

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

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

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

The following members were present for the meeting:

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

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of February 1, 2021 was made by Jessica Glatt, seconded by Craig Ploetner, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3766-20, Justin & Jenna Tichauer, 472 Long Hill Drive, Short Hills

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

Craig Ploetner – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**JUSTIN AND JENNA TICHAUER
BLOCK 4702, LOT 23**

**CALENDAR NO. 3766-20
MARCH 1, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Justin and Jenna Tichauer, to permit the construction of a four foot high fence in the Mohawk Road front yard of the property located at 472 Long Hill Drive, Short Hills, New Jersey known and designated as Lot 23, Block 4702 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on January 11, 2021 in Calendar No. 3766-20 filed by Justin and Jenna Tichauer (hereinafter referred to as the “Applicants”) for permission to construct a four foot high fence in the Mohawk Road front yard of the property located at 472 Long Hill Drive, Short Hills, 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. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The subject property is located in the R-4 zone. The Applicants wish to install a four foot tall, black aluminum fence behind existing and proposed evergreen trees to enclose the area of the property that serves as the Applicants’ backyard, and provide a safe and secure area for the Applicants’ dog. Pursuant to Section 609-6(a) of the development regulations and zoning ordinances of the Township of Millburn, fences are prohibited in the front yard. The proposed fence would be located in the Mohawk Road front yard of this corner lot property. Therefore, variance relief is required to permit the proposed fence.

3. The Board received as part of the application materials, and considered, the following documents in support of the application:

A. A one sheet survey plan marked up in color by the Applicants to identify the proposed location of the fence; and

B. A one page, Job Specification fence detail of the proposed four foot aluminum fence by Jan Fence, Inc.

4. The Applicants, Justin Tichauer and Jenna Tichauer, testified in support of the application. They reside at the subject property with their children and family dog. The property constitutes a corner lot at the intersection of Long Hill Drive and Mohawk Road. As a result, the

lot has two front yards and two side yards. The driveway of the single family home on the property faces Mohawk Road. Since acquiring the property, the Applicants have installed evergreen trees which are currently 10 feet tall along the Mohawk Road property line. The only portion of the proposed fence that requires variance relief is that portion within the Mohawk Road front yard, located to the south of the home on the property as shown on the plans and documents submitted with the application. The proposed fence would extend parallel to the driveway, along Mohawk Road, and then continue along the easterly property line, all as shown on the plans and documents submitted with the application. The proposed fence would be situated behind existing and proposed evergreens, both adjacent and perpendicular to Mohawk Road, and so that the proposed fence would not be visible from either Long Hill Drive or Mohawk Road. At the easterly side yard, the proposed fence would be located approximately three feet in from the easterly property line.

5. The Applicants testified that the surrounding neighborhood includes properties with similar type fencing as they are proposing, including at least one corner lot property where the fence is partially located within that property's front yard. The Applicants are amenable to installing additional evergreen trees to the east of, and parallel to, the existing driveway on the property so that any view of the proposed fence from Long Hill Drive and Mohawk Road will be concealed.

6. The Board concludes that the variance requested by the Applicants to permit a four foot high fence along Mohawk Road may be granted. The Board is satisfied that the need for variance relief to permit the proposed fence is due to the corner lot status of the subject property and the placement of the dwelling on the property, so that a portion of the effective backyard of the property is in close proximity to Mohawk Road. No variance relief would be required if the property did not constitute a corner lot. Alternatively, if the fence were placed in a conforming location on the property, the property's effective backyard would essentially become bisected, significantly and unreasonably reducing its utility. The proposed location of the fence allows the Applicants to maximize the useable yard area for their children and dog. No existing trees are proposed to be removed in connection with the fence installation. The proposed four foot high aluminum fence will serve to create the necessary safety barrier between Mohawk Road and the Applicants' effective backyard. The proposed fence will be effectively buffered from view from Mohawk Road and Long Hill Drive by existing, mature landscaping, to be supplemented with the planting of additional evergreen trees (a minimum of four feet tall from the root ball at the time of planting) extending from the existing trees parallel to Mohawk Road and continuing to the house parallel to the driveway. All existing and proposed landscaping shall be maintained by the Applicants. The Board finds these combined factors present an exceptional situation uniquely affecting the property and justifying the requested variance relief. The Board also concludes, for all the reasons contained herein, that the proposed fence will not result in a substantial detriment to the zone plan, zoning ordinance or public good. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c1.

NOW, THEREFORE, BE IT RESOLVED on this 1st day of March, 2021 that the Board's actions of January 11, 2021, granting variance relief to permit the construction of a four

foot high black aluminum fence in the Mohawk Road front yard of the property be and are hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. The proposed fence shall be a four foot high black aluminum fence located as shown on the Jan Fence, Inc. job specification submitted with the application.
2. Prior to the issuance of a Certificate of Approval for the proposed fence installation, the Applicants shall install additional landscaping to be planted starting from the existing trees parallel to Mohawk Road and continuing parallel to the driveway to the house on the property (with the additional landscaping consisting of evergreen trees a minimum of four feet tall from the root ball at the time of planting) to block the view of the fence from Mohawk Road and Long Hill Road.
3. The Applicants shall insure that all new plantings, as well as existing trees and landscaping, shall be maintained in order to block the view of the fence from Mohawk Road and Long Hill Road.
4. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
5. The Applicants shall be bound to comply with the representations made before this Board by the Applicants, 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 approval set forth herein. Such representations are hereby made conditions of such approval.
6. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
7. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 1st day of March, 2021.

Cal#3773-20, A. Nakao/R. Kem, 9 North Road, Short Hills

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

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

the following memorializing resolution was adopted:

**AKI NAKAO/ READE KEM
BLOCK 3410, LOT 2**

**CALENDAR NO. 3773-20
MARCH 1, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Aki Nakao and Reade Kem, in Calendar No. 3773-20 for permission to construct an addition to the dwelling on property located at 9 North Road, Short Hills, New Jersey, known and designated as Lot 2, Block 3410 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on February 1, 2021 in Calendar No. 3773-20 filed by Aki Nakao and Reade Kem (hereinafter the “Applicants”) for permission to construct an addition to the dwelling on property located at 9 North Road, Short Hills, New Jersey, known and designated as Lot 2, Block 3410 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicants appeared with Timothy P. Klesse AIA, licensed architect. A neighbor, Henry Du, testified in support of the application. No other interested parties or objectors appeared or testified at the hearing.

2. The Applicants are the owners of the subject property, which is located in the R-3 zone district. The Applicants are proposing to construct a two-story addition to the existing dwelling, consisting of a basement, garage, first floor office and bedroom, and second floor master bedroom suite above the garage. The following standards apply in the R-3 zone: minimum 35% combined side yard setback, minimum 20% rear yard setback and minimum 28 foot side yard setback for a side facing garage. The Applicants propose an addition that would result in a 34.7% combined side yard setback, 16.4% rear yard setback and 26.5 foot side yard setback for a side facing garage. Therefore, variance relief is required.

3. Plans prepared by Klesse Associates P.A., consisting of five sheets, BOA-1 through BOA-5, dated July 30, 2020 were submitted in support of the application. The Board also received and considered the following documents admitted into evidence: A-1, consisting of four (4) photographs of the subject and neighboring properties, taken sometime in August, 2020, was marked into evidence at the hearing.

4. Reade Kem, one of the Applicants, and Timothy P. Klesse, Licensed Architect, testified in support of the application. The Applicants desire to construct a two-story addition to the existing dwelling on the left side of the property (viewed from North Road). The proposed improvements consist of a basement, garage, first floor office and bedroom, and second floor master bedroom suite above the garage. The home currently has no garage space (a former garage was converted to a family room approximately 25 years ago). The Township ordinance requires that this residential property contain a garage.

5. The subject property is undersized for the R-3 zone and irregularly shaped. It contains a two-story colonial home, with its front façade angled to the street. The dwelling on the property currently maintains a pre-existing, non-conforming side yard setback of 14.3 feet. The topography of the property is sloped, with the existing dwelling sited at the rear of the property at a higher elevation than the adjacent street. The driveway servicing the property extends from the street to the rear yard area of the property.

6. The proposed addition was designed to appear as being “tucked into the site” with minimal disturbance to existing conditions or to the neighboring properties. As the existing home is oriented on an angle to the street, the proposed addition will appear from the street to be further away than the existing home. The proposed improvements also offer an opportunity for the Applicants to propose a more practical house design for the property.

7. The proposed addition will be located approximately 90 feet from North Road. The front of the proposed basement and garage doors will each be concealed from view from the street. There will be adequate room in the rear of the property where the driveway area extends to maneuver vehicles entering and exiting the garage (one garage door for two cars). Constructing the proposed garage will reduce the need for vehicles to be parked on the portion of the driveway located in the property’s rear yard. Additionally, it is proposed that the existing driveway macadam that will no longer be needed for the parking or maneuvering of vehicles will be removed from the rear yard and replaced with grass.

8. The portion of the proposed addition that will be violative of the aforementioned rear yard setback regulation consists of a triangular area of approximately 42 square feet, while the portion of the proposed addition that will be violative of the aforementioned combined side yard setback regulation consists of a triangular area of approximately 18 square feet. According to Mr. Klesse, the portion of the proposed addition that will be seen from the street will appear to have a conforming side yard setback. Retaining walls are proposed to be constructed in the area of the proposed addition to support the proposed leveling of the site. The neighboring property that would be most impacted by the proposed addition is located a considerable distance away from the common property line.

9. 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 remains well under the allowable building coverage, lot coverage and floor area ratio allowances. By adding a garage, the proposal will be bringing the property more into conformance with the applicable zoning regulations while providing protection for the Applicants' vehicles from inclement weather conditions.

10. The Applicants, 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 proposed plans. That neighbor, Henry Du, 7 North Road, the owner of the neighboring property closest to the subject property, appeared and was sworn. Mr. Du stated that he has seen the proposed construction plans and feels the proposal and its associated layout is "most impressive" and will be an improvement to the property and the neighborhood.

11. The Board concludes that variance relief may be granted to permit the construction of the proposed addition. The need for variance relief is partly the result of the geometry of the existing house, coupled with the undersized nature of the lot. The Board finds that the need for variance relief is also related to the irregular configuration of the property, its slope, the placement of the existing dwelling on the property, the internal configuration of the rooms in the home, and the lack of functional garage space. Based on the foregoing, the Board finds and concludes that cumulatively, these are exceptional conditions uniquely affecting the property and the existing dwelling, which result in undue hardship and practical difficulties to the applicants. The home with the proposed addition will be an improvement to the property and an aesthetic improvement to the neighborhood. It will be in keeping with the other homes in the neighborhood. Therefore, the Board concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 1st day of March, 2021 that variance relief to permit a two-story addition to the existing dwelling, with a 34.7% combined side yard setback, a 16.4% rear yard setback and a 26.5 foot side yard setback for a side facing garage, granted by this Board on February 1, 2021, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. The addition shall be constructed in accordance with the plans prepared by Klesse Associates P.A., consisting of three sheets, BOA-1 through BOA-5, dated July 30, 2020 submitted in support of the application.

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

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

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

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

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 March, 2021.

Cal#3775-20, 132 Hartshorn JMPOG, 132 Hartshorn Drive, Short Hills

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 – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**132 HARTSHORN JMPOG, LLC
BLOCK 3903, LOT 25**

**CAL. NO. 3775-20
MARCH 1, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, 132 Hartshorn JMPOG, LLC, as to Calendar No. 3775-20, for permission to construct a single family dwelling on property located at 132 Hartshorn Drive, Short Hills, New Jersey, known and designated as Lot 25, Block 3903 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on February 1, 2021 as to Calendar No. 3775-20 filed by 132 Hartshorn JMPOG, LLC (hereinafter the “Applicant”) for permission to construct a single family dwelling on property located at 132 Hartshorn Drive, Short Hills, New Jersey, known and designated as Lot 25, Block 3903 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. James Foerst, Esq. represented the Applicant at the hearing. Mr. Shrinath Kotdawala, a civil engineer, and Dr. Mehul Shah each appeared and testified at the hearing on behalf of Maya Shah, the owner of neighboring property commonly known as 128 Hartshorn Drive, Short Hills, New Jersey.

2. The Applicant is the owner of the subject property, which is located in the R-3 zone district. The Applicant proposes to construct a single family dwelling on the property. Other than the present need for a steep slope variance due to the need to disturb 20% slopes in excess of 1,000 square feet of land, the Applicant seeks almost identical variance relief to that previously granted to the Applicant by the Board in February, 2017 in furtherance of a development application bearing Calendar number 3534 (the “2017 Application”). As compared to the approved 2017 Application, which expired by its terms, the footprint of the currently proposed single family home is now slightly larger, while the square footage of the proposed home is slightly smaller. While the changes to the home are mostly stylistic in nature, they provide a more attractive and practical house design.

3. The following standards apply in the R-3 zone that are relevant to the present application: maximum 40 foot principal building height measured from the lowest elevation, maximum 35 foot principal building height measured from the average elevation, minimum 66.6 foot front yard setback based upon the average front yard setback within 500 feet or to the nearest corner and maximum 2 foot wall height in the front yard. The Applicant’s proposed construction of a single family dwelling on the property would result in a 49.3 foot principal building height measured from the lowest elevation; a 32.4 foot building height measured from the average elevation (in the 2017 application, a non-compliant 39.2 foot building height measured from the average elevation was approved by the Board); a 52 foot front yard setback; and a front yard wall height of not more than 4 feet. Additionally, the Applicant intends to disturb 16,730 SF of steep slopes greater than 20%, while the maximum permitted disturbance of steep slopes greater than 20% is 1,000 SF. Variance relief is required for each of the aforementioned deviations. The proposed building height variance as measured from the lowest elevation is more than 10% over the maximum permitted building height, which requires variance relief pursuant to N.J.S.A. 40:55D-70d(6). In a principal structure height case pursuant to N.J.S.A. 40:55D-70d(6), the Applicant must demonstrate that the increased height would not offend the purposes of the height restrictions in the zoning ordinance in order to establish special

reasons for the granting of variance relief. Grasso v. Borough of Spring Lake, 375 N.J. Super. 41 (App. Div. 2004).

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

a. A Plot Plan/Soil Erosion & Sediment Control Plan prepared by Page-Mueller Engineering Consultants, PC dated September 30, 2020 and revised through December 1, 2020.

b. Architectural Plans prepared by TLA Design, LLC, consisting of six sheets, Sheets V-1 through V-6, dated September 22, 2020 and revised through October 30, 2020.

c. Two Photos obtained by the Applicant from the Google Images website and introduced to depict the relationship between the subject property and retaining walls approximately 6-12 foot tall constructed on abutting properties, which photos were collectively admitted into evidence as A-1.

5. The Board heard testimony from Kevin Page, Professional Engineer, and Kimberly Tone, Licensed Architect, in support of the application.

6. The Applicant is a local developer that proposes to construct a single family dwelling on a vacant lot. This property has a conforming lot area, lot width and lot depth. However, the topography of the property is steeply sloped with a 44 foot change in elevation from the front of the property at the street to the rear property line. The property is situated between two lots which have been developed with single family homes. The Applicant's proposed development of the subject property provides for a three-car, side-facing attached garage with a courtyard driveway configuration, to be located perpendicular to the main portion of the dwelling. As the one and one-half story garage would maintain a 52 foot front yard setback, it conforms to the minimum 40 foot front yard setback requirement for the R-3 zone district but encroaches upon the required 66.6 foot front yard setback based on the average front yard setback of homes on the same side of the street within 500 feet (only approximately 260 SF of the garage would violate the required setback). The dwelling itself would provide a front yard setback to the front portico entry in excess of both the required minimum (40 feet) and average (66.63 feet) front yard setbacks required in the R-3 zone district.

7. The proposed plans for the two-story dwelling and attached garage include a bonus room and bathroom over the garage which, in all likelihood, would serve as a guest room suite separate from the main dwelling. The interior configuration of the main portion of the home is two rooms deep, with features such as a powder room, butler's pantry, staircase and hallway running down the middle of the home. The second floor of the proposed dwelling includes four bedrooms, four bathrooms, and a laundry room.

8. Mr. Shrinath Kotdawala, a civil engineer, participated in the hearing as a representative of Maya Shah, the owner of an adjacent property (Block 3903, Lot 26, commonly known as 128 Hartshorn Drive) (the “Shah Property”). Mr. Kotdawala requested that the Applicant be required to install 10’ – 12’ tall green giant arborvitae trees (two rows) adjacent to the common property line separating the Shah Property from the subject property, so that the proposed home would be screened from view from the Shah Property. Mr. Kotdawala introduced an exhibit, marked as O-1, identifying the desired location for the requested plantings. The Shah Property owner’s husband, Dr. Mehul Shah, also participated in the hearing and noted that certain trees shown on Exhibit A-1 as located in the area of the requested plantings have been removed by the Applicant. In response, the Applicant confirmed that all permits required for any such tree removal had been obtained from the Township. The Board finds that there is no need for the Applicant to provide the requested green giant arborvitae tree buffer, especially given that the application complies with the side yard setback requirement separating the two properties and that the proposed plantings would not mitigate any detrimental impact of the proposed development caused by the need for variance relief.

9. The need for variance relief is the result of the topography of the currently vacant lot, which makes this lot very difficult to develop with a home and useable backyard. There is an approximate 26 foot drop in elevation from the street to the center of the dwelling. If the Applicant were to push the proposed house closer to the street, the front yard setback violation would be greater. If the Applicant were to push the house farther back on the property, the proposed front yard retaining wall would increase in height. The only way the Applicant could construct the proposed dwelling without the need for variance relief from the maximum permitted building height would be to construct the proposed dwelling with a flat roof. However, a flat roof would not be consistent with the architecture of the other homes in the neighborhood. The proposed design nestles the house into the slope of the property and allows for a useable backyard with a walkout basement. The proposed home will appear similar to the adjacent homes, other than the first floor appearing a bit lower due to the property’s topography. The proposed driveway as placed on the down slope of the property appropriately follows the contours of the site. Two drywell areas are also proposed. During construction, the existing grade of the property at the rear would be raised. When viewed from the street, the height of the proposed dwelling will appear to meet the height requirements of the Township Ordinance and designed to appear lower than the house on the property to the south, which has a sloping hip roof.

10. Retaining walls in the front yard are necessary due to the existing steeply sloped topography of the property, in order to provide a proper pitch for the driveway and for adequate drainage of the paved driveway and courtyard area. The proposed retaining walls would be constructed of the same stone veneer used on the proposed dwelling. The proposed retaining wall on the left side of the driveway would meet the maximum 2 foot wall height permitted by Township Ordinance. However, the proposed retaining wall on the right side of the driveway would reach a maximum height of 4 feet due to the topography of the property. Since the street is at a higher elevation than the interior of the lot, the proposed 4 foot high retaining wall would not be visible from the street as the top of the proposed retaining wall would be at grade. The proposed 4 foot retaining wall would only be visible from the interior of the property. The

development of the subject property with the proposed dwelling and retaining wall would be in keeping with the size and architecture of the neighborhood.

11. As for the height variance pursuant to N.J.S.A. 40:55D-70d(6), the Board notes that in a principal structure height case, special reasons for granting the variance means the Applicant must show that the increased height would not offend the purposes of the height restrictions in the zoning ordinance and the site can accommodate the problems associated with the increased height. In this case, the Applicant's proposal will continue to provide adequate light, air and open space and there will be no appearance of overcrowding as the lot has a conforming lot area and width and there is ample distance between the proposed dwelling and the existing homes on the neighboring lots. The proposed dwelling will be nestled into the slope of the property, while allowing a useable backyard for its occupants. Any attempt to mitigate or eliminate the need for height variance relief would increase the deviation from the required front yard setback or retaining wall height, or require a roofline that is out of keeping with the architecture of the neighborhood. The Board finds that the proposed view of the dwelling from the street will give the appearance of a conforming height as the closest portion of the proposed home is the proposed garage, which is only one and one-half stories tall, while the main portion of the proposed dwelling has a deeper setback of more than 80 feet. The Board is satisfied that this lot with its 44 foot change in grade can readily accommodate the height of 49.3 feet from the lowest point of the elevation to the ridgeline of the roof. The proposed home at its average grades will have a height of 32.4 feet and will thus conform to the 35 foot height requirement above average grade. The Board is also satisfied that the proposed height variance from the lowest grade does not offend the intent and purpose of the height restrictions in the Township Ordinance and the Applicant has demonstrated sufficient special reasons that justify the granting of variance relief pursuant to N.J.S.A. 40:55D-70d(6).

12. The Board is also satisfied that the Applicant has demonstrated a right to variance relief pursuant to N.J.S.A. 40:55D-70c(1) for front yard setback, steep slope disturbance (more than 60% of the lot contains steep slopes in excess of 20%), and a 4 foot maximum retaining wall height in the front yard. The need for variance relief is the result of the topography of this isolated vacant lot, which has a drop of more than 44 feet from the street to the rear property line. The Board is satisfied that this condition is an exceptional circumstance that results in a classic case of undue hardship and practical difficulty to the Applicant. The Board is further satisfied that each of these bulk variances arise as a consequence of the steeply sloping topography of the lot. Due to the more than 20 foot difference in elevation between the grade of the street and the grade at the proposed dwelling, the deviation from the required front yard setback will not be noticeable from the street. As for the retaining wall height, the top of the proposed retaining wall will be at grade so that the proposed retaining wall will only be visible from inside the property and not from the street.

13. The Board also finds and concludes that the Applicant has met its burden of proof with respect to the negative criteria required for the granting of variance relief. The architectural treatment of the dwelling is sensitive to the substantial change in grade on the property, and the proposed open courtyard space, located in the front of the proposed home, will ensure that the front elevation does not read as a huge mass from the street. The Board is also satisfied that the

proposed dwelling and retaining wall will not have any negative impact on the adjoining properties. Therefore, the Board is satisfied that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Zoning Ordinance. As compared to the 2017 Application, no previously granted variance relief is being exacerbated by the current proposal, while the few changes to the 2017 Application as reflected in the current design of the proposed home only improve the project and the application.

NOW, THEREFORE, BE IT RESOLVED on this 1st day of March, 2021 that variance relief to permit the construction of a single family dwelling with attached three-car garage and a retaining wall on the property with a 49.3 foot principal building height measured from the lowest elevation, 52 foot front yard setback and a front yard wall height of not more than 4 feet, and the disturbance of 16,730 SF of steep slopes greater than 20%, granted by this Board on February 1, 2021 be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing, the Plot Plan/Soil Erosion & Sediment Control Plan prepared by Page-Mueller Engineering Consultants, PC dated September 30, 2020 and revised through December 1, 2020, and the Architectural Plans prepared by TLA Design, LLC, consisting of six sheets, Sheets V-1 through V-6, dated September 22, 2020 and revised through October 30, 2020.
2. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, the Applicant's professionals and other witnesses as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
4. The Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The 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 1st day of March, 2021.

APPLICATIONS

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

Donald Fiore, Architect for the applicants, appeared and remains sworn. The applicants appeared before the Board on February 1, 2021. He briefly described the applicants' change to the original proposal. The new plan replaces the deck with a grade level patio. Two of the variances requested remain the same. The accessory coverage variance relief increases by 35 SF, from 7.2% to 7.5%.

It was the opinion of the Board Attorney that the original notice is satisfactory. Board members discussed the adequacy of the original notice which reflected the construction of a deck. After discussion, Board members opted to proceed with the matter.

Entered as A-1: Revised SP-1.2 (3/1/21)

Donald Fiore shared the revised plan showing the location of the proposed patio and landscaping. He also explained the proposed project in relation to the surrounding neighbors. Mr. Fiore stated that the applicant and 3 neighbors had the opportunity to discuss the applicants' proposal. Neighbors were concerned that this property is elevated and the proposed deck would be very visible and out of character for the area. The applicant agreed to replace the proposed deck with a grade level patio.

Carol Ball, 2 Farley Road, Sharon Klesse, 4 Burnside Drive, and Muffin Mullrt, 5 Burnside Drive, stated that they met with the applicants and their architect. They would like the matter to proceed tonight as they feel the applicants have heard their concerns and revised the plans accordingly.

Upon 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 – no
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3774-20, Saurabh & Sonika Agarwal, 9 Burnside Drive, was **APPROVED** with the condition that the applicant plant a minimum of nine (9) 4-foot tall emerald green arborvitae, 2 foot on center.

CAL#3777-20, DOUGLAS SOLOMON, 401 WYOMING AVENUE, MILLBURN

The matter was carried to March 15, 2021.

CAL#3778-21, BING SHEN, 332 LUPINE WAY, SHORT HILLS

Douglas Asral, Architect, and Peter Korzen, P. E., appeared and were sworn. Their credentials were presented and accepted by the Board.

The applicant proposes to construct front yard walls. Proposal is in violation of:

609.6a – Front yard walls shall not exceed 2 feet in height

Peter Korzen briefly described the proposal. The applicant received approval for the construction of a new dwelling. The need for front yard wall height was inadvertently omitted from the original variance request.

The property is a corner lot and the topography is difficult to work with and adhere to the 2 foot maximum wall height.

Douglas Asral referred to sheet Z-2 shared a detail of the wall. The walls will range in height from 1.3 feet at the street to 5.2 feet at the garage doors.

With a motion made by Steve Togher, a second by Wolfgang Tsoutsouris, and 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#3778-21, Bing Shen, 332 Lupine Way, was **APPROVED**.

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

The matter was carried to April 5, 2021. The applicant will re-notice the matter.

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 Jyoti Sharma, and carried with a unanimous voice vote. (8:21 PM)

Eileen Davitt
Board Secretary

Motion: CP
Second: WT
Date Adopted: 3/15/21