

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
February 5, 2018

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, February 5, 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  
Ellen Hirsch  
Jyoti Sharma  
Joy Siegel  
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 January 8, 2018 was made by Michael Birnberg, seconded by Joy Siegel and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3588-17, 64 Farley Road, LLC, 64 Farley Road, Short Hills**

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

Ellen Hirsch – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Joseph Steinberg – yes

the following resolution was approved:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Jennifer and David Rothberg, in Calendar No. 3588-17 for permission to construct a second story addition to the dwelling, patio expansion with hot tub on property located at 64 Farley Road, Short Hills, New Jersey, known and designated as Lot 11, Block 1403 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 8, 2018 in Calendar No. 3588-17 filed by Jennifer and David Rothberg (hereinafter referred to as the “Applicants”) for permission to construct a second story addition to the dwelling and patio expansion with hot tub on property located at 64 Farley Road, Short Hills, New Jersey, known and designated as Lot 11, Block 1403 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. The Applicants are members of the record owner of the property, 64 Farley Road, LLC. No objectors or interested parties appeared or testified at the hearing.

2. The property is located in the R-4 zone, which is subject to the following zoning requirements: maximum 26% floor area ratio, maximum 35% lot coverage and minimum 12 foot accessory side yard setback. The home with the proposed addition and patio expansion with hot tub would result in a 31.2% floor area ratio, 37.4% lot coverage and 9.0 foot accessory side yard setbacks. 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 support of the application:

A. Plans prepared by Klesse Architects, consisting of five sheets, Sheets BOA-1 through BOA-5, dated July 25, 2017.

B. A survey of the property prepared by Thomas A. Finnegan, dated November 23, 2007 and a copy of the Finnegan survey, marked up by the Applicants' architect to depict the proposed addition, patio expansion and hot tub.

C. A one sheet Exhibit 1 prepared by Klesse Architects, consisting of three photo simulated renderings of the dwelling and property with the proposed addition, patio and hot tub, which was admitted into evidence as A-1.

4. The Applicants Jennifer Rothberg and David Rothberg, and Timothy Klesse, Licensed Architect, testified in support of the application.

5. Jennifer Rothberg previously resided at the property with her two daughters. Mr. Rothberg has two sons from a prior marriage. When the Applicants married, their blended family had outgrown the dwelling on the subject property, which they rented out to a third party. The Applicants moved back to the property approximately six months ago and they wish to renovate and update the dwelling for their personal use. The proposed renovations include interior modifications on the first and second floor, which do not require variance relief. They also proposed a second floor addition for a new master bedroom suite, which requires floor area ratio variance relief. In conjunction with the renovations to the dwelling, the Applicants also wish to upgrade the backyard area by constructing a patio expansion with a hot tub for their use and enjoyment.

6. The subject property is a corner lot at the intersection of Farley Road and Hardwell Road. The property has an 11,867 square foot lot area, which is undersized for the R-4 zone district, which requires a minimum 20,000 square foot lot area. In addition, an examination of the tax map for properties within 200 feet reveals that the Applicants property may be the smallest lot in the neighborhood.

7. The proposed second floor addition would result in a 31.2% floor area ratio, which exceeds the allowable floor area ratio by 624.6 square feet. However, the existing dwelling has a pre-existing nonconforming 29.3% floor area ratio and the proposed second story addition would increase the existing floor area ratio by 220 square feet. The proposed second story addition would be situated at the rear of the existing dwelling over the existing one-story portion of the home, where it will be concealed from view from Farley Road by the existing dwelling. The proposed addition will be partially concealed from Hardwell Road by the existing dwelling and the Applicants propose to install landscaping to further screen the view of the proposed addition and back yard from Hardwell Road.

8. The Applicants also propose to expand the existing patio in the back yard to accommodate a hot tub. The patio expansion conforms to the 80 foot accessory structure corner lot setback. However, the wall of the landscape planter along the patio expansion and hot tub has a 9 foot accessory structure setback, which does not satisfy the minimum 12 foot setback

required in the zone district. The subject property abuts the South Mountain Reservation to the northeast, which is heavily wooded. The neighbor closest to the proposed patio expansion and hot tub is the neighbor to the south, whose property is at an elevation lower than the subject property and heavily wooded along the shared property line. In addition, the southerly neighbor's dwelling is much closer to Farley Road than the Applicants' dwelling because of the curve in the roadway. Nonetheless, the Applicants have planted a row of evergreens between the proposed patio expansion and the neighbor to the south which serves as an additional privacy buffer between the two properties.

9. The Board is satisfied that variance relief may be granted to permit the proposed addition to the dwelling and patio expansion with hot tub. The proposed floor area ratio is 31.2% which is a deviation of 624.6 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 of this property. The proposed addition will be concealed from Farley Road by the existing dwelling. The addition will be concealed from Hardwell Road by distance, the existing dwelling and the landscape screening proposed by the Applicants. The Board also finds that the proposed addition will not result in any negative impact on the neighboring properties. The property to the northeast is the heavily wooded South Mountain Reservation. Landscaping buffers the view from the neighboring property to the south, where the neighbor's dwelling is at a lower elevation and much closer to the street than the Applicants' dwelling. Moreover, the existing dwelling already has a pre-existing nonconforming 29.3% floor area ratio. As a result, any addition to the dwelling would require variance relief from this condition. Of the 624.6 square foot deviation from the permitted floor area ratio, only 220 square feet of the deviation is attributable to the proposed addition. If this property had a conforming lot area, no variance relief would be required for floor area ratio.

10. The Board is also satisfied that the remaining variances for lot coverage and accessory side yard setback are appropriate and satisfy the criteria for the granting of variance relief. The undersized lot area is an exceptional circumstance that results in undue hardship and practical difficulties to the Applicants. If this property had a conforming lot area, lot coverage of the property with the dwelling and proposed improvements would be conforming and no lot coverage variance would be required. The Board is also satisfied that the need for accessory structure side yard setback variance relief is the result of the skewed placement of the dwelling on the property and the existing patio. The proposed patio expansion with hot tub will not have any impact on the adjacent properties as will be screened from view by the heavily wooded South Mountain Reservation to the northeast and existing evergreens and wooded areas to the south. The home with the proposed addition and patio expansion with a hot tub 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 5th day of February, 2018 that variance relief to permit a second story addition and patio expansion with hot tub resulting in a 31.2% floor area ratio, 37.4% lot coverage and 9.0 foot accessory side yard setbacks, granted by this Board on January 8, 2018 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 Klesse Architects, consisting of five sheets, Sheets BOA-1 through BOA-5, dated July 25, 2017.

2. The Applicants shall maintain the row of evergreens along the southerly boundary line to buffer the view of the patio and the hot tub in perpetuity. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall record a copy of this Resolution in the Essex County Register's Office as a deed restriction and provide the Board Secretary with a conformed copy of the Resolution bearing the recording information.

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

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 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.

6. 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 5th day of February, 2018.

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**Cal#3592-17, Todd & Stacey Eisner, 26 Deerfield Road, Short Hills**

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

Jyoti Sharma – yes  
Joy Siegel – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

the following resolution was approved:

**TODD AND STACEY EISNER  
BLOCK 4407, LOT 11**

**CAL. NO. 3592-17  
FEBRUARY 5, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief to the Applicants, Todd and Stacey Eisner, in Calendar No. 3592-17 to permit the construction of an in-ground pool, patio & spa, pool fence and pool equipment on property located at 26 Deerfield Road, Short Hills, New Jersey, known and designated as Lot 11, Block 4407 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 22, 2018 in Calendar No. 3592-17 filed by Todd and Stacey Eisner (hereinafter the “Applicants”) to permit the construction of an in-ground pool, patio & spa, pool fence and pool equipment on property located at 26 Deerfield Road, Short Hills, New Jersey, known and designated as Lot 11, Block 4407 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 without counsel. Elizabeth and Scott Bryant of 27 Exeter Road appeared and testified at the hearing as interested parties in favor of the application.

2. The subject property is located in the R-5 zone district. The Township Zoning Ordinance requirements for the R-5 zone include the following: maximum 7% accessory coverage, minimum 80 foot accessory corner lot setback, minimum 12 foot accessory structure side yard setback, minimum 36 foot pool equipment setback and front yard fences are prohibited. The Applicants’ proposed pool, patio & spa, pool fence and pool equipment would result in an 11.4% accessory coverage, accessory corner lot setbacks of 42 feet for the proposed pool and patio and 60 feet for the proposed spa, a 3 foot accessory side yard setback for the proposed patio, 3 foot 9 inch accessory side yard setback for the proposed pool/pool coping, a 12 foot pool

equipment setback and a four foot high fence in the Deerfield Road front yard. Therefore, variance relief is required.

3. The Board received and considered the following documents submitted with the application:

- A. A landscaping plan prepared by Stephen Borghi, LLA, consisting of one sheet dated September 9, 2017.
- B. A survey of the property prepared by P&M Surveying, Inc. dated April 5, 2004 and a copy of the P&M survey marked up by the Applicants' architect to depict the proposed improvements to the property.
- C. An April 3, 2017 aerial photograph of the neighborhood, which was admitted into evidence as A-1.
- D. Casey & Keller photo board #1, which was admitted into evidence as A-2.
- E. A colored version of the Borghi landscaping plan, which was admitted into evidence as A-3.
- F. A group of four photographs of the subject property, which was admitted into evidence as A-4.
- G. A representative depiction of the fence proposed by the Applicants, which was admitted into evidence as A-5.

4. The Applicants, Todd and Stacey Eisner, Timothy P. Klesse, Licensed Architect, and Richard Keller, P.P., testified in support of the application.

5. The Applicants have resided at the property with their children for approximately 10 years. In 2011 the Applicants obtained variance approval from this Board to permit the construction of an addition to the dwelling and the relocation of an existing patio at the rear of the dwelling. They now wish to construct an in-ground pool, expanded patio & spa, pool equipment and pool fence for the use and enjoyment of their family.

6. The subject property is a corner lot at the intersection of Exeter Road and Deerfield Road. A portion of Deerfield Road was vacated by Millburn Township so the paved portion of Deerfield Road terminates before the Applicants' easterly side property line. The property has an undersized lot area of 13,390 square feet. When measured from Deerfield Road, the lot is 85 feet deep and 160 feet wide. The placement of the existing dwelling is biased towards the southerly side property line where it abuts adjacent Lot 12, which fronts on Exeter Road. The owners of Lot 12 have a patio in their rear yard which is approximately 6 feet from their shared property line. The improvements the Applicants propose will be much farther from that property line. The paved portion of Deerfield Road as well as the unimproved vacated portion of Deerfield Road separates the Applicants' property from the nearest neighbor to the north on Lot 10. The easterly side of the property abuts Lot 19 which straddles the boundary line between Millburn and Livingston Townships. The subject property has the benefit of an

easement to use a portion of adjacent Lot 19. The Applicants' easement extends to the bank of a stream which runs through Lot 19 and presently, the Applicants' shed and swing set are located within the easement area closest to the Applicants' property line. If this application is approved, the Applicants propose to remove the shed and swing set.

7. Due to the dimensions of the lot, it would be impossible to construct an in-ground pool or any accessory structure without variance relief because the Applicants cannot simultaneously satisfy an 80 foot accessory structure corner lot setback and 12 foot accessory side yard setback on a lot with an 85 foot dimension. The Applicants cannot construct a pool at the rear of the existing dwelling due to its proximity to the southerly side property line. The proposed pool and spa locations have been chosen and designed to have as little impact on the neighborhood as possible. The proposed pool and patio would have a 42 foot accessory corner lot setback from Deerfield Road. The proposed spa would be located in close proximity to the dwelling and across from the pool with a 60 foot accessory corner lot setback from Deerfield Road. The proposed pool and spa placement locates the pool and spa as far away as possible from the neighbors' dwelling at 20 Exeter Road. Because of the lot dimensions and the placement of the existing structures and proposed improvements, the Applicants cannot construct the pool equipment in a location that provides a conforming 36 foot setback from the adjacent property. The proposed placement for the pool equipment is adjacent to the existing air conditioning condensers and generator which serve the property, at a 12 foot setback from the southerly side property line. However, dense evergreen vegetation separates the Applicants' proposed pool, patio, spa and pool equipment from the home on Lot 12 at 20 Exeter Road. The proposed pool and other improvements would also be concealed from view from the residents of Lot 10 at 25 Deerfield Road due to the distance between the two properties and landscaping. Although the proposed pool and patio would be 3 feet from the easterly side property line, the Applicants' easement on Lot 19 extends an additional 20 feet and there is another 50 to 55 feet to the stream on Lot 19. The Applicants intentionally placed the pool 3 feet from the easterly property line because the Applicants' easement on Lot 19 has a provision that the owner of Lot 19 has the right to terminate the easement on 90 days prior notice. The Applicants have spoken to the current and prospective owner of Lot 19. Based on their conversations, the Applicants do not anticipate the current or prospective owner of Lot 19 would terminate the easement. But even if that were to occur, the termination of the easement would not impact on the proposed pool, patio and spa because the improvements would be wholly located on the Applicants' property. Under those circumstances, the Applicants would simply move the pool fence out of the easement area and onto their property. The total accessory coverage after the removal of the shed and swing set, and the construction of the pool, patio, spa and pool equipment would be approximately 1,527 square feet, which requires variance relief. If the subject property had a conforming lot area, the proposed accessory coverage would still require variance relief, but the deviation would be reduced. However, despite this deviation from accessory coverage, the property with the dwelling and all the proposed improvements would continue to satisfy the floor area ratio, lot coverage and building coverage permitted in the zone district.

8. The Applicants have a pre-existing nonconforming post and rail fence, which is located within the easement area and within the vacated portion of Deerfield Road in the front yard of the property. The Applicants propose to replace the post and rail fence with a pool code compliant 4 foot high white picket fence. Originally, the Applicants proposed that the pool fence

would run along the Deerfield Road northerly property line and then southward parallel to the easterly property line to enclose the area of the property containing the pool, patio and spa in order to provide the Applicants with an enclosed grassy area for their children to play. As a result of concerns expressed by the Board about the visibility of the fence and its proximity to Deerfield Road, the Applicants agreed to move the placement of the proposed pool fence so that it extends for 25 feet from the front façade of the dwelling closest to the pool. The new fence location would place it 17.5 feet from the Deerfield Road right of way. The Applicants propose to landscape the entire 25 foot length of fence in the front yard from the dwelling to the northerly property line with hydrangea on the outside of the fence, which would soften the view of the fence from Exeter Road and Deerfield Road.

9. Elizabeth and Scott Bryant, of 27 Exeter Road testified that they live on the opposite corner from the subject property. They offered the Board their respective opinions that due to the nature of the property, the proposed placement of the pool and other improvements would appear to be in a rear yard location. They also stated their opinions that the Applicants' home with the proposed improvements would be consistent with the homes and other improvements in the neighborhood

10. The Board finds that the Applicants have satisfied the statutory criteria for the granting of variance relief to permit the construction of an in-ground pool, patio & spa, pool fence and pool equipment. The subject property has an undersized lot area and the placement of the dwelling on the property is biased towards the southerly side yard, limiting the available land behind the dwelling for accessory structures. Although the property is 160 feet deep when measured from Exeter Road, it is only 85 feet deep when measured from Deerfield Road. As a result, it would be very difficult, if not impossible, for any accessory structure to simultaneously meet the 80 foot accessory structure corner lot setback from Deerfield Road and the 12 foot accessory side yard setback. The need for variance relief to permit the proposed improvements is due to the undersized lot area and dimensions of the property and the placement of the existing dwelling, which the board finds to be exceptional circumstances resulting in practical difficulties and undue hardship to the Applicants. The Board is also satisfied that the nature of this property is unique, as it is located on a dead end street, which has been partially vacated by the Township, and it abuts a large tract of land that straddles the boundary between Millburn and Livingston Townships so that the subject property appears to be part of a large wooded area when viewed from Exeter Road or Deerfield Road. The Board notes that an in-ground pool is a permitted accessory use in a residential zone. The Board finds that the proposed pool and other accessory improvements are typical rear yard residential amenities. The proposed placement of the pool and other accessory structures give the feel, or appearance, of a rear yard location despite the corner lot status of this property due to the neighboring lots surrounding this property. As for the proposed fence, the Applicants have modified the placement of the proposed fence to locate it farther away from the Deerfield Road right of way and the Applicants propose to buffer the view of the fence from the street with landscaping. The Board is satisfied that existing and supplemental landscaping will serve as a privacy buffer that conceals the proposed pool, patio, spa, pool equipment and fence improvements from view from the neighboring properties. The Board concludes that the proposed improvements will not result in any negative impact on the streetscape and the adjoining residential properties. Therefore, the Board concludes that the granting of the variance relief to permit the proposed construction may 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 5th day of February, 2018 that the variance relief to permit the construction of an in-ground pool, patio & spa, pool fence and pool equipment resulting in an 11.4% accessory coverage, accessory corner lot setbacks of 42 feet for the proposed pool and patio and 60 feet for the proposed spa, a 3 foot accessory side yard setback for the proposed patio and 3 foot 9 inch accessory side yard setback for the proposed pool/pool coping, a 12 foot pool equipment setback and a four foot high fence in the Deerfield Road front yard, granted by this Board at its meeting of January 22, 2018 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. The approved fence shall consist of four foot high pool code compliant fence that extends into Deerfield Road front yard 25 feet from the front façade of the dwelling closest to the pool and then running in an easterly direction along the Deerfield Road front yard in a location 17.5 feet from the Deerfield Road right of way with landscaping on the outside of the fence to buffer the view from Exeter and Deerfield Roads. Prior to the issuance of a building permit, the Applicants shall submit a revised landscaping plan to depict the approved fence location and landscaping. Construction shall be in accordance with the testimony at the hearing and the landscaping plan prepared by Stephen Borghi, revised in accordance with this condition.

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

3. The Applicants shall be required to maintain the evergreen landscape buffer between the subject property and 20 Exeter Road, and the landscaping to buffer the fence in the Deerfield Road front yard in perpetuity. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall record a copy of this Resolution as a deed restriction in the Essex County Register's Office and provide the Board Secretary with a conformed copy of the document which bears the recording information.

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 hearings, 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. 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.

6. 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 5th day of February, 2018.

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**Cal#3596-18, Busy Bee Indoor Playground, 296 Millburn Avenue, Millburn**

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

- Michael Birnberg – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Joseph Steinberg – yes

the following resolution was approved:

**THE BUSY BEE INDOOR PLAYGROUND LLC  
BLOCK 805, LOT 2**

**CAL. NO. 3596-18  
FEBRUARY 5, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of waivers from the Environmental Impact Statement (“EIS”) and stormwater runoff requirements, variance relief pursuant to N.J.S.A. 40:55D-70c(1) and N.J.S.A. 40:55D-70d(1), and granting preliminary and final site plan approval to the Applicant, The Busy Bee Indoor Playground, LLC in connection with an application for an indoor children’s play studio on property located at 296 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 2, Block 805 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. 3596-18 filed by The Busy Bee Indoor Playground, LLC (hereinafter the “Applicant”) in connection with an application for an indoor children’s play studio on property located at 296 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 2, Block 805 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. Anthony Cerciello, Esq. represented the Applicant. No objectors or interested parties appeared or testified at the hearing.

2. The Applicant is the prospective tenant of the subject property, which is located in the B-4 Central Business zone district. The owner of the property, 296 Millburn LLC, consented to the application. The Applicant proposes to lease the property for use as an indoor children's play studio. The proposed use is not an expressly permitted use in the B-4 zone. Therefore, the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed indoor children's play studio.

3. In addition, Sections 607.1 of the Township Zoning Ordinance requires one on-site loading space. The Applicant proposes no on-site loading, which requires variance relief pursuant to N.J.S.A. 40:55D-70c.

4. The Applicant also requires preliminary and final major site plan approval.

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

A. Plans prepared by Buchholz Architects, consisting of two sheets, A-0 and A-1, dated November 8, 2017.

B. A four page handout depicting merged Tax Lots 2 & 3, which was admitted into evidence as A-1.

C. A revised Buchholz Sheet A-0, reflecting the merger of prior Tax Lots 2 and 3 into Lot 2, was admitted into evidence as A-2.

D. A satellite aerial photograph from October 2017, prepared by Casey & Keller, was admitted into evidence as A-3.

E. A photo board prepared by Casey & Keller, was admitted into evidence as A-4.

F. The following reports from Township Officials and Departments: Millburn Township Engineer dated January, 3, 2018 and Millburn Township Fire Marshal dated January 5, 2018.

6. The Board heard testimony from Jeffrey Thompson, Managing Member of The Busy Bee Indoor Playground, LLC, John Buchholz, Licensed Architect and Richard Keller, Professional Engineer and Professional Planner in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Officer.

7. The subject property is fully developed with an existing structure and on-site parking lot, which received preliminary and final site plan approval and bulk variance relief from the Millburn Planning Board in 2013 to permit a two-story mixed use structure, consisting of first floor retail use and five residential apartments on the second floor with 33 on-site parking

spaces and no on-site loading space. Conditions of the Planning Board approval have been satisfied, including the condition that required the recording of a perpetual access easement from the owner of the property to the east to allow use of the shared driveway for access to the rear parking area on the subject property.

8. The property is not constrained by steep slopes or wetlands, it is not located in a flood hazard area and it is already served by sewer and water utilities. Because the property is a fully developed site, the Board determined the Applicant's request for a waiver of the checklist requirement for the submission of an EIS and and request for a design waiver from the stormwater runoff requirement was reasonable and appropriate and granted the EIS checklist waiver and stormwater runoff design waiver.

9. The Applicant's managing member and his wife and children have been Maplewood residents for approximately eight years. During that time, he and his wife have found that while there are numerous activities in the surrounding area for older children, there are few recreational opportunities for younger children. The Applicant proposes to lease and occupy 3,000 square feet of the first floor commercial space for a four season indoor play studio for children ranging from infant to 6 years of age in a clean, safe and affordable environment. The play studio would contain themed areas allowing for imaginative play, free from electronics and arcade type games. The proposed use is not a franchise, but the Applicant has visited facilities such as Giggles in Cranford, New Jersey, Imagine That in Florham Park, NJ and a play studio in New York City and the Applicant's proposed use would be similar to those business ventures. Mr. & Mrs. Thompson have based their determination of the need for such a facility on their own experiences as parents of young children.

10. The proposed play studio would consist of an indoor playground with padded flooring throughout. The themed play areas include a play camper, a play house, and other toys such as blocks and train tables. There would also be opportunities for explorative play where children may play dress-up, grocery store, and restaurant. The proposed use would include a separate arts & crafts room, which would also be available for children's birthday parties. The Applicant also proposes a station for parents with children less than two years of age, which would contain soft toys suitable for toddlers. Children older than 6 years of age would be permitted to use the arts & crafts room, but not the playground areas, which are designed for children 6 years of age or younger.

11. The Applicant testified that children would not be dropped-off at the proposed play studio. Instead, parents would bring their children into the facility and supervise them while the children play. The Applicant anticipates that the facility would serve approximately 10 to 35 children over the course of a day, with drop-ins staying for one or two hours at a time. Although the size of the space and fire code occupancy limits would permit a maximum occupancy of 60 people, the Applicant anticipates the maximum occupancy would be 30 people, which would include 20 children and parents at a birthday party event.

12. The Applicant proposes the hours of the business would be Monday through Thursday from 9:30 a.m. to 5:30 p.m., Friday from 9:30 a.m. to 3:30 p.m., and Saturday and Sunday between 9:00 a.m. and Noon. Weekend afternoons would be reserved for birthday parties. Use of the facility will be drop-in based. No appointments are necessary, except for

advance reservation of the arts & crafts/party room for a birthday party or special event. The Applicant anticipates the fee for use of the facility will be \$16 for the first child and \$10 for each additional child, which may be paid upon arrival. Memberships would be available but not required.

13. Although the space contains two entrances directly from the rear parking area, for security and management reasons, the Applicant proposes that all patrons would enter the play studio through the front entrance on Millburn Avenue. The reception area at the front of the space would contain a partitioned four foot high wall with a see-through window where patrons are able to see the open area and activities of the play studio. Patrons would sign-in at the reception area, completing the necessary paperwork and payment. The reception area would also contain cubbies where patrons leave their shoes and coats before entering the playground area through a gated entry controlled by the Applicant's staff. The reception area would also contain a small retail area where themed toys, such as the Melissa & Doug brand, and pre-packaged snacks would be sold.

14. With respect to the two rear entry doors, the Applicant anticipates the double entry door at the rear of the building would be used as a staff entrance only, controlled by a doorbell for entry. The rear door which leads directly into the arts/crafts and party room would be used for delivery of party food and supplies for patrons holding private birthday parties. The leased space would have security video cameras at the front and rear entrances to the facility, as well as a doorbell for the rear employee entrance.

15. The proposed facility would be manned by a minimum of two employees, one employee at the front desk reception area and one employee circulating throughout the play area. In the event of a simultaneous birthday party, a third employee would assist in supervising the birthday party activities.

16. There would be no food preparation on site. Food and drink for birthday parties, such as pizza and drinks, would be catered by nearby businesses. Parents would bring their own birthday cake. Garbage generated from the proposed facility would utilize the on-site garbage dumpster in the rear of the parking lot. Apart from the original set-up of the playground structures, the Applicant does not anticipate deliveries to the site. Toys and snack goods for the retail area would be delivered to the home of Mr. Thompson, the Managing Member of the Applicant.

17. The Applicant's lease agreement with the owner provides for eight dedicated surface parking spaces in the rear parking lot for customers. The Applicant also has the use of two spaces in the lower level underground parking garage for employee parking. The Township Zoning Officer confirmed that at the time this building was approved, the Township Planning Board approved the on-site parking for the mixed uses to occupy the building, including the eight parking spaces under the building overhang. She also testified that the Township Zoning Ordinance does not have a specific parking requirement for the proposed play studio use.

18. The Applicant's planner, Richard Keller, testified that the subject property was previously a pre-existing nonconforming single family dwelling in the B-4, Central Business zone district. The existing mixed use building with 33 on-site parking spaces and no on-site

loading space was approved by the Millburn Planning Board in 2013 and constructed on the property after the single family dwelling was demolished in 2014. Presently, two of the five second floor apartments have received Certificates of Occupancy. In addition, the first floor commercial space remains vacant. The lower level underground parking garage is for the use of the residences in the second floor residential apartments, as well as the owners/employees of the Applicant's business.

19. Mr. Keller testified that although the proposed play studio use might be deemed retail services in other municipalities, the Millburn Township Zoning Ordinance has a very narrow definition of retail services and the proposed play studio use does not meet that definition or any of the other permitted uses in the B-4 zone district. He testified that although retail sales are a permitted use in the zone, the subject property is not well suited for retail sales uses for several reasons. The first floor commercial space is set back under the second floor overhang of the building, which limits the visibility of the commercial space from the street. In addition, most retail uses prefer a location in the heart of the Millburn downtown, whereas this property is located on the fringe of the business district. He also testified that as a result of changes in consumers' shopping habits, the need for physical retail sales uses is diminishing and consumers are now seeking establishments that provide experience uses, such as yoga, spinning, and karate. As an example of an experience use, Mr. Keller noted that the Board recently approved a school of art and design studio with an art gallery use studio for the adjacent property at 290 Millburn Avenue.

20. Mr. Keller testified that the proposed use is particularly suitable for the subject property for several reasons. The proposed play studio use is designed to be an all-weather indoor play environment. The subject property is not located in the heart of the downtown, but on the fringe of the business district with eight dedicated parking spaces in an on-site parking lot. Moreover, a 200 space parking deck located two blocks away at the intersection of Essex Street and Lackawanna Place would accommodate additional parking needs. Importantly, the property is contiguous to the South Mountain R-6 residential zone, which would provide the residents of that neighborhood with a play environment within walking distance. Mr. Keller also testified that the mixed use building is new construction which meets all current building code requirements and alleviates any concerns about a children's play studio in an older structure that might have potential for environmental or code concerns. The proposed first floor commercial space in this building is a large open 3,000 square foot space with a ceiling height of 10 feet, which is necessary for the proposed play structures contemplated by the Applicant. Mr. Keller opined that it is rare to find a building in the business district which has these characteristics. With respect to the Township Ordinance loading space requirement, Mr. Keller testified that when the Planning Board approved the existing mixed use building on this property, it granted variance relief from the requirement for an on-site loading space. The Applicant does not contemplate any deliveries to the property, other than deliveries associated with the initial set-up of the facility, so there would be no benefit from eliminating any of the on-site parking spaces to provide a loading space.

21. Mr. Keller also testified that the proposed play studio satisfied some of the enumerated purposes of zoning as set forth in the Municipal Land Use Law ("MLUL"), specifically the purposes set forth in N.J.S.A. 40:55D-2(a), the promotion of public health, safety

and general welfare, as the proposed use would promote the health, safety and welfare of some of the youngest residents of Millburn Township, and purpose (g), the promotion of safe, electronic-free imaginative and explorative play in an all-weather environment that would meet the needs of Millburn Township residents and the surrounding communities with young children. Mr. Keller further observed that the proposed site is particularly suitable for the proposed use because it has an on-site parking lot with 8 parking spaces dedicated exclusively to the Applicant's customers. It is also within walking distance of a municipal parking lot and proximate to the nearby South Mountain neighborhood so it provides a unique children's recreational opportunity within walking distance of a residential neighborhood.

22. Mr. Keller testified that the proposed play studio use also satisfies the negative criteria under the MLUL. He testified that the proposed use will not result in any detriment to the public good because it is located in the B-4 zone, which is designed for commercial uses. The Applicant's proposed use is consistent with the uses permitted in the zone district, as well as other experience uses recently approved by the Board, such as the school of art & design studio with an art gallery approved for the neighboring commercial building at 290 Millburn Avenue. Mr. Keller also testified that while the proposed use does include a small retail component for the sale of toys and pre-packaged snacks, that retail sales component would not compete with other retail sales in the area. In fact, the proposed use would also be supportive of other commercial uses in the area because customers holding birthday parties in the facility would patronize nearby pizzerias and other establishments to provide the food and drinks for such parties.

23. Mr. Keller testified that the proposed use would not substantially impair the intent and purpose of the zone plan and zoning ordinance. He also advised the Board of his opinion that the proposed use is not inconsistent with the Township's Master Plan, which has not been the subject of a reexamination since 2008. The subject property is located at the periphery of the B-4 zone and the first floor commercial space in this building is not well-suited for retail sales. He opined that the Applicant's proposed play studio use is a relatively new use and one which has evolved beyond the uses contemplated by the current Township Zoning Ordinance due to changing consumer demands.

24. Mr. Keller also testified that the proposed loading space variance satisfied the statutory criteria to support variance relief pursuant to N.J.S.A. 40:55D-70c (1) and (2). He advised the Board that the current on-site parking lot cannot physically accommodate a loading space without eliminating one or more parking spaces. Moreover, even if an on-site loading space were available, it is unlikely to benefit the zone plan because delivery services such as UPS and Federal Express would continue to deliver curbside as they do to other businesses. The delivery services would be unlikely to use an on-site loading space in the rear parking lot even if it were available. He opined that the number of parking spaces in the existing on-site parking lot meets the number of parking spaces required under the Township Zoning Ordinance and it would be better to preserve the existing parking spaces for customer parking rather than convert one or more spaces to a loading space.

25. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d(1) and concludes that it is appropriate to grant the use variance

requested by the Applicant to permit the use of the property for an indoor children's play studio. The Board finds and concludes that the Applicant has met its burden of proving the proposed use on this property satisfies the positive and negative criteria under N.J.S.A. 40:55D-70d(1). The Board accepts and adopts the testimony of the Applicant's planner that the proposed play studio use advances the purposes of zoning set forth in the MLUL at N.J.S.A. 40:55D-2(a) and (g). The Board is satisfied that the proposed use advances the public health, safety and general welfare and promotes a unique recreational use that meets the needs of the residents of Millburn Township and the surrounding communities with young children as there is nothing similar in Millburn Township or in the area.

26. The Board is also satisfied that the subject property is particularly suitable for the proposed use. The subject property is located in the B-4 zone district, the Township's Central Business Zone District, in which the principal permitted uses include first floor commercial uses, including retail sales and services, financial institutions and physical fitness studios. The subject property is already developed with a mixed use building that contains first floor commercial space and second floor residential apartments. The Board finds that the proposed indoor children's play studio is a unique recreational use that will serve to provide the youngest residents of Millburn Township and the surrounding areas with imaginative and explorative play in an all-weather, electronic-free, environment. The proposed use in this location is particularly suitable as it is within walking distance for the residents of the nearby South Mountain residential district. The Board acknowledges that evolving consumer shopping trends have had a significant impact on traditional local retail sales establishments. As a result, while the heart of Millburn's downtown area still contains retail sales, Millburn Township business uses are also undergoing a shift towards restaurants, services and experience uses. The Board is satisfied that the proposed children's play studio use will benefit the residents of the Township and surrounding areas.

27. With respect to the negative criteria required under the MLUL, the Board notes that the subject property is zoned for commercial use. The Board is satisfied that the proposed indoor play studio use would not have any substantial impact on the zone plan or zoning ordinance. The Township Master Plan and Reexamination Reports continue to emphasize the commercial development of the B-4 zone. As noted in the Master Plan and Reexamination Reports, such development is intended for pedestrian scale retail uses, with attractive designs for store fronts being encouraged to draw shoppers to the area and increase the potential for new merchants. The Applicant proposes an all-weather recreational use in an existing building with vacant commercial space. The proposed use will eliminate a portion of the vacant space in this building. In addition, the proposed use would be contiguous and within walking distance of the South Mountain residential neighborhood, which will serve to draw pedestrians to this area and encourage them to shop in neighborhood stores. Therefore, the proposed play studio use will benefit the public good. In addition, the Board finds that the proposed use will not result in any detriment to the zone plan or zoning ordinance as the proposed indoor play studio will occupy an existing mixed use building that conforms to all the zone requirements for the B-4 zone, other than a loading space. In balancing the benefits of the proposed indoor play studio use against the detriments, the Board concludes that the benefits of the proposed use at this site substantially outweigh any detriment. The Board is satisfied that the proposed use will be a low traffic generator with adequate on-site parking that meets the requirements of the Township Zoning

Ordinance. Therefore, the Board finds and concludes that the grant of use variance relief to permit the proposed indoor play studio would not result in a substantial detriment to the public good, nor would it result in a substantial impairment of the intent and purpose of the established zone plan and zoning ordinance of the Township under the enhanced burden required by Medici v. BPR Co., 107 N.J. 1 (1987).

28. The Board also finds and concludes that variance relief may be granted to permit no on-site loading space. The use is such that it will not generate deliveries requiring a dedicated loading space. Therefore, the Board finds and concludes that the granting of variance relief to permit no on-site loading space will not result in a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance given the adequacy of the existing on-site parking for the proposed use.

29. The Board also finds that the Applicant has satisfied the requirements for preliminary and final major site plan approval.

**NOW, THEREFORE, BE IT RESOLVED** on this 5th day of February, 2018 that the checklist waiver from the Environmental Impact Statement requirement, waiver from the stormwater runoff requirements, use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed indoor children's play studio, bulk variance relief to permit no on-site loading space, and preliminary and major site plan approval requested by the Applicant for property located at 296 Millburn Avenue, Millburn, granted by this Board at its meeting of January 8, 2018 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. The use approved is that of an indoor children's play studio as described in the testimony at the hearing and depicted on the plans submitted with the application prepared by Buchholz Architects, consisting of two sheets, A-0 and A-1, dated November 8, 2017.

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

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 5th day of February, 2018.

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**Cal#3597-18, Steven & Kathryn Plump, 15 Elmwood Place, Short Hills**

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

- Michael Birnberg – y es
- Ellen Hirsch – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Joseph Steinberg – yes

the following resolution was approved:

**STEVEN AND KATHRYN PLUMP  
BLOCK 1804, LOT 26**

**CAL. NO. 3597-18  
FEBRUARY 5, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Steven and Kathryn Plump, in Calendar No. 3597-18 for permission to widen the existing driveway and construct an addition on the dwelling on property located at 15 Elmwood Place, Short Hills, New Jersey, known and designated as Lot 26, Block 1804 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 8, 2018 in Calendar No. 3597-18 filed by Steven and Kathryn Plump (hereinafter referred to as the “Applicants”) for permission to widen the existing driveway and construct an addition on the dwelling on property located at 15 Elmwood Place, Short Hills, New Jersey, known and designated as Lot 26, Block 1804 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. No objectors or interested parties appeared or testified at the hearing.

2. The property is located in the R-6 zone, which is subject to the following zoning requirements: maximum 36% floor area ratio, maximum 30% front yard coverage and front yard parking spaces are prohibited. The home with the driveway widening and proposed addition would result in a 38.9% floor area ratio, 33.9% front yard coverage and front yard parking spaces. 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 support of the application:

- A. Plans prepared by Majewski Architecture, LLC, consisting of three sheets PP-1, A-1 & A-2, dated November 15, 2017.
- B. A survey of the property prepared by Casey & Keller, dated February 13, 2017.
- C. A photo board with four photographs of the subject dwelling and property, which was admitted into evidence as A-1.
- D. A photo board with an aerial view of the neighborhood and other properties with front yard parking areas, which was admitted into evidence as A-2.

4. Applicant Kathryn Plump, and Steven Majewski, Licensed Architect, testified in support of the application.

5. The existing dwelling on the property was built in 1941 with a one-car attached garage. The Applicants wish to update the home by constructing a one-story addition that would allow them to modernize and expand the existing kitchen and provide a new mudroom and powder room. In addition, the Applicants wish to widen the existing driveway to permit an on-site front yard parking space for a second vehicle.

6. The subject property has a conforming lot area and lot dimensions. Lots in this neighborhood are consistent in size as the entire development predates the Township Zoning Ordinance. The Applicants wish to construct a new one-story, 94 square foot addition at the rear of the dwelling in order to renovate and expand the kitchen and provide a modestly sized powder room and mudroom with rear access to the back yard. The dwelling is constrained by a pre-existing nonconforming 37.4% floor area ratio. As a result, any addition to the dwelling, no matter how modest, would require variance relief for floor area ratio. The proposed addition would be located at the rear of the existing dwelling, so it would not be visible from the street. The proposed addition is only 9 feet deep and it would maintain and extend the existing conforming northerly side yard setback of the dwelling. The proposed addition would square off the rear of the dwelling and replace an existing raised deck, unifying the rear egress to the back yard. A row of evergreen trees would buffer the nearest neighbor's view of the proposed addition. Although the proposed addition requires variance relief for floor area ratio due to the

pre-existing nonconforming condition, the home with the addition would continue to satisfy the lot coverage and building coverage permitted in the zone district.

7. With respect to the Applicants' proposed front yard parking space, the Applicants wish to provide a safe on-site parking area for their two vehicles and vehicles of visitors and overnight guests. Due to the placement of the existing dwelling on the property, the Applicants cannot expand the existing one-car attached garage into a two-car garage because the dwelling is only 8.35 feet from the northerly property line. Moreover, overnight on-street parking is prohibited on the Applicants' street and there are no sidewalks. Thus, the Applicants propose to widen the existing driveway to a width of 17 feet as the best means of achieving safe on-site parking of their own vehicles as well as vehicles of their visitors and overnight guests. The proposed driveway widening would increase the front yard coverage by 225 feet, resulting in 33.9% front yard coverage, whereas 30% front yard coverage is permitted. Although front yard parking spaces are prohibited in the R-6 zone, this neighborhood has a number of properties with double width driveways and the Applicants' proposed driveway widening would be in keeping with other properties in the neighborhood.

8. The Board is satisfied that variance relief may be granted to permit the proposed addition to the dwelling and driveway widening. Floor area ratio of this property is a pre-existing nonconforming 37.4%, or 2,245 square feet, whereas the permitted floor area ratio is 36% or 2,160 square feet. The proposed addition would result in a floor area ratio of 38.9%, which is 2.9% greater than the permitted floor area ratio, but only 94 square feet greater than the pre-existing nonconforming 37.4% floor area ratio. Notwithstanding this deviation, the Board finds that the property can accommodate the excess floor area ratio. The proposed addition will serve to modernize this older home without any impact on the streetscape as it will be concealed from view from the street by the existing dwelling. The proposed addition, modest in size, will not have any negative impact on the nearest neighbor as it will be buffered from view by a row of existing evergreens.

9. The Board is also satisfied that the remaining variances for 33.9% front yard coverage and to permit front yard parking spaces may be granted. Although the subject property has conforming lot dimensions, the dwelling has a 26 foot front yard setback, which reduces the available square footage of the front yard. As a result, the Board finds that the 30% maximum front yard coverage requirement has a greater impact on the subject property than it would if the dwelling had a deeper front yard setback. The Board notes that, regardless of whether the paved driveways in this neighborhood are single width or double width, cars are parked in the front yards of many properties in this neighborhood because overnight on-street parking is prohibited by Township Ordinance. As a result, in some instances it is difficult to avoid front yard parking in this neighborhood due to the size of the lots and the development of the neighborhood, which predates the Township Zoning Ordinance. The Board is also satisfied that widening the driveway to 17 feet will serve to enhance safety and the general welfare as a wider driveway will allow the Applicants and any visitors or overnight guests to their property to park on-site. The home with the new addition and wider driveway will remain in keeping with the existing character of the property and the neighborhood. Consequently, the Board concludes that variance relief can be granted 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 5th day of February, 2018 that variance relief to permit a one-story addition to the dwelling which results in a result in a 38.9% floor area ratio and a driveway widening which results in front yard parking spaces and a 33.9% front yard coverage, granted by this Board on January 8, 2018, be and it is hereby 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 Majewski Architecture, LLC, consisting of three sheets, PP-1, A-1 & A-2, dated November 15, 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 5<sup>th</sup> day of February, 2018.

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**Cal#3599-18, Natalia & David Robakidze, 25 Farley Road, Short Hills**

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

- Jyoti Sharma – yes
- Joy Siegel – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following resolution was approved:

**NATASHA AND DAVID ROBAKIDZE  
BLOCK 1401, LOT 30**

**CAL. NO. 3599-18  
FEBRUARY 5, 2018**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Natasha and David Robakidze, in Calendar No. 3599-18 for permission to construct an addition on the dwelling on property located at 25 Farley Road, Short Hills, New Jersey, known and designated as Lot 30, Block 1401 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 22, 2018 in Calendar No. 3599-18 filed by Natasha and David Robakidze (hereinafter referred to as the “Applicants”) for permission to construct an addition on the dwelling on property located at 25 Farley Road, Short Hills, New Jersey, known and designated as Lot 30, Block 1401 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. Thomas DiTosto, of 15 Brooklawn Drive appeared and testified in support of the application.

2. The property is located in the R-4 zone, which is subject to the following zoning requirements: maximum 26% floor area ratio, maximum 14% building coverage, minimum 40 foot front yard setback, minimum 15 foot first floor side yard setback, 22 foot second floor side yard setback and minimum 35% combined side yard setback. The home with the proposed addition would result in a 32.8% floor area ratio, 16.8% building coverage, 38 foot front yard setback, 14.2 foot first floor side yard setback, 17.3 foot second story side yard setback, and 31.9% combined side yard setback. Therefore, the Applicants require variance relief.

3. 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).

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

A. Plans prepared by Klesse Architects, consisting of five sheets, Sheets BOA-1 through BOA-5, dated October 25, 2017.

B. A survey of the property prepared by Control Layouts, Inc., dated March 13, 2013 and a copy of the Control Layouts survey marked up by the Applicants' architect to depict the proposed addition.

5. The Applicants, David Robakidze and Natalia Arsentieva Robakidze, and Timothy Klesse, Licensed Architect, testified in support of the application. Thomas DiTosto of 15 Brooklawn Drive testified in support of the application

6. The Applicants purchased the subject property in 2013. They have two children and aging parents in their 80's, who reside outside of the United States. They wish to construct an addition that would provide additional living space, including a guest area that would accommodate extended stay visits from their parents. The Applicants have focused on designing an addition that would remain consistent with their needs and other homes in the neighborhood, while resulting in little to no negative impact on their neighbors. The proposed addition would include removal of an existing swing set, which is located behind the home.

7. The proposed addition would include a new first floor guest bedroom and full bathroom, mudroom, library and exercise room at the rear of the existing garage. The proposed addition also includes a new second floor master bedroom suite and laundry room, which would be located above the existing two car garage and the new first floor addition. The living space above the existing garage has a very low ceiling height, as it originally served as maid quarters. The proposed addition would include raising the roof by two feet in order to accommodate a full height wall in the master bathroom above the garage. The proposed second floor addition has been designed with a decorative gable to provide architectural interest to the front façade of the dwelling. Most of the massing of the addition would be located at the rear of the dwelling where it would not be visible from the street.

8. The subject property is an undersized lot with a lot area of 14,477 square feet instead of the minimum 20,000 square feet required in the R-4 zone. If this property had a conforming lot area, the Applicants' proposed floor area ratio and building coverage would conform to the zoning ordinance and no variance relief would be required from those two conditions to construct the proposed addition.

9. Front yard setback, side yard setback, second story side yard setback and combined side yard setback are all pre-existing nonconforming conditions which affect the existing dwelling on the property. The existing dwelling has a 38 foot front yard setback at the front right corner of the dwelling where the two-car garage is located, which is closer to Farley Road than the west side of the dwelling which has a 46 foot front yard setback from Farley Road. Because the proposed addition would be located above the existing garage, it would extend the existing front yard setback to the new second story, requiring variance relief to maintain the 38 foot front yard setback on the east, or right side of the dwelling.

10. The existing dwelling also has a pre-existing nonconforming 14.2 foot side yard setback and a pre-existing nonconforming 17.3 foot second story side yard setback. The proposed addition would extend the easterly façade of the dwelling to the new addition. As a result, the addition would maintain the pre-existing nonconforming 14.2 easterly side yard setback and 17.3 second story side yard setback farther to the rear of the property.

11. In addition, the property is a parallelogram on a curve in the roadway of Farley Road. While the existing dwelling is parallel with the side property lines, its placement is skewed in relation to the front and rear property lines. In addition, even though the existing dwelling is parallel to the side property lines, its placement is closer to the easterly side property line, resulting in a pre-existing nonconforming combined side yard setback of 31.9%. This pre-existing nonconforming condition is because the westerly rear corner of the dwelling has a side yard setback of 17.7 feet, which is more than four feet closer to the side property line than the westerly front corner of the dwelling, which has a 21.8 foot. As a result, any addition to the dwelling would require variance relief from the combined side yard setback requirement.

12. The Applicants have chosen the proposed location for the addition along the easterly side of the existing dwelling because the proposed placement would have little to no impact on the nearest neighbors. The neighboring dwelling to the east is located uphill, at a much higher elevation than the subject property. As a result, the proposed two-story addition would not be within in their easterly neighbors' line of sight. Furthermore, the proposed placement of the addition is on the east side of the lot, where the rear yard is deeper than on the west side of the lot. This placement provides the greatest distance between the proposed addition and the neighbor to the rear, whose dwelling is completely screened from view by existing landscaping on the rear neighbor's lot.

13. The Applicants' rear neighbor, Thomas DiTosto, testified that his side yard is the Applicants' rear yard, while the Applicants' neighbor to the east is Mr. DiTosto's rear yard neighbor. Mr. DiTosto testified that his swimming pool would be closer to the Applicants' property than his dwelling. He stated his opinion that he would not even see the Applicants' proposed addition because there is heavy evergreen screening that separates his pool area from view from the Applicants' property.

14. The Board is satisfied that variance relief may be granted to permit the proposed addition to the dwelling. Although the proposed floor area ratio of 32.8% is a deviation of 410 square feet greater than the permitted floor area ratio, the Board finds that the property can accommodate excess floor area ratio. The majority of the addition will be located to the rear of the existing dwelling, where it will be concealed from view from the street. The proposed addition will not be visible to the nearest neighbors due to the difference in elevation and heavy evergreen screening. The Board finds that if this property had a conforming 20,000 square foot lot area, the proposed addition would not require floor area ratio variance relief.

13. The Board is also satisfied that the remaining variances for front yard setback, side yard setback, combined side yard setback and building coverage are the result of the undersized lot area, the shape of the property, the placement of the dwelling on the property and the pre-existing nonconforming conditions affecting the property and the structures on the property. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. This property is one of the smallest lots on this street and the lot area is substantially less than required for the R-4 zone district. If this property had a conforming lot area, the need for building coverage variance relief would be eliminated. The proposed addition will align with the existing front and easterly façades of the dwelling, extending the pre-existing nonconforming side yard, second story side yard and

combined side yard setbacks to the new addition. The Board is also satisfied that the proposed addition will not result in any substantial negative impact on the nearest neighbors or the neighborhood. The Board finds the testimony presented by the Applicants' witnesses and the rear neighbor that the proposed addition will not have any negative impact on the views from the neighboring properties is persuasive. Although the proposed addition will be closer to the easterly side property line than permitted, the dwelling on the adjacent lot is at a much higher elevation than the subject property and the home with the addition will not be within the view of the adjacent neighbor. Similarly, there are dense evergreen plantings on the neighboring lot to the rear that will conceal the view of the proposed addition from the Applicants' rear neighbor. The home with the proposed addition will be an attractive improvement to the property 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 5th day of February, 2018 that variance relief to permit the construction of an addition resulting in a 32.8% floor area ratio, 16.8% building coverage, 38 foot front yard setback, 14.2 foot first floor side yard setback , 17.3 foot second story side yard setback, and 31.9% combined side yard setback, granted by this Board on January 22, 2018, be and it is hereby 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 Klesse Architects, consisting of five sheets, Sheets BOA-1 through BOA-5, dated October 25, 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, 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 5th day of February, 2018.

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**APPLICATIONS**

**CAL#3562-17, 521 MILLBURN AVENUE, LLC, 521 MILLBURN AVENUE, MILLBURN**

The matter was carried to April 16, 2018 with no further notice required.

**CAL#3602-18, AMANDA & RAMSEY CABBANI, 330 HOBART AVENUE, SHORT HILLS**

Timothy Klesse, Architect, and Amanda & Ramsey Cabbani, appeared and were sworn. The applicants would like to maintain a patio in its current location. Proposal is in violation of:

609.5 – Accessory structure location on a corner lot

Timothy Klesse’s credentials were presented and accepted by the Board. He gave a brief description of the patio area that is the subject of the application. The original owners of the property installed the patio without the necessary permits. The owners were alerted to the fact that the patio was in violation of the Township ordinance. However, the current owners were already in the process of purchasing the dwelling and wanted to retain the patio. They chose to seek variance relief in order to get the permits properly issued.

Tim Klesse referenced his BOA-1 sheet. The 375 square foot patio is 12.6 feet off the Coniston Road property line. There is an additional 18 feet of right of way before the actual paved street begins.

Prior to this hearing, the applicants planted 6 foot emerald green arborvitae parallel to Coniston Road in order to buffer the patio from street view.

Mr. Klesse stated that this patio is not visible from Hobart Avenue. He feels the new arborvitae, when they reach full height, will provide the necessary screening from neighboring properties.

Laura Kessler, 31 Knollwood Road, appeared and was sworn. She is happy to see the Cabbani’s investing their time and money in this property.

Overall, Board members felt variance relief could be granted with no substantial detriment to the neighborhood.

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

Michael Birnberg – yes  
Ellen Hirsch – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3602-18, Amanda & Ramsey Cabbani, 330 Hobart Avenue, was **APPROVED**.

**CAL#3605-18, SARAH MOABA, 29 MOUNTAINVIEW ROAD, MILLBURN**

Sarah Moaba, and Gary Rosard, Architect, appeared and were sworn. The applicant would like to construct an addition. Proposal is in violation of:

606.2e1d – Front yard setback

Gary Rosard’s credentials were presented and accepted by the Board. He gave a brief description of the proposal. The existing front yard setback of the dwelling is 24.93 feet and the area the applicant proposes to construct above has a 29.3 feet front yard setback, thereby requiring variance relief.

Entered as A-1: photoboard with aerial view, photo, survey

Mr. Rosard stated that many of the houses in the area have similar non-conforming front yard setbacks.

Board members discussed the applicant’s proposal and felt it would have minimal impact on the adjoining property owners and the neighborhood.

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

Michael Birnberg – yes  
Ellen Hirsch – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3605-18, Sarah Moaba, 29 Mountainview Road, 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 Michael Birnberg, seconded by Joy Siegel, and carried with a unanimous voice vote. (7:52 PM)

Eileen Davitt  
Board Secretary

Motion: MB  
Second: EH  
Date Adopted: 3/19/18