

Township of Millburn
Minutes of the Zoning Board of Adjustment
January 22, 2018

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 22, 2018** at 7:00 PM in Millburn Town Hall.

Chairman Joseph Steinberg opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Michael Birnberg
Mary McNett
Ellen Hirsch
Craig Ploetner
Jyoti Sharma
Joy Siegel
Steve Togher
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of December 18, 2017 was made by Mary McNett, seconded by Craig Ploetner and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3577-17, 99 Myrtle Avenue, LLC, 99 Myrtle Avenue, Millburn

Upon a motion made by Michael Birnberg, seconded by Ellen Hirsch, and with a roll-call vote as follows:

Michael Birnberg – y es
Ellen Hirsch – yes
Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes

Jessica Glatt – yes

the following resolution was approved:

**99 MYRTLE AVENUE LLC
BLOCK 307, LOT 11**

**CAL. NO. 3577-17
JANUARY 22, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, 99 Myrtle Avenue LLC, in Calendar No. 3577-17 for permission to construct a detached garage and two-story addition on the dwelling on property located at 99 Myrtle Avenue, Millburn, New Jersey, known and designated as Lot 11, Block 307 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 September 18, 2017 and December 4, 2017 in Calendar No. 3577-17 filed by 99 Myrtle Avenue LLC (hereinafter referred to as the “Applicant”) for permission to construct a detached garage and two-story addition on the dwelling on property located at 99 Myrtle Avenue, Millburn, New Jersey, known and designated as Lot 11, Block 307 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. Anthony Cerciello, Esq. represented the Applicant. Nancy Elder of 46 Linden Street, and Christian and Paula Ivan of 101 Myrtle Avenue, appeared and/or testified at the hearing as interested parties.

2. The property is located in the R-5 zone, which is subject to the following zoning requirements: maximum 30% floor area ratio, maximum 35% lot coverage, maximum 18% building coverage, minimum 12 foot side yard setback, minimum 16 foot side yard setback for building segments over 18 feet in height. The home with the proposed detached garage and two-story addition would result in a 39.8% floor area ratio, 39.8% lot coverage, 24.3% building coverage, 7.8 foot side yard setback and 7.8 foot side yard setback for building segments over 18 feet in height. Therefore, the Applicant requires variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an applicant must demonstrate that the proposed site will accommodate the problems associated with the proposed floor area larger than that permitted by the zoning ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).

3. Initially, the Applicants proposed the construction of a two-car detached garage as well as a new patio, which would have required three additional variances to permit 13.4% rear yard unoccupied, 30.4% accessory coverage and 4.25 foot accessory side yard setback. The need

for these variances was eliminated prior to the conclusion of the hearing when the Applicant revised its plans to eliminate the proposed patio, reduce the size of the addition to the dwelling and reduce the size of the detached garage from a two-car garage to a one-car garage.

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

A. A one-sheet plan prepared by ABC Surveys, LLC, dated October 24, 2017.

B. Plans prepared by Robert G. Emert Architect, Inc., consisting of three sheets, Sheets H1 through H3, dated June 8, 2017.

C. Plans prepared by Robert G. Emert Architect, Inc., consisting of three sheets, Sheets Z1 through Z3, dated June 8, 2017 and revised through October 24, 2017.

D. A colorized copy of the Emert architectural plan Sheet H1, which was admitted into evidence as A-1.

E. A zoning overview exhibit with key map and photos, which was admitted into evidence as A-2.

F. A series of photographs of the property and homes in the neighborhood, which was admitted into evidence as A-3.

G. A colorized and revised version of the ABC Surveys plan dated October 24, 2017, which was admitted into evidence as A-4.

H. A rendering of the home with the proposed addition, which was admitted into evidence as A-5.

5. Robert Emert, Licensed Architect, Susan Blickstein, P.P., and Andrew Clark, P.E. and P.L.S., testified in support of the application. The Board also heard testimony from Nancy Elder of 46 Linden Street and Paula Ivan of 101 Myrtle Avenue.

6. The subject property is a non-contributing historic district resource within the Wyoming Historic District in Millburn Township. The Applicant appeared before the Millburn Historic Preservation Commission and received a Certificate of Appropriateness approving the Applicant's proposed improvements.

7. The subject property is an undersized lot in the R-5 zone district with a lot area of 7,500 square feet and lot width of 50 feet, whereas the R-5 zone requires a minimum 14,500 foot lot area and minimum 75 foot lot width. The existing dwelling is a Queen Anne style dwelling built in approximately 1912. There are pre-existing nonconforming conditions affecting the property, dwelling and other improvements, including a pre-existing nonconforming 6.4 foot side yard setback and 6.4 foot side yard setback for building segments over 18 feet in height, 53% rear yard unoccupied, and 8.2 foot accessory side yard setback. Initially, the Applicant proposed to demolish an existing enclosed rear porch, convert an enclosed front porch to an open front porch, and construct a two-story addition at the rear of the home and a new rear patio. The original design proposed a rear addition to the dwelling that would have added 1,031 square feet

to the footprint of the existing dwelling and the proposed second story of the addition would have contributed another 1,042 square feet of floor area. The Applicant also proposed to replace the existing one-car detached garage with a new two-car detached garage and construct a new patio at the rear of the addition. The Applicant's witness testified that the existing home has deteriorated over the years. The Applicant wishes to retain the character and charm of the existing dwelling, rather than demolish it and construct a new dwelling. As a result, the Applicant proposes to renovate the existing two bedroom, one bathroom dwelling and construct a rear two-story addition that would result in a 4 bedroom, three bathroom home. The existing dwelling has a floor area of approximately 1,200 square feet, while the dwelling with the addition would have a floor area of approximately 3,200 square feet.

8. The Applicant's expert planner, Susan Blickstein, testified that the vast majority of lots in the R-5 zone district are larger than the subject property. She testified that the neighborhood is an attractive mix of home styles, including Dutch gambrels, Dutch colonials, split levels, and cottages, both older and newer homes and one-family and two-family dwellings. She testified that the newer homes have more even side yard setbacks, while the older homes generally have unbalanced side yards with the dwelling closer to one side yard than the other. Ms. Blickstein testified that the granting of variance relief may be justified under the statutory criteria of N.J.S.A. 40:55D-70c(1) and c(2). Specifically, she testified that the narrowness of the lot and the placement of the existing dwelling with pre-existing nonconforming conditions justify the granting of variance relief in this case. The undersized 50 foot lot width and placement of the existing dwelling makes it difficult and impractical to construct an addition to the home with conforming side yard setbacks. With respect to the proposed detached garage, Ms. Blickstein testified that it is challenging to design a garage with safe access for this property due to the narrowness of the lot and the position of the home on the lot. The proposed detached garage at the rear of the property requires a longer driveway length, which contributes to the proposed lot coverage. Ms. Blickstein testified that the granting of variance relief to permit the construction of an addition to the dwelling and detached garage satisfies the statutory criteria for variance relief under N.J.S.A. 40:55D-70c(2) because the Applicant's proposal results in the restoration of a deteriorating structure in a historic district as well as a visual improvement in the appearance of the property. She testified that a detached garage is consistent with the other homes in the neighborhood and a better zoning alternative than an attached front loading garage which would have a more significant impact on the streetscape. As a result, Ms. Blickstein opined that the proposed improvements would promote the zoning purposes under N.J.S.A. 40:55D-2(i) and (j). With respect to the floor area ratio variance, Ms. Blickstein testified that the home with the addition would continue to meet the combined side yard setback, rear yard setback, and height requirements of the zone. She testified that the Applicant's property can accommodate any problems associated with the increased floor area ratio, as the addition is located at the rear of the existing dwelling and the impact on the surrounding properties is minor. She testified that the Township's Master Plan encourages restoration, rather than demolition, of older homes in established neighborhoods. The proposed addition would be compatible and consistent with the architecture of the existing home. The home would remain a single family dwelling so there would be no increase in density, traffic, noise or other negative impacts.

9. Neighbors testified at the hearing that the proposed dwelling requires renovation but the initial design would result in too large a home on this small lot. Board members also

expressed concerns regarding the size of the proposed addition, which would result in a single family dwelling of such massive proportions on this undersized lot that it would overshadow the other homes in the area and result in an undesirable visual impact on the neighborhood.

10. As a result of concerns expressed by the Board and the neighbors, the Applicant revised its plans by eliminating the proposed patio, reducing the size of the two-story addition and reducing the size of the new detached garage from a two-car garage to a one-car garage. These plan revisions reduced the extent of the deviation on the five variances the Applicant requires to proceed with the proposed construction. Specifically, the plan revisions decrease the length of the addition to the dwelling by 13 feet, or 750 square feet, which increases the rear yard setback so the addition will have less impact on the neighbor to the rear. The addition to the dwelling has also been pulled in from the northerly side yard to provide a 7.8 foot side yard setback and 7.8 foot side yard setback for building segments over 18 feet in height. The detached garage has been reduced in size to a one-car garage instead of a two-car garage and pulled in off the rear property line. These changes also reduce the building coverage and lot coverage deviations. The paved driveway has been reduced to a width of 10 feet, which also reduces the lot coverage deviation and allows a 4 foot green space area along the southerly property line for the installation of evergreens. The Applicant proposes the installation of an evergreen buffer of arborvitae on each side of the property, which would mitigate the visual impact of the proposed two-story addition on the adjacent properties to the north and south. The Applicant also proposes the installation of 1 Kwanzan cherry tree and 6 Green Giant arborvitae at the rear of the property to buffer the rear neighbor's view. The enclosed front porch would be converted to an open covered front porch, but it would maintain the same footprint as the enclosed front porch.

11. The Applicant's expert planner testified that her testimony regarding the positive and negative criteria to support the granting of variance relief is still relevant to the revised plans. The subject property is 7,500 square feet, which is approximately 50% of the minimum lot area required in the zone district and less than the lot area of many of the properties in the neighborhood, which are approximately 8,500 square feet. In addition, the 50 foot lot width of this property is one-third less than the minimum required 75 foot lot width. Ms. Blickstein advised the Board of her opinion that the restoration of this home from the 1910's, with an open front porch and the construction of a new smaller detached garage is still a better zoning alternative for the property and the community than its demolition and the construction of a new two-story home that complies with the zone requirements but is out of character with the visual appeal of the variety of home styles in this neighborhood. The proposed design can accommodate the problems associated with the greater floor area ratio because the majority of the work, the two-story addition, will be at the rear of the existing dwelling, where it will not have any negative impact on the streetscape and the Applicant proposes to mitigate any impact on the adjoining neighbors through landscaped buffers. Moreover, the restoration of the existing dwelling, which is in a dilapidated condition, and the conversion of the enclosed front porch to an open covered porch would actually be an aesthetic improvement to the property and the neighborhood. Furthermore, the Applicant's plans include the installation of a drywell on the property which would improve the stormwater runoff and drainage of the property.

12. The Board is satisfied that variance relief may be granted to permit the proposed addition to the dwelling. The proposed floor area ratio is 39.8% which is a deviation of 732 square feet greater than the permitted floor area ratio. Notwithstanding this deviation, the Board finds that the property can accommodate the excess floor area ratio because the proposed addition will be located at the rear of the existing dwelling, where it will not impact on the streetscape. The Board is also satisfied that the remaining variances for lot coverage, building coverage, side yard setback and side yard setback over 18 feet are appropriate and satisfy the criteria for the granting of variance relief. The undersized lot area and lot width are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The side yard setback and side yard setback over 18 feet are pre-existing nonconforming conditions affecting the property and the existing dwelling. Furthermore, in conjunction with the proposed addition to the home, the Applicant proposes to renovate the existing dwelling, which is in a deteriorating condition, resulting in a more attractive view of the property for the neighbors. While the Applicant proposes the installation of a substantial number of evergreens on both sides of the property to buffer the adjacent neighbor's views, the Board notes that the southerly neighbor's driveway abuts the shared property line. As a result, the Board finds that the 4 foot landscape strip along the southerly property line would be more aesthetically pleasing as a grassy strip of land, rather than a tall row of evergreens. The home with the proposed addition and new detached one-car garage will continue to be in keeping with the neighborhood and the streetscape. 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 22nd day of January, 2018 that variance relief to permit a two-story addition to the dwelling and a detached one-car garage resulting in a 39.8% floor area ratio, 39.4% lot coverage, 24.3% building coverage, 7.8 foot side yard setback and 7.8 foot side yard setback for building segments over 18 feet in height, granted by this Board on December 4, 2017 is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicant shall revise the ABC Surveys, LLC, site plan dated October 24, 2017 to depict a 4 foot wide strip of grass along the southerly side property line instead of a row of 15 Emerald Green Arborvitae. Construction shall be in accordance with the testimony at the hearing, the ABC Surveys site plan revised as required by this condition and the architectural plans prepared by Robert G. Emert Architect, Inc., consisting of three sheets, Sheets Z1 through Z3, dated June 8, 2017 and revised through October 24, 2017.

2. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 22nd day of January, 2018.

Cal#3594-17, Adam & Jamie Dauber, 78 Locust Avenue, Millburn

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

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following resolution was approved:

**ADAM AND JAMIE DAUBER
BLOCK 611, LOT 11**

**CAL. NO. 3594-17
JANUARY 22, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Adam and Jamie Dauber, in Calendar No. 3594-17 for permission to construct a second story addition on the dwelling on property located at 78 Locust Avenue, Millburn, New Jersey, known and designated as Lot 11, Block 611 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the "Board") has held a public hearing according to law on December 18, 2017 in Calendar

No. 3594-17 filed by Adam and Jamie Dauber (hereinafter referred to as the “Applicants”) for permission to construct a second story addition on the dwelling on property located at 78 Locust Avenue, Millburn, New Jersey, known and designated as Lot 11, Block 611 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 Applicants appeared without counsel. Robert Devone, of 76 Locust Avenue appeared and testified at the hearing as an interested party.

2. The property is located in the R-6 zone, which is subject to the following zoning requirements: maximum 36% floor area ratio, minimum 8.99 foot side yard setback for building segments over 18 feet in height and minimum 35% combined side yard setback, which in this case is a combined side yard setback of 17.5 feet. The home with the proposed second story addition would result in a 44.6% floor area ratio, 6.9 foot side yard setback for building segments over 18 feet in height and 29.4%, or 14.70 foot, combined side yard setback. Therefore, the Applicants require variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an Applicant must demonstrate that the proposed site will accommodate the problems associated with the proposed floor area larger than that permitted by the zoning ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).

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

A. A plan prepared by Dubinett Architects, LLC, consisting of one sheet, A-1, dated August 24, 2017.

B. A survey of the property prepared by Northeast Land Surveying LLC, dated December 29, 2011 and a copy of the Northeast survey marked up by the Applicants’ architect to depict the proposed addition.

C. A group of four photographs of the subject property and dwelling, which was admitted into evidence as A-1.

4. Applicant Jamie Dauber, and Danial Dubinett, Licensed Architect, testified in support of the application. Robert Devone of 76 Locust Avenue testified as an interested party.

5. The Applicants’ family has grown since they purchased the property in 2012. They are now expecting their third child and need additional living space. The rear of the existing dwelling is a one-story component which contains a family room, breakfast area, bathroom and mudroom. Two of the three existing second floor bedrooms in the home have sloped ceilings and low plate heights due to the Tudor architecture. The existing bedrooms are also modest in size as the master bedroom is 10 feet by 13 feet and one of the children’s bedrooms is 10 feet by 11 feet. The Applicants wish to construct a second story addition over that existing first floor space to create a master bedroom suite, as well as a second floor laundry

room. The proposed addition would convert this three bedroom home into a four bedroom home. The Applicants wish to relocate the laundry room to the second floor as part of the renovation, as the laundry room is presently located in the basement, but the basement stairs are dangerous and unsafe.

6. The subject property has an undersized 50 foot lot width, whereas the R-6 zone requires a minimum 60 foot lot width. Moreover, the existing dwelling has a pre-existing nonconforming 37% floor area ratio, 28.6% combined side yard setback and 6.9 foot side yard setback for the building segment over 18 feet in height. Because of the existing 37% floor area ratio, any addition to the dwelling would require variance relief from this condition. The proposed 471.5 square foot second floor addition would be flush with the side facades of the existing one-story portion of the home, which would extend the pre-existing 6.9 foot side yard setback to the second story. When measured at the location of the addition, the combined side yard setback measures 21 feet, which conforms to the zone requirements, while the pre-existing nonconforming 28.6%, or 14.3 foot, combined side yard setback condition at the existing dwelling remains unchanged. When measured from the existing dwelling on the southerly side and the new addition on the northerly side, the resulting combined side yard setback is 29.4%, or 14.7 feet, which requires variance relief but comes closer to a conforming combined side yard setback than the existing dwelling.

7. While the addition includes two master bedroom windows in the side elevation, the windows have been placed so they would not directly face the neighbor's bedroom windows. Moreover, the dwellings on the neighboring properties are approximately 16 feet and 27 feet away so the proposed addition would not result in any negative impact on the neighbors' views. In conjunction with the proposed addition, the Applicants propose to raise the height of the chimney, which is not presently built to code. This increase in height will eliminate an existing chimney smoke problem that impacts on the adjacent neighbor. The proposed addition would not have any negative impact on the massing of the dwelling from the street because the addition would be located at the rear of the existing dwelling. The addition would be constructed of materials that match the existing Tudor style home. The home with the addition will be in keeping with other homes in the neighborhood.

8. The Board is satisfied that variance relief may be granted to permit the proposed second story addition to the dwelling. The proposed floor area ratio is 44.6% which is a deviation of 540.4 square feet greater than the permitted floor area ratio and 471.5 square feet greater than the pre-existing nonconforming condition. Notwithstanding this deviation, the Board finds that the property can accommodate the excess floor area ratio. The Applicants propose a modest addition that will provide a modestly sized master bedroom suite without any increase in the footprint of the existing dwelling. The proposed addition will be in keeping with the other homes in the neighborhood. The Board is also satisfied that the remaining variances for side yard setback for building segments over 18 feet in height and combined side yard setback are the result of the undersized lot width and the placement of the existing dwelling, which results in the pre-existing nonconforming conditions affecting the property and the existing dwelling. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. If this property had a conforming minimum lot width, in all likelihood, the variances for side yard setback over 18 feet

in height and combined side yard setback would be reduced or eliminated. The Board is also satisfied that the proposed addition will not result in any negative impact on the adjacent neighbors or the neighborhood. The Board finds and concludes that the Applicants propose a modest second story addition at the rear of the home that is in keeping with the architectural style of the existing dwelling. The addition will be an attractive improvement to the property and the neighborhood. Therefore, the Board concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 22nd day of January, 2018 that variance relief to permit a second story addition to the dwelling resulting in a 44.6% floor area ratio, 6.9 foot side yard setback for building segments over 18 feet in height and 29.4%, or 14.70 foot, combined side yard setback, granted by this Board on December 18, 2017, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plan prepared by Dubinett Architects, LLC, consisting of one sheet, A-1, dated August 24, 2017.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses at the public hearing, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
5. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 22nd day of January, 2018.

Cal#3598-18, Chia Hao/Stephanie Lan, 431 Wyoming Avenue, Millburn

Upon a motion made by Joy Siegel, seconded by Mary McNett, and with a roll-call vote as follows:

Ellen Hirsch – yes
Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Joseph Steinberg – yes

the following resolution was approved:

**CHIA HAO AND STEPHANIE LAN
BLOCK 302, LOT 11**

**CALENDAR NO. 3598-18
JANUARY 22, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Chia Hao and Stephanie Lan, to permit the construction of a roof over an existing front porch on the dwelling on property located at 431 Wyoming Avenue, Millburn, New Jersey known and designated as Lot 11, Block 302 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 January 8, 2018 in Calendar No. 3598-18 filed by Chia Hao and Stephanie Lan (hereinafter the “Applicants”) for permission to construct a roof over an existing front porch on the dwelling on property located at 431 Wyoming Avenue, Millburn, New Jersey; and

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

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The property is located in the R-5 zone district. The R-5 zone district requires a minimum 40 foot front yard setback, minimum 12 foot side yard setback and minimum 35% combined side yard setback. The Applicants propose to construct a roof over an existing front porch on the dwelling that would result in a 22.0 foot front yard setback, 7.11 foot side yard setback and 27.04% combined side yard setback. Therefore, variance relief is required.
3. The Board received and considered the following documents:

a. A plan prepared by James Weill & Associates, consisting of one sheet, Sheet 1, dated November 6, 2017.

b. A front yard setback map, which was admitted into evidence as A-1.

c. A photo board with six photos, which was admitted into evidence as A-2.

4. Applicant Stephanie Lan and James Weill, Professional Planner, testified in support of the application.

5. The subject property is a pre-existing undersized 7,500 square foot lot in the R-5 zone, which requires a minimum 14,500 square foot lot. The property also has a pre-existing nonconforming 50 foot lot width, instead of the minimum required 75 foot lot width. The dwelling is a Victorian home, originally built in the 1870's with some modifications constructed in the 1930's. Due to the placement of the home on this undersized lot, the existing dwelling has several pre-existing nonconforming conditions, including a 22 foot front yard setback, 7.11 foot side yard setback and 27.04% combined side yard setback. The existing dwelling has a porch along the entire front façade of the dwelling, However, only half of the porch is covered by a roof. The remainder is an open porch which is now suffering some advanced rot and deterioration due to exposure to the elements. The Applicants propose to repair the deteriorating portion of the porch, but they wish to extend the roof over the entire porch to prevent future deterioration. The proposed roof will not extend any further into the front yard than the existing porch roof, nor will it extend further into the side yard than the existing porch and dwelling. The home after extension of the roof over the open portion of the porch will continue to be in keeping with the historic character of the existing dwelling on the property as well as the other homes in the neighborhood.

6. The property is a Contributing Historic District Resource in the Wyoming Historic District and the Millburn Historic Preservation Commission ("HPC") authorized the issuance of a Certificate of Appropriateness and report to the Millburn Township Construction Official to permit the proposed modification.

7. The Board finds and concludes that variance relief may be granted to permit the proposed expansion of the roof over the open portion of the existing front porch on the dwelling. The development of the subject property and many other lots in this historic neighborhood pre-date the Township Zoning Ordinance. As a result, the property is constrained by several pre-existing nonconforming conditions, including an undersized lot area, lot width, front yard setback, side yard setback and combined side yard setback. The Board is satisfied that the cumulative effect of the pre-existing nonconforming conditions and the placement of the home on the lot present exceptional circumstances uniquely affecting the property that justify variance relief. The Board is also satisfied that the proposed roof over the open portion of the front porch will not exacerbate any of the pre-existing nonconforming conditions. The Board finds that extending the roof over the remainder of the porch will actually enhance the appearance of this historic dwelling and it will be in keeping with the character of the other homes in this historic 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 22nd day of January, 2018 that variance relief granted by this Board on January 8, 2018 to permit the construction of a roof over an existing front porch on the dwelling that would result in a 22.0 foot front yard setback, 7.11 foot side yard setback and 27.04% combined side yard setback, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by James Weill & Associates, consisting of one sheet, Sheet 1, dated November 6, 2017.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses at the public hearing, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
5. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 22nd day of January, 2018.

Cal#3600-18, Ian & Daphne Waxman, 61 Baltusrol Way, Short Hills

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

- Michael Birnberg – y es
- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes

Joy Siegel – yes
Steve Togher – yes
Joseph Steinberg – yes

the following resolution was approved:

**IAN AND DAPHNE WAXMAN
BLOCK 1810, LOT 1**

**CALENDAR NO. 3600-18
JANUARY 22, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Ian and Daphne Waxman, to permit the construction of a detached garage and expanded walkway and patio on property located at 61 Baltusrol Way, Short Hills, New Jersey known and designated as Lot 1, Block 1810 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (the “Board”) has held a public hearing according to law on January 8, 2018 in Calendar No. 3600-18 filed by Ian and Daphne Waxman (the “Applicants”) for permission to construct a detached garage and expanded walkway and patio on property located at 61 Baltusrol Way, 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-6 zone, which requires an 80 foot accessory structure front setback on a corner lot. In this case, the proposed garage would result in a 39.6 foot accessory structure front setback on a corner lot, the expanded walkway would result in a 22.45 foot accessory structure front setback on a corner lot and the patio expansion would result in a 63 foot accessory structure front setback on a corner lot. Therefore, the Applicants require variance relief to permit the construction of the proposed improvements.

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

A. Plans prepared by John James, Architect, consisting of seven sheets, T-01 dated September 6, 2017 and revised through September 29, 2017, Sheet G-01 dated September 18, 2017 and revised through September 29, 2017, A-01 through A-03 and A-20 through A-21 dated July 19, 2017 and revised through September 29, 2017.

B. A seven page photo exhibit prepared by John James, Licensed Architect, dated December 1, 2017, which was admitted into evidence as A-1.

4. Applicant Daphne Waxman, and John James, Licensed Architect, testified in support of the application.

5. The subject property is a corner lot located at the intersection of Baltusrol Way and Pine Terrace West. The Applicants have resided at the property with their three children for five years. They presently have a one-car garage and adjacent outdoor parking space fronting on Pine Terrace West with a 39.6 foot accessory structure setback. They wish to replace the one-car garage and adjacent outdoor parking space with a new two-car garage in the same location, which would require variance relief to permit the Applicants to maintain the proposed 39.6 foot accessory structure setback for the new two-car garage. The existing and proposed garage setback from Pine Terrace West would align with the other homes and attached garages on the street. By maintaining the existing setback, the Applicants would not require an expansion of the driveway coverage. The impact on the adjoining streetscape would be negligible because the area is well screened by mature plantings that would remain in place. The proposed two-car garage will eliminate the need to park the Applicants' second vehicle on the side of the garage. In addition, the new garage would provide a charging station for an electric car. Although it would be feasible for the Applicants to construct a new two-car garage in a location with a conforming accessory structure corner lot setback from Pine Terrace West, such a placement would place the garage in closer proximity and more visible to the adjacent neighbors. Moreover, such a placement would require a longer driveway, resulting in greater soil disturbance, reducing the grassy area of the property and increasing the impervious coverage of the property. The existing and proposed garage location is shielded from the neighbors' views by fencing, mature planting and trees and it maintains the alignment with the existing garage and prevailing setback on Pine Terrace West.

6. The Applicants also propose to expand an existing walkway and patio at the rear of the existing dwelling. The existing walkway has a 22.45 foot accessory setback from Pine Terrace West as it aligns with the side of the home. The walkway provides the children's primary access from the school bus into the back yard and rear patio entry to the dwelling. The Applicants wish to widen the walkway by 71 square feet, maintaining the current 22.45 foot accessory setback from Pine Terrace West. The wider walkway will improve accessibility around the existing grill area and patio behind the dwelling.

7. The Applicants are constructing a new mudroom and breakfast room addition to the dwelling, which does not require variance relief. In conjunction with the new addition to the dwelling, the Applicants wish to expand the existing bluestone patio beyond the new addition to the dwelling. The new patio expansion would commence at the end of the existing patio, which is 63 feet from the Pine Terrace West property line. If the Applicants were to construct the patio expansion with a conforming 80 foot accessory structure setback, the patio would not be adjacent to the existing patio or the dwelling and it would be much closer to the adjacent neighbor to the north, than the proposed location.

8. The Board concludes that variance relief requested by the Applicants may be granted to permit the construction of the proposed detached garage, and walkway and patio expansions. The Board is satisfied that the need for variance relief is the result of the corner lot status of the property and the placement of the existing garage, walkway and patio with pre-existing nonconforming accessory structure corner lot setbacks. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The proposed two-car garage, walkway and patio expansions will be no closer

to Pine Terrace West than the existing one-car garage, walkway and patio. The Board notes that if the Applicants were to construct a patio with a conforming 80 foot accessory structure setback, the patio would not be located adjacent to the dwelling, or the existing patio. Alternatively, the Board is satisfied that the proposed two-car garage location satisfies the statutory criteria for variance relief pursuant to N.J.S.A. 40:55D-70c(2) because the construction of a garage in a conforming location would place the garage in closer proximity to the neighboring dwellings with a negative impact on the neighbors' views of the subject property, while the proposed location maintains the current setback of the garage and its alignment with the setbacks of other homes on Pine Terrace West. The proposed detached garage location will be completely concealed from view from the street and the neighbors by the existing mature landscaping. As a result, the Board is satisfied that the proposed improvements will not result in any negative impact on the nearest neighbors or the streetscape. The Board is also satisfied that the home with the proposed garage, walkway and patio improvements will continue to be in keeping with the other homes in the neighborhood. Therefore, the Board also concludes that variance relief can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW, THEREFORE, BE IT RESOLVED on this 22nd day of January, 2018 that variance relief granted by this Board on January 8, 2018 to permit the construction of a two-car detached garage resulting in a 39.6 foot accessory structure front setback from Pine Terrace West, a walkway expansion resulting in a 22.45 foot accessory structure front setback from Pine Terrace West, and a patio expansion resulting in a 63 foot accessory structure from Pine Terrace West, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by John James, Architect, consisting of seven sheets, T-01 dated September 6, 2017 and revised through September 29, 2017, Sheet G-01 dated September 18, 2017 and revised through September 29, 2017, A-01 through A-03 and A-20 through A-21 dated July 19, 2017 and revised through September 29, 2017.
2. The Applicants shall apply for a building permit within 365 days from the date of this decision.
3. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses at the public hearings, if any, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 22nd day of January, 2018.

APPLICATIONS

CAL#3592-18, TODD & STACEY EISNER, 26 DEERFIELD ROAD, SHORT HILLS

Todd & Stacey Eisner, Tim Klesse, Architect, and Richard Keller, P. P., appeared and were sworn. The applicants would like to install an in-ground pool. Proposal is in violation of:

- 609.1e – Pool equipment setback
- 609.1c – Maximum accessory use coverage
- 609.5 – Accessory structure front setback on a corner lot
- 609.6a – Front yard fences are not permitted
- 606.2e3a – Accessory structure side yard setback

Richard Keller's credentials were presented and accepted by the Board. He gave a brief description of the applicants' proposal. The subject property is a corner lot at the intersection of Deerfield Road and Exeter Road. The 13,514 SF lot is an undersized lot located in the R-5 zone which has a minimum lot size of 14,000 SF.

Entered as A-1: aerial photo

Mr. Keller stated that the property is located at the end of a dead-end road. Due to the 80 foot front setback requirement and the 12 foot side yard setback, there is nowhere to locate an accessory structure on this property without the need for variance relief.

Entered as A-2: photoboard

Tim Klesse's credentials were presented and accepted by the Board.

Entered as A-3: colorized version of submitted landscape plan

Mr. Klesse explained the nature of the application.

Entered as A-4: group of 4 photos of SP

Entered as A-5: fence specifications

Mr. Keller stated that there is a private easement area of 4550 SF. The applicant has an easement agreement with the owner of the property to utilize the property. In the event that the owner of the property decides to void the easement, the applicant would reposition the fence to be completely on the applicant's property. The pool has been proposed at a setback of 40 feet

from the Deerfield Road front property line. The patio will have a front setback of 37-1/2 feet and the spa will have a front setback of 60 feet. Variance relief is required to permit a front yard fence, where the ordinance does not permit front yard fences. Variance relief is required for accessory structure side yard setback to allow 9 feet on the east property line and 3 feet on the north property line where 12 feet is required.

Variance relief is required for the pool equipment which does not meet the 36 foot setback requirement and relief is required to permit accessory coverage of 12.8% where 7% is permitted.

Elizabeth Bryant, 27 Exeter Road, appeared and was sworn. She stated that she has no objection to the application and feels the proposal will be an improvement to the area.

Scott Bryant, 27 Exeter Road, appeared and was sworn. He stated that he feels this will be a nice addition to the area.

Chairman Joseph Steinberg stated that he looked at the 2011 resolution with respect to this property. He feels that there should be a condition if this application is approved that the evergreen hedges on the common property line be maintained in perpetuity.

Mary McNett felt there was a lot of impervious surface being added.

Michael Birnberg was concerned with the front yard fence.

The applicants agreed to remove 150-200 SF of impervious patio area. They also agreed to pull the fence back from the front property line so as to install the fence 25 feet off the face of the house. In addition, they will plant a buffer of evergreens along the outside of the fence parallel to the Deerfield Road front property line.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3592-17, Todd & Stacey Eisner, 26 Deerfield Road, was **APPROVED** with the following conditions: 1) the applicant shall revise the plans to show the reduction of 150 SF of impervious area; 2) the applicant shall revise the plans to show the fence installation to be 25 feet off the face of the house; 3) the existing evergreen trees on the common property line shall be

maintained in perpetuity and a copy of the memorializing resolution shall be filed with the Essex County Register's office.

CAL#3599-18, NATALIA ARSENTIEVA & DAVID ROBAKIDZE, 25 FARLEY ROAD, SHORT HILLS

Timothy Klesse, Architect, and Natalie Arsentieva & David Robakidze, appeared and were sworn. The applicants would like to construct an addition. Proposal is in violation of:

- 606.2e2a – Building coverage
- 606.2e2d – FAR
- 606.2e1f – Combined side yard
- 606.2e1e2b – Side yard setback
- 606.2e1d – Front yard setback

Tim Klesse's credentials were presented and accepted by the Board. He gave a brief description of the proposal. He stated that the applicants are proposing to build a 2nd story over the existing garage as well as a 2-story addition behind the garage area. He stated that the property is an undersized lot in the R-4 zone.

He spoke to the variance being requested for the proposed construction.

Mary McNett was concerned with the floor area ratio. She questioned whether it could be decreased. Mr. Klesse stated that he could eliminate approximately 100 SF of FAR but he feels it will not make a visual difference.

Tom DiTosto, 15 Brooklawn Drive, appeared and was sworn. He stated that he lives to the rear of the subject property. He indicated that he had numerous conversations with the applicants and is satisfied that the addition will be beneficial to the applicants without causing a negative impact on his property.

Mrs. McNett stated that after hearing the testimony of Mr. DiTosto, she is satisfied the FAR will not be visually imposing and she withdrew her request for a decrease to the FAR.

Chairman Joseph Steinberg stated that the dwelling to the right of this property is significantly elevated. He stated that he is in favor of the application.

Upon a motion made by Craig Ploetner, seconded by Mary McNett, and with a roll-call vote as follows:

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes

Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3599-18, Natalia Arsentieva & David Robakidze, 25 Farley Road, was **APPROVED**.

CAL#3601-18, GUOFENG QI/YAMING PAN, 16 THE CRESCENT, SHORT HILLS

Tim Klesse, Architect, Guofeng Qi & Yaming Pan, appeared and were sworn. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

- 606.2e1d – Front yard setback
- 606.2e1e1a – Side yard setback to 18 feet in height
- 606.2e1e1b – Side yard setback above 18 feet in height
- 606.2e1f – Combined side yard setback
- 606.2e1g – Rear yard unoccupied
- 606.2e2a – Building coverage

Tim Klesse’s credentials were presented and accepted by the Board. He gave a brief description of the proposal. He stated that the property is located in the Historic District and has appeared and been granted approval by the HPC.

The property is located in the R-5 zone district and is an undersized lot for the zone. The lot has an area of 9,584 SF where 14,500 SF is the minimum lot size required.

- Entered as A-1: 8-1/2 x 11 photo of dwelling
- Entered as A-2: 8-1/2 x 11 photo of dwelling

Tim Klesse referred to sheet HPC-11 and explained the proposed construction. The proposal is to remove the existing side yard deck and construct a 2-story addition.

- Entered as A-3: photoboard of 4 photos of existing dwelling

Tim Klesse summarized the variance relief being requested. Front yard setback variance relief is required to permit a front yard setback of 29.5 feet where 40 feet is required. Side yard setback variance relief is being requested to allow a 10 foot setback where 12 feet is required.

Prim Lacapra, 22 The Crescent, stated that she lives to the left of the subject property. She asked how much square footage the proposal exceeds the allowable. Mr. Klesse stated that the FAR is over by 47 square feet and the building coverage is over by 32 square feet. He indicated that the applicants agreed to shave off 1 foot of the left side addition from front to back which would bring the building coverage and FAR into conformance. It would also improve the side yard setback, front yard setback and combined side yard setback.

Prim Lacapra, 22 The Crescent, appeared and was sworn.

Entered as O-1: photos of subject property

Ms. Lacapra feels that the addition to the dwelling will be a negative to the neighborhood.

Barry Abramowitz, 45 Hilltop Road, appeared and was sworn. He stated that the oak trees along the shared property line with 22 The Crescent should be looked at. There is much disarray.

Stephanie Donmez, 21 The Crescent, appeared and was sworn. She stated that she lives across the street from the subject property. She is afraid that the proposed construction will change the character of this charming area.

Eray Donmez, 21 The Crescent, appeared and was sworn. He feels the proposed addition will have a negative impact on the historic nature of the area. He feels that no hardship has been presented to warrant the granting of 5 variances.

Guofeng Qi responded to some of the neighbors' concerns. He stated that he will be happy to clean up the site in order to make it more aesthetically pleasing. He feels that he is making the house look much nicer than it currently exists.

Mr. Klesse stated that this is an irregularly shaped, undersized lot which create a hardship. The applicant agrees to plant 6 foot conifers along the shared property line.

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3601-18, Guifeng Qi/Yaming Pan, 16 The Crescent, was **APPROVED**.

BUSINESS

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

ADJOURNMENT

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

Eileen Davitt
Board Secretary

Motion: JSi
Second: ST
Date Adopted: 3/5/18