from gasoline. Plants impacted by flooding could be replaced with new plants. He confirmed that the proposed trees are deciduous, which would limit their ability to block light spillage from the site between late October through March. While Mr. Carman recognized the property is located in a flood zone, he was not able to testify regarding the mean high-water mark. He testified that the NJDEP does require landscaping in buffer zones to be native species, indigenous to the area, and he stated that as far as he knows, the proposed species comply with that requirement.

23 John McDonough, Professional Planner, testified in support of the application on behalf of the Applicant. He described the property as an oversized lot with a lot area of 16,400 square feet whereas the minimum lot area required is 10,000 square feet. The property is located

at a signalized intersection and at the convergence of the OR-2, C, and R-O zone districts, with a variety of non-residential uses in the area, as well as residential uses. Mr. McDonough stated that the property has always contained an auto-centric land use, as it has been used as a gas station for approximately 90 years. Although the gas station has been closed and unused for several years, the use has not been abandoned and the existing gas canopy remains on the property. Mr. McDonough testified that the Applicant proposes to remove the existing canopy and other site improvements and replace them with the construction of a new convenience store building close to the intersection, and the construction of a new fuel canopy in the center of the property. Mr. McDonough testified that the proposed convenience store would serve to buffer the view of the internal use of the site as a convenience store and gas station.

24. Mr. McDonough offered his professional opinion that the proposed convenience store and gasoline service uses would satisfy the statutory criteria for use variance relief pursuant to N.J.S.A. 40:55D-70d(1). He stated that the subject property is particularly suitable for the proposed uses as they are services uses, on a property located at the intersection of two service roads and there is a 90 year history of use of the property for a gasoline service station. Mr. McDonough testified that the proposed uses promote several of the purposes of zoning as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-2, (“MLUL”), including purposes (a), (g), (h), (i) and (n). He stated that the proposed uses will promote the general welfare because the uses will provide public benefits of convenience, accessibility, efficiency and variety, by allowing people to obtain a diversity of product offerings for immediate use, such as food, fuel, coffee and other beverages, which would be accessible to pass-by traffic for quick stop purchases. Mr. McDonough testified there is a natural integration between convenience stores and gas stations. He stated that for every 150 convenience stores, approximately 120 of them also sell gasoline. He also testified that the proposed uses would promote the restoration of an underutilized property to a functional use in a non-residential zone and that the Applicant’s proposed reinvestment in the property would improve the aesthetics of the site which would benefit the property, the area and the Township as a whole. Mr. McDonough testified that the Applicant’s proposed convenience store and gas station use of the property would also promote sustainability by providing greenspace on the property, as well as a more modern facility. He also testified that the proposed uses would allow for better integration of the property into the existing neighborhood as the convenience store building with its rear façade facing the intersection would serve to buffer the active internal site activity of the proposed convenience store and gasoline uses on the site from the surrounding neighborhood.

25. With respect to the first prong of the negative criteria under the MLUL, Mr. McDonough testified that the proposed uses at the site would function safely and efficiently for the benefit of the neighborhood and the public at large, as the Applicants’ professionals have not identified any adverse impacts resulting from the proposed uses, including the absence of any adverse traffic impacts. As for the second prong of the negative criteria, Mr. McDonough

testified that the combination of convenience stores with gas stations is not a new or novel land use, and this combination of uses has been recognized as a single use by various industry standards, including those of the American Planning Association, the Institute of Traffic Engineers, as well as by various New Jersey court decisions. With respect to the ancillary bulk variances and design waivers requested by the Applicant, Mr. McDonough testified that the Applicant has met the statutory criteria for bulk relief, which the Board could grant as a whole, or as a flexible c(2) variance in conjunction with the use variance. He stated that the pre-existing nonconforming 92.2% lot coverage would be reduced to 76.6% under the Applicant's proposal, which requires variance relief, but is closer to the maximum permitted 65% lot coverage allowed under the Township ordinances. As for the proposed eight foot front yard setback of the convenience store building, instead of the required minimum 15 foot front yard setback, Mr. McDonough testified that the deviation would be mitigated with the installation of landscaping. He offered his opinion that the sign package proposed for the various pole mounted, wall and canopy signs are tasteful and would provide safe and clear identification of the proposed uses on the property without being obtrusive. While the lighting under the proposed fuel island canopy is necessary for safe business practice, the proposed lighting will not result in any off-site glare. He offered his opinion that the proposed landscaping would be abundant and visually pleasing. Mr. McDonough concluded his testimony by offering his opinion that the proposed convenience store and gas station uses are a singular use which presents a much better alternative to the prior use of the property for a gasoline service station because it would result in a better product offering and less noise.

26. On cross-examination, a Board member sought clarification that the statistic Mr. McDonough offered in his testimony, that for every 150 convenience stores, 120 sites also sold fuel, related to highway rest stops and not locations such as the subject property, but Mr. McDonough was not able to provide such clarification. In addition, Mr. McDonough conceded that throughout the property's history of use as a gas station, that use has never been combined with a convenience store use. Mr. McDonough reiterated his opinion that the proposed site lighting would not have an impact on the residences in the neighborhood as the site lighting would be consistent with the proposed hours of operation from 6:00 a.m. to 11:00 p.m., except for any necessary security lighting beyond those hours. When questioned about the potential risks associated with the open area underneath the proposed convenience store built on piers, Mr. McDonough agreed it was an unusual construction due to an environmental factor, but deferred the remaining aspects of that question to the Applicant's architect. Mr. McDonough also testified that he was unaware of the use of the property in the 1960's as a plant nursery. In response to questions regarding crime statistics associated with police reports of incidents at convenience stores in a neighboring town, Mr. McDonough testified that it would be atypical to investigate crime statistics associated with a proposed land use or to consider police reports associated with similar uses at other locations as having an impact on the proposed use at the subject property. He acknowledged that the 2018 Master Plan Reexamination Report adopted by

the Millburn Planning Board could have recommended a gas station/convenience store use for the OR-2 but it did not do so. However, he noted that a recent amendment to the Township's Ordinance now permits retail services as a principal permitted use in the OR-2 zone.

27. Michael J. Pessolano, Professional Planner, also testified and offered his professional planning opinion on behalf of residents of Reeve Circle. He confirmed that he visited the property, reviewed the Applicant's application, reports and other documentation, the reports submitted by the Township professionals and departments, and the Township's Zoning Ordinance and Master Plan. He testified that the Applicant's proposed convenience store and gas station uses are not principal permitted uses in the OR-2 zone. He testified that as a professional planner, he has reviewed many gas station variance and site plan applications and their associated issues, including traffic and other matters, and offered observations based on his experience as a planner in evaluating sites for such uses. He testified that in his professional opinion that both of the proposed uses, a convenience store and gas station, are not permitted uses in the OR-2 zone district. He described both as intensive uses proposed for placement on a small site in a congested area, which includes the neighborhood and roadways surrounding the property. He stated that the multiple directional and turning movements in the vicinity of the subject property, including the Millburn Avenue access drive and Reeve Circle, result in a plethora of potential conflicts to and from various turning movements. He stated the addition of pedestrians into the mix would result in a fairly volatile situation, resulting in circumstances where a quick stop purchase at the convenience store on such a small site during times of high traffic volumes would result in conflicts that offset any potential public benefits. He testified that Reeve Circle is a residential street and headlights of vehicles exiting the subject property from the Millburn Avenue access drive during nighttime hours would shine into homes on Reeve Circle. Mr. Pessolano also testified that in order to design the site to accommodate the proposed convenience store and gas station uses, the proposed convenience store building needs to severely encroach on the required front yard setbacks of both Millburn Avenue and Vauxhall Road, resulting in an eight foot front yard setback from each street, rather than the minimum required 15 foot front yard setback, requiring front yard setback relief from both Millburn Avenue and Vauxhall Road. He offered his professional opinion that both front yard setback deviations are prominent setback variances resulting in a setback at the edge of the right-of-way of both County roadways. He observed that the existing gas canopy on the subject property is aligned with the setback of the building to the east and he offered the opinion that the intersection is the wrong place to squeeze in a building in order to add a second prohibited use, the proposed convenience store, to the property. Mr. Pessolano testified that the Applicant's proposal places the rear façade of the convenience store building facing two important Millburn thoroughfares, contrary to zoning principles which generally have the front façade of a building facing the front yard. He also testified that although the Applicant's witnesses have referred to the pre-existing nonconforming gas station use of the property and its structures, the Applicant is

not proposing to use the existing structures. Instead, the Applicant proposes to demolish the existing structures, so the proposed convenience store and gas station will be new construction.

28. Mr. Pessolano opined that the Applicant's overall project is too ambitious as it proposes two prohibited uses, a convenience store and gas station, on a site which is too small to accommodate both uses and is constrained by unusual features such as its placement in a flood hazard area and floodway. Mr. Pessolano testified that in the context of evaluating the public benefits associated with a proposed use, potential dangers should also be considered, particularly at this site which is located at a congested intersection, with ingress and egress by customer vehicles, commercial trucks, and pedestrians, in addition to passing traffic. Mr. Pessolano testified that while the site could physically accommodate either of the proposed prohibited uses, as recently as 2018 and 2019, neither the Township Planning Board nor the Township Committee took any action to allow convenience store or gasoline station uses in the OR-2 zone, let alone both uses in combination. He testified that Millburn Township's zoning ordinance identifies where the Township wants retail sales stores to be located and it is not here in the OR-2 zone. He opined that if retail sales were permitted on this site, it would impact negatively on the Township's overall zone plan. Mr. Pessolano stated that this application for a convenience store and gas station use of the property presents a request for use variance relief to permit two prohibited uses on the property, as well as more than one principal permitted use on a lot, and various bulk variances. He opined that despite recent trends, there are many municipal zoning ordinances which still consider gas stations and convenience stores to be separate, stand-alone uses. In response to a question from the Board, Mr. Pessolano agreed that the statistic in Mr. McDonough's testimony that of every 150 convenience stores, 120 also sell fuel, is one which relates to highway locations. Mr. Pessolano concluded that there are several reasons to support the denial of variance relief to the Applicant in this case for the reasons set forth in his testimony. He reiterated that the placement of the proposed convenience store building with its rear façade facing the front yard is contrary to placement in accordance with sound zoning principles. The proposed gas canopy itself is not a permitted accessory structure because the underlying gas station use is not permitted. Mr. Pessolano also testified that the property is located in the floodway and flood hazard area and despite the proposed reduction in existing lot coverage, the proposed lot coverage of the new construction would still exceed the maximum 65% lot coverage permitted in the OR-2 zone. He also stated that the buildings on the opposite side of Millburn Avenue are mixed use buildings with offices and residential apartments, so the residents of those apartments would be impacted by the brightly lit proposed gas station and convenience store uses on the property during nighttime hours.

29. Mr. Pessolano testified that in his opinion this application fails to satisfy the second prong of the negative criteria, which requires proof that the grant of use variance relief would not substantially impair the intent and purpose of the zone plan and zoning ordinance. He testified that in this case, the Applicant's proposed convenience store use and proposed gasoline

station use would substantially impair the intent and purpose of the zone plan and zoning ordinance because neither the 2018 Master Plan Reexamination Report, or the 2019 zoning ordinance amending the OR-2 zone district regulations reflect any intent to permit gasoline stations or retail sales uses in the OR-2 zone. In fact, he testified that the 2018 Master Plan Reexamination and 2019 zoning ordinance amendment make it clear that while the Millburn Township Planning Board and governing body of Millburn Township continue to encourage office and retail services in the OR-2 zone, neither recommended or adopted any zoning ordinance changes to allow gas stations or retail sales. Mr. Pessolano referred to the language in the 2018 Master Plan Reexamination report which acknowledged some vacancies on the south side of Millburn Avenue in the OR-2 zone, and expressly concluded that no changes are currently recommended but may need to be revisited in the future. As a result of the statement in the 2018 Master Plan Reexamination Report, Mr. Pessolano opined that now is not the time for the Board to authorize a wholly prohibited use, which may well constitute zoning by variance, the Board's exercise of a role that is within the province of the governing body of Millburn Township. He also stated that given the statement in the 2018 Master Plan Reexamination Report, it is premature to tie the hands of the Millburn Township Planning Board and the Millburn Township governing body with uses that are discordant with the entire area.

30. Mr. Pessolano concluded his testimony by offering his opinion that the proposed uses of the property cannot be reconciled with the enhanced quality of proof required by Medici v. BPR Co., 107 N.J. 1 (1987). He testified the subject property is particularly unsuitable for the proposed convenience store and proposed gas station uses for several reasons: it is a heavily congested intersection with multiple points of conflicting traffic movements; the convenience store building encroaches on the required front yard setback of both streets with the rear façade of the building facing the front yard; the lot size is not suitable as the minimum lot area for an individual principal permitted use is 10,000 square feet, whereas the Applicant's proposed uses will share the 16,400 square foot lot area of this site; and the two proposed uses are not permitted in the OR-2 zone, or in the adjacent R-0 and C zones, which makes the proposed uses of the property more impactful on the neighborhood and surrounding area than it would if it were located at the boundary of a zone which permits such uses; and the proposed combination of the convenience store and gas station use of this property would be an unsuitably over-intensification of the use of the property.

31. On cross-examination, Mr. Pessolano acknowledged the contents of the Board's findings in its 1996 resolution which acknowledged the existing gas station was a pre-existing nonconforming use and approved the existing gas canopy and signage on the property in connection with that pre-existing nonconforming use. He also confirmed his testimony regarding traffic was based on his observations of the site and the surrounding area and uses, as a planner, not as a traffic engineer. Mr. Pessolano acknowledged that the Applicant's proposed 76.7% lot coverage was a reduction in the pre-existing nonconforming lot coverage which would

help to alleviate stormwater concerns. In response to the question whether the combination of a convenience store and gas station is more consistent with modern trends than a gas station with auto repair facilities, Mr. Pessolano testified that he does not perceive a gas station with auto repair facilities as being outdated. When questioned about a historical use of the subject property, Mr. Pessolano confirmed that a resident of Reeve Circle advised him that there was a break in the use of the property as a gas station when the property was used as a plant nursery at some point in time. He also confirmed his opinion as a professional planner that the addition of a second principal use of the property for a convenience store is a violation of the Township Zoning Ordinance which could result in safety hazards resulting from cut-through traffic, “quick stop” purchases, combined with existing traffic on the two adjacent heavily traveled streets and pedestrian traffic. He recognized the testimony of the Applicant’s traffic expert witness that the site could function safely, but based on his education and experience as a professional planner, he continues to be of the opinion that the safe use of the property for the proposed convenience store and gas station use will suffer due to the proposed number of approaches and turning movements at this location. He reiterated his professional opinion that jamming a convenience store building into the two frontages of this property with its rear façade facing the streets is poor planning and that the Applicant has not met its burden of proving a right to variance relief from that front yard setback requirement. When asked whether the history of the use of the site for a gasoline station is sufficient reason to grant variance relief to permit a convenience store, a prohibited use in the zone, as an additional use of the property, Mr. Pessolano testified that only the Township’s governing body has the statutory authority to rezone a property and the history of the pre-existing nonconforming gas station use does not serve as a criterion for granting use variance relief to permit a prohibited use of the property as a second principal permitted use. When residents inquired whether Mr. Pessolano had an opinion on whether the prior testimony from the Applicant’s traffic expert is in conflict with a recent public announcement by Essex County that the intersection of the Millburn Avenue/Vauxhall Road intersection is one of Essex County’s most heavily congested county roadway intersections, and the County planned to utilize a portion of its grant funds for various safety improvements to the intersection, Mr. Pessolano reiterated his opinion that the subject property located at this very congested intersection is an inappropriate location for the high intensity of the combined proposed convenience store and gas station uses.

32. Numerous members of the public testified in opposition to the application. Various residents of Reeve Circle testified that the proposed convenience store and gas station uses at this property, open until 11 pm seven days per week, would be inconsistent with the hours of operation of the other businesses in the area, resulting in new nighttime traffic, as well as added congestion during daytime hours at this very busy intersection, which would have strong repercussions on the quality of life that their residential neighborhood has enjoyed for decades. They also expressed the concern that the granting of variance relief would be a total departure from the Township’s Master Plan. A member of the South Mountain Civic

Association expressed the concern that the Board should not grant variance relief to permit the sale of food in the OR-2 zone, contrary to Township Zoning Ordinances and Master Plan.

33. The Board finds that the Applicant has not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d(1) and concludes that it is not appropriate to grant use variance to permit the proposed convenience store and gas station use of the property in violation of the Township Zoning Ordinance. The Board finds and concludes that the Applicant has not met its burden of proving the proposed convenience store and gas station use of the property satisfy the positive and negative criteria under N.J.S.A. 40:55D-70d(1) based upon the testimony and evidence presented at the hearings. Although the subject property has a lot area of 16,400 square feet, which exceeds the minimum 10,000 square foot lot area required in the OR-2 zone, the property is irregular in shape, located at the convergence of two heavily congested Essex County roadways, and subject to various other constraints due to its placement along the East Branch of the Rahway River. The Board finds and concludes that based on the property's size, geometry and location, the subject property is too small to capably handle the convenience store and gas station use, regardless of whether the convenience store and gas station uses are two principal uses or one single use. The Board's conclusion in this regard is buttressed by the fact that in order to accommodate both the proposed convenience store and gas station uses of the property, the proposed convenience store use was jammed into the Millburn Avenue and Vauxhall Road frontages of the property, resulting in the need for bulk variance relief to permit an eight foot front yard setback from each street. The Board finds that Millburn Avenue and Vauxhall Road are two prominent and heavily traveled Essex County roadways in Millburn Township. A front yard setback that is approximately half of the required minimum front yard setback is substantial and simply too great a deviation from the required front yard setback.

34. Although the Applicant's professional planner offered the opinion that the subject property is particularly suitable for the proposed convenience store and gas station uses, and satisfies the positive and negative criteria required by N.J.S.A. 40:55D-70d(1), the Board disagrees and rejects this testimony. The Board accepts and adopts the testimony of Michael Pessolano, professional planner, as its findings of fact. The Board is satisfied that the subject property is particularly unsuitable for the proposed convenience store and gas station uses because of its location at a congested intersection with multiple points of conflicting movements, its size, geometry and the environmental constraints which result in the placement of the convenience store use in violation of the front yard setback of both Millburn Avenue and Vauxhall Road, with the rear façade facing the two roadways. The Board also agrees with Mr. Pessolano that the size of the property and its geometry does not safely accommodate the convenience store and gas station use, a combination of two high intensity uses, which the Board finds will have a substantial detrimental impact on the public good, including the neighborhood and surrounding uses in the OR-2 zone, as well as the adjacent R-O and C zones. As noted in the Township Planner's September 18, 2020 report, the specifically permitted uses in the OR-2 zone

are offices, including medical offices, and retail services such as beauty salons and barber shops and the proposed convenience store and gas station uses are not permitted. The Board agrees with the Township Planner's opinion that the size of this property, which is under 0.4 acres, is well below the size of property typically required for combined convenience store and gas station uses. The Board finds and concludes that the Township Planner's opinion is bolstered by the testimony of Michael Pessolano, the professional planner for objectors from Reeve Circle.

35. Furthermore, the Board finds and concludes that the Applicant has failed to satisfactorily reconcile the grant of variance relief with the Township Committee's failure to rezone the OR-2 zone to permit retail sales and gasoline station uses, or to allow a gas station/convenience store as a single principal permitted use, under the enhanced quality of proof required by Medici v. BPR Co., 107 N.J. 1 (1987). The Board is satisfied that it is apparent from the express language used in the 2018 Master Plan Reexamination Report that the Millburn Township Planning Board continues to identify office and retail service uses such as beauty parlors and barber shops in the OR-2 zone, and it did not recommend any zoning ordinance changes to allow gas stations or retail sales in the OR-2 zone. Specifically, the 2018 Master Plan Reexamination report expressly acknowledges that some vacancies exist on the south side of Millburn Avenue in the OR-2 zone, but it concludes that no changes are currently recommended although this issue may need to be revisited in the future. Significantly, the Township Committee adopted an amendment to the Township Zoning Ordinance in 2019, Ordinance 2528-19, which includes the following statement of purpose:

STATEMENT OF PURPOSE: *Analysis of existing development within the Township's OR-2 zone concentrated at the east end of Millburn Avenue revealed that the district contains principally office uses, including medical offices, together with a number of retail/personal service uses. Neither retail sales establishments nor eating and drinking establishments currently exist within the district. While the built condition largely conforms to the current OR-2 zone standards with regard to use, the subject amendment accomplishes the following objectives. It expressly allows for medical offices, which is not presently the case, and, in recognition of the fact that OR-2 zone is in close proximity to established residential uses and zones it expands upon and reinforces the definition of retail services rendering it clear that retail service use shall not include establishments primarily engaged in the sale of products or merchandise, including food or drink, to the general public.*

In light of the legislative purpose expressed in Ordinance 2528-19, the Board finds and concludes that the grant of variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed convenience store use and proposed gas station use of the property cannot be reconciled with the enhanced burden required by Medici v. BPR Co., 107 N.J. 1 (1987) because the proposed convenience store and gas station uses would result in a substantial impairment of the intent and purpose of the established zone plan and zoning ordinance of the Township.

36. For all of the foregoing reasons, the Board further finds and concludes that the granting of bulk variances for front yard setback, lot coverage, pole mounted ground graphic area, canopy structure, canopy signs, wall graphic height, sign surface colors, lighting design waivers, and preliminary and final major site plan approval in connection with the Applicant's use variance application is not reasonable or appropriate based on the Board's denial of variance relief to the applicant pursuant to N.J.S.A. 40:55D-70d(1).

NOW, THEREFORE, BE IT RESOLVED on this 1st day of February, 2021 that the use and bulk variance relief, design waiver and preliminary and final major site plan approval requested by Applicant for the proposed convenience store and gas station use of property located at 132 Millburn Avenue, Millburn, denied by this Board at its meeting of December 21, 2020 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 1st day of February, 2021.

APPLICATIONS

CAL#3768-20, SPIRO & LAUREN SKOURAS, 10 ALEXANDER LANE, SHORT HILLS

The matter was carried to March 15, 2021.

CAL#3773-20, A. NAKEO/R. KEM, 9 NORTH ROAD, SHORT HILLS

Timothy Klesse, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

- 606.2e1e2c – Side facing garage setback
- 606.2e1f – Combined side yard setback
- 606.2e1h – Rear yard setback

Entered as A-1: 4 photos of site

Mr. Klesse gave a brief description of the applicants' proposal. The applicants are proposing to construct an addition to house by adding a garage on the left side of the home with a master bedroom above. The existing house is a 2-story colonial style on an angle to the street.

There is presently no garage on site. The former garage was enclosed about 20 years ago and converted into a family room. The applicants are seeking variance relief to permit a combined side yard setback of 31.7% where 35% of the lot width is required. Rear yard setback variance relief is required to permit a setback of 16.4% of the lot depth where 20% is required. Finally, side facing garage setback variance relief is required to permit a 26.5 foot setback where 28 feet is required.

Mr. Klesse stated that the impact to surrounding properties is minimal. The addition is approximately 90 feet from the street and the front of the basement is concealed from view. The dwelling to the left is set back quite a distance from the common property line. Mr. Klesse stated that they are removing the rear yard driveway area and replacing it with grass. The 15,936 SF lot is undersized for the R-3 zone, which has a minimum lot area requirement of 29,000 SF. However, the property well under the allowable building coverage, lot coverage and floor area ratio allowances. The proposal will be adding a garage and bringing it into conformity in that regard.

Reade Kem & Aki Nakao appeared and were sworn. Mr. Kem indicated that he spoke to the neighbor most affected by the proposal who indicated that he is pleased with the plans.

Henry Du, 7 North Road, appeared and was sworn. He stated that he has seen the proposed construction plans and feels the proposal will be an improvement to the property and the neighborhood.

With a motion made by Craig Ploetner, a second by Joy Siegel, and with a roll-call vote as follows:

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

Cal#3773-20, A. Nakeo/R. Kem, 9 North Road, was **APPROVED**.

CAL#3774-20, SAURABH & SONIKA AGARWAL, 9 BURNSIDE DRIVE, SHORT HILLS

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

606.2e2b – Lot coverage
606.2e3a – Accessory structure side yard setback

609.5 – Accessory structure setback on a corner lot

Mr. Fiore indicated that the property is a corner lot in the R-5 zone district. The applicant would like to construct a deck which requires 3 variances. Township ordinance requires that accessory structures on a corner lot be set back a minimum 80 feet from the front lot line. The deck, as proposed, will have a setback of 58.28 feet from the front lot line. The applicant also requires variance relief to permit a side setback of 6.5 feet where 12 feet is required. In addition, lot coverage variance relief is required to allow 42.2% coverage where 35% is permitted.

Donald Fiore opined that the purpose of the 80 foot setback requirement on a corner lot is to minimize the impact of an accessory structure on the streetscape. The proposed deck will not be visible from the street. In addition, the driveway separates the applicants' property from the neighbor's dwelling. It will have minimal impact on the neighboring property due to the line of mature trees between the properties.

Carol Ball, 2 Farley Road, asked how high the deck is and if it will be visible when people are on it. Mr. Fiore indicated that it is approximately 4 feet above the existing grade at the point closest to 2 Farley Road. Ms. Ball asked if the applicants would consider additional landscaping around the corner of the deck.

Saurabh Agarwal appeared and was sworn. He indicated that he would agree to planting green giant arborvitae to provide screening.

The Board requested a more detailed landscape plan.

The matter was carried to 3/1/21.

CAL#3775-20, 132 HARTSHORN JMPOG, 132 HARTSHORN DRIVE, SHORT HILLS

James Foerst, Attorney for the applicant, stated his appearance. The applicant proposes to construct a new dwelling. Proposal is in violation of:

- 606.2e1d – Front yard setback
- 606.2e2c – Building height
- 609.6a – Front yard wall height
- 608.5 – Steep slope disturbance

Kevin Page, P. E., appeared and was sworn. He spoke to the lot conditions and the proposed construction. He indicated that 132 Hartshorn Drive was the subject of a prior variance relief granted by this Board in 2017. Permits were never obtained and the variance relief lapsed after one year. It was also discovered after the original approval that steep slope variance relief was also required. The applicant is before the Board seeking the original variances that were granted as well as steep slope disturbance.

The property is a conforming lot with regard to lot area, width and depth. The applicant proposes to disturb 16,730 SF of steep slope area where the ordinance permits disturbance of 1,000 SF.

Entered as A-1: 2 photos of subject property

The applicant is proposing a front yard setback of 52 feet where the average front yard setback is 66.6 feet. This will minimize the steep slope disturbance and allow the architect to work with the property conditions as best as he can. The applicant is seeking variance relief to allow a building height of 34.8 feet where 32 feet is the maximum permitted. Finally, front yard wall height variance relief is required to allow a wall height of 4 feet where 2 feet is the maximum permitted.

The dwelling will look similar to the dwellings in the area and will be consistent with the neighborhood aesthetic.

Kimberly Tone, Architect for the applicant, appeared and was sworn. Her credentials were presented and accepted by the Board. She gave a brief description of the architectural plans. She stated that she was the architect of record for the 2017 plan as well. The previous application was similar. However, the plans were modified slightly. The applicant modified the entrance to create a center hall colonial. In addition, the square footage decreased but the footprint increased slightly. The 1st floor contains a living room, dining room, kitchen, powder room, guest bedroom, mud room and 3-car garage. The 2nd floor contains a master bedroom, 3 additional bedrooms and 3 bathrooms. There is also a guest suite/office area proposed.

Srinath Kotdawala, P. E. for 128 Hartshorn Drive property owner, appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as O-1: portion of Kevin Page site plan, colored to indicate 20 foot planting strip and drywell re-location.

Mr. Kotdawala would like the applicant to consider a 20 foot wide strip of landscaping as well as re-locating the drywells.

James Foerst gave a brief summary and indicated that the variance relief being requested can be granted without substantial detriment to the zone plan or the neighboring properties.

With a motion made by Craig Ploetner, a second by Steve Togher, and with a roll-call vote as follows:

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

Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3775-20, 132 Hartshorn JMPOG, 132 Hartshorn Drive, was **APPROVED**.

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

The matter was carried to 3/1/21.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Craig Ploetner, seconded by Amy Lawrence, and carried with a unanimous voice vote. (10:00 PM)

Eileen Davitt
Board Secretary

Motion: JG
Second: CP
Date Adopted: 3/1/21