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Township of Millburn
Minutes of the Zoning Board of Adjustment
June 6, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 6, 2022** at 7:00 PM via Zoom webinar.

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

The following members were present for the meeting:

Amy Lawrence
Jyoti Sharma
Joseph Steinberg
Steve Togher
Wolfgang Tsoutsouris
Chandru Harjani
Ashley Avigdor
Craig Ploetner, Chairman

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of May 16, 2022, was made by Steve Togher, seconded by Ashley Avigdor, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3852-21, Ashish Vats & Neha Krishan, 10 Stewart Road, Short Hills.

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

Jyoti Sharma – yes
Joseph Steinberg – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes
Craig Ploetner – yes

46 the following memorializing resolution was adopted:

47
48 **ASHISH VATS & NEHA KRISHAN**
49 **BLOCK 2201, LOT 7**

CAL. NO. 3852-21
JUNE 6, 2022

50
51 Mister Chairman, I move the adoption of the following resolution memorializing the
52 granting of certain variance relief requested by the applicants, Ashish Vats and Neha Krishan
53 (hereinafter the “Applicants”), in Calendar No. 3852-21, to permit the construction of certain
54 outdoor amenities, including an 800 square foot pool and a 64 square foot spa, a patio, fencing
55 and landscaping, on property located at 10 Stewart Road, Short Hills, New Jersey, and
56 designated as Lot 7, Block 2201, on the Official Tax Map of the Township of Millburn.

57
58 **RESOLUTION**

59
60 **WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the
61 “Board”) held a public hearing according to law on April 4 and May 2, 2022, as to Calendar No.
62 3852-21 to permit the construction of certain outdoor amenities, including an 800 square foot
63 pool and a 64 square foot spa, a patio, fencing and landscaping, on property located at 10 Stewart
64 Road, Short Hills, New Jersey, and designated as Lot 7, Block 2201, on the Official Tax Map of
65 the Township of Millburn; and

66
67 **WHEREAS** the Board does hereby set forth the following findings of fact,
68 circumstances, reasons, and conclusions:

69
70 1. At both the April 4 and May 2, 2022 hearing, the application and service of notice
71 were found to be in order. The Applicants appeared with Samantha Alfonso, Esq., of Dempsey,
72 Dempsey & Sheehan, and together with Richard Nusser, the Applicants’ Engineer and Planner,
73 provided sworn testimony in support of the application. There was no public opposition to the
74 application.

75
76 2. The Applicants are the owners of the subject property, which contains a single-
77 family residence located in the Township’s R-3 Zone District (the “R-3 Zone”). The subject
78 property is a “flag-lot”, and therefore does not have the typical side and rear yards one would
79 typically see within the Township.

80
81 3. The proposed construction would result in an accessory structure located in a
82 side-yard where same may only be located within a rear yard; pool equipment being stored in the
83 front yard with a setback 24 feet, where accessory structures in a front yard must be set back a
84 minimum of 36 feet; and a total accessory coverage of 59.2%, where a maximum total accessory
85 coverage of 20% is permitted. Therefore, variance relief is required.

86
87 4. The Board received and considered the following additional document submitted
88 in support of the application:

90 a. Coverage Calculations, prepared by Richard Nusser, P.E., P.P., dated
91 April 29, 2022, introduced into evidence as Exhibit A-1, on May 2, 2022.
92

93 5. Both the Applicants and Richard Nussar, the Applicants' Engineer and Planner,
94 testified that the subject property is very uniquely shaped, and combined with the positioning of
95 the existing single-family dwelling creates a hardship for the Applicants. Namely, there is almost
96 no potential occupancy/use of the property's rear yard as defined by the Township Ordinance.
97 The property is further constrained by its sloping topography which slopes upward from the front
98 lot line to the rear lot line by approximately 20 feet. Mr. Nussar testified that the variance relief
99 requested as part of the Applicants' proposal does not create any negative impacts for the other
100 properties in the subject neighborhood. Mr. Nusser also stated that the proposal is for an average
101 sized pool and an average sized patio, both of which are consistent with what is seen throughout
102 the neighborhood.
103

104 6. The Applicants testified that there is no other place to locate the proposed
105 improvements, as the location of the dwelling makes it "nearly" impossible to locate same
106 anywhere else on the subject property. The Applicants stated that the area behind the house,
107 which is technically a side yard, is very private and there will not be any detriment to the
108 neighbors. They believe the surrounding residential neighborhood contains at least four pools.
109

110 7. N.J.S.A. 40:55D-70c(1) states:
111 Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of
112 property, or (b) by reason of exceptional topographic conditions or physical features uniquely
113 affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional
114 situation uniquely affecting a specific piece of property or the structures lawfully existing
115 thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this
116 act would result in peculiar and exceptional practical difficulties to, or exceptional and undue
117 hardship upon, the developer of such property, grant, upon an application or an appeal relating to
118 such property, a variance from such strict application of such regulation so as to relieve such
119 difficulties or hardship[.]
120

121 8. N.J.S.A. 40:55D-70 further states "[n]o variance or other relief may be granted
122 under the terms of this section, including a variance or other relief involving an inherently
123 beneficial use, without a showing that such variance or other relief can be granted without
124 substantial detriment to the public good and will not substantially impair the intent and the
125 purpose of the zone plan and zoning ordinance" (the so-called "negative criteria").
126

127 9. The Board finds that the Applicants have satisfied the statutory criteria of
128 N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested
129 by the Applicants to permit the proposed construction. While accessory structures can only be
130 located in a rear yard in the R-3 Zone, the subject property's unique status as a "flag lot", with no
131 rear yard pursuant to the Township Zoning Ordinance, creates an undue hardship for the
132 Applicants. The need for variance relief is related to this and other existing conditions affecting
133 the property, dwelling and other site improvements, as set forth above and contained in the
134 application materials. The Board finds these conditions to be extraordinary and exceptional

135 conditions affecting the property and the structures thereon, which result in practical difficulties
136 and undue hardship to the Applicants.

137
138 10. The Board further notes that the Applicants received a Certificate of
139 Appropriateness from the Township’s Historic Preservation Commission for the proposed
140 construction, with a landscaping plan to be approved by the Township forester as a condition of
141 said approval.

142
143 11. The Board concludes that the proposed construction preserves the character of the
144 subject neighborhood given that it will not be visible to neighboring properties, and that any
145 negative impact from the proposed improvements is negligible and not a substantial detriment.
146 The proposal to create a functional, family-friendly outdoor living area is reasonable and not
147 overreaching, especially given that the Applicants have no other location alternatives for the
148 proposed improvements. The positive and negative criteria for variance relief have therefore
149 been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1). For the reasons stated above,
150 the Board concludes that the granting of the variance relief requested relating to the proposed
151 construction can be done without substantial detriment to the public good and without
152 substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

153
154 **NOW, THEREFORE, BE IT RESOLVED** on this 6th day of June, 2022, that the
155 variance relief requested by the Applicants to permit the construction of certain outdoor
156 amenities, including an 800 square foot pool and 64 square foot spa, a patio, fencing and
157 landscaping, on property located at 10 Stewart Road, Short Hills, New Jersey, granted by this
158 Board at its meeting of May 2, 2022, is memorialized pursuant to the provisions of N.J.S.A.
159 40:55D-10(g), subject to the following conditions:

160
161 1. The Applicants shall apply for a building permit within 365 days from the date of
162 publication of this decision.

163
164 2. The Applicants shall be bound to comply with the representations made before
165 this Board by the Applicants and the Applicants’ professionals and at the public hearing, and as
166 set forth in the Board’s findings of fact contained in this resolution. The Board has relied upon
167 such representations in adopting its findings of fact and granting the approvals set forth herein.
168 Such representations are hereby made conditions of such approvals.

169
170 3. The Applicants shall remove all debris from the subject premises immediately
171 upon completion of construction and shall maintain the site in reasonable order during
172 construction.

173
174 4. The Applicants shall comply with all other rules, regulations and requirements
175 affecting development in the Township, County and State.

176
177 **CLERK CERTIFICATION**
178

179 I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of
180 Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and
181 exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the
182 Township of Millburn held on the 6th day of June, 2022.

183
184 -----
185
186 **Cal#3856-22, Wen-Shing Chou & Wei Hung Chen, 58 Pine Street, Millburn**

187
188 Upon a motion made by Chandru Harjani, a second by Steve Togher, and with a roll-call
189 vote as follows:

- 190
191 Jyoti Sharma – yes
192 Joseph Steinberg – yes
193 Steve Togher – yes
194 Wolfgang Tsoutsouris – yes
195 Chandru Harjani – yes
196 Craig Ploetner – yes

197
198 the following memorializing resolution was adopted:

199
200 **WEN-SHING CHOU & WEI HUNG CHEN**
201 **BLOCK 207, LOT 11**

CAL. NO. 3856-22
JUNE 6, 2022

202
203 Mister Chairman, I move the adoption of the following resolution memorializing the granting of
204 certain variance relief requested by the applicants, Wen-Shing Chou and Wei Hung Chen
205 (hereinafter the “Applicants”), in Calendar No. 3856-22, to permit the construction of a second-
206 story addition on an existing single-story dwelling, and a two-story addition in the rear, on
207 property located at 58 Pine Street, Millburn, New Jersey, and designated as Lot 11, Block 207,
208 on the Official Tax Map of the Township of Millburn.

209
210 **RESOLUTION**

211
212 **WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the
213 “Board”) held a public hearing according to law on May 2, 2022, as to Calendar No. 3856-22, to
214 permit the construction of a second-story addition on an existing single-story dwelling, and a
215 two-story addition in the rear, on property located at 58 Pine Street, Millburn, New Jersey, and
216 designated as Lot 11, Block 207, on the Official Tax Map of the Township of Millburn; and

217
218 **WHEREAS** the Board does hereby set forth the following findings of fact,
219 circumstances, reasons, and conclusions:

220
221 1. At the May 2, 2022 hearing, the application and service of notice were found to
222 be in order. The Applicants appeared without counsel and together with Douglas Miller, the
223 Applicants’ Licensed Architect, and Richard Keller, P.E., P.P., the Applicants’ Engineer and

224 Professional Planner, provided sworn testimony in support of the application. There was no
225 public opposition to the application.

226
227 2. The Applicants are the owners of the subject property, which contains a single-
228 family residence in the Township’s R-5 Zone District (the “R-5 Zone”). The Applicants’ lot is
229 undersized for the R-5 Zone with a number of additional pre-existing non-conformities,
230 including those related to Floor Area Ratio (“FAR”), lot coverage, and other applicable bulk
231 standards.

232
233 3. The application requires the following variance relief pursuant to the Township
234 Zoning Ordinances:

235
236 a. A side-yard setback deviation (right side) of five feet is proposed (5.55’
237 existing), where a minimum side-yard setback of 12 feet is required;

238
239 b. A side-yard setback deviation (right side) of five feet is proposed (5.81’
240 existing), where a minimum side-yard setback of 16 feet is required;

241
242 c. A combined side-yard setback deviation of 16.85 feet is proposed (17.4’
243 existing), where a minimum combined side-yard setback of 20.3 feet is required;

244
245 d. Building coverage of 19.8% is proposed (17.2% existing), where a
246 maximum permitted building coverage of 18% is permitted;

247
248 e. Lot coverage of 45.39% is proposed (43.47% existing), where a maximum
249 lot coverage of 35% is permitted; and

250
251 f. Floor Area Ratio (“FAR”) of 33.76% is proposed (26.88% existing),
252 where a maximum FAR of 30% is permitted.

253
254 4. At the May 2, 2022 hearing, the Board received and considered the following
255 additional documents submitted in support of the application:

256
257 a. A photo-board containing photographs of neighboring properties, an aerial
258 photograph of the subject property, and a copy of the relevant section of the Township
259 Tax Map, which contains the subject property, prepared by Douglas Miller, A.I.A., on or
260 about March 20, 2022, introduced into evidence as Exhibit A-1, on May 2, 2022; and

261
262 b. An aerial photograph prepared by Richard Keller, P.E., P.P., on or about
263 March 21, 2022 and the relevant section of the Township Tax Map, introduced into
264 evidence as Exhibit A-2, on May 2, 2022.

265
266 5. Both the Applicants and Douglas Miller, A.I.A, the Applicants’ architect, testified
267 that the proposed construction is intended to modernize the subject residence while increasing its

268 functionality, and that the proposed construction was designed to have the subject residence be
269 similar in appearance to other residences in the subject neighborhood.
270

271 6. Mr. Miller testified that the proposal is for a “modest” addition, which will
272 include a new master bedroom and bathroom, necessary to accommodate the needs of a growing
273 family. Mr. Miller stated that the Applicants’ proposal calls for a six-foot, nine-inch “bump-out”
274 of the existing single-family dwelling to create additional interior space, and that the Applicants
275 have no other option to expand the dwelling without the need for variance relief.
276

277 7. Mr. Miller testified that even with the proposed modifications and/or additions to
278 the existing single-family dwelling, the dwelling will look exactly the same as viewed from Pine
279 Street. He opined that the proposal will not be out of character with other homes within the
280 subject Pine Street neighborhood.
281

282 8. Richard Keller, P.E., P.P., the Applicants’ Engineer and Professional Planner,
283 testified that there are no conforming lots located on Pine Street, with other homes on the street
284 having bulk deficiencies including those relating to side-yard setbacks. Mr. Keller testified that
285 the lot area of the subject property is 45% of what is required, with the depth and width of the lot
286 also being deficient.
287

288 9. Mr. Keller stated that the existing dwelling, even with the proposed additions, will
289 be smaller in scale as compared to some of the dwellings on neighboring properties. He testified
290 that the proposed addition will be constructed closest to the Applicants’ driveway, with sufficient
291 distance mitigating any detrimental impacts to the neighboring property adjacent to the
292 driveway.
293

294 10. As to the request for FAR relief, Mr. Keller testified that the mass of the addition
295 is proposed to be placed in the rear of the dwelling and the subject property so that it will not
296 create any impact on the surrounding neighborhood. He stated that, with the proposed addition,
297 there will still be a minimum of 21 feet between the subject dwelling and the closest neighboring
298 dwelling, which appears to be generally consistent with the distances between dwellings in the
299 remainder of the neighborhood.
300

301 11. Finally, Mr. Keller noted that this is a modest application with a reasonable
302 request for variance relief. He stated that the application was well thought-out, and it will make
303 the single-family dwelling look a bit more contemporary, so to benefit the surrounding
304 neighborhood.
305

306 12. N.J.S.A. 40:55D-70c(1) states:
307 Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of
308 property, or (b) by reason of exceptional topographic conditions or physical features uniquely
309 affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional
310 situation uniquely affecting a specific piece of property or the structures lawfully existing
311 thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this
312 act would result in peculiar and exceptional practical difficulties to, or exceptional and undue

313 hardship upon, the developer of such property, grant, upon an application or an appeal relating to
314 such property, a variance from such strict application of such regulation so as to relieve such
315 difficulties or hardship[.]

316
317 13. In a floor area ratio (“FAR”) variance application pursuant to N.J.S.A. 40:55D-
318 70(d)(4), an applicant must demonstrate that the proposed site will accommodate any problems
319 associated with the proposed floor area larger than that permitted by the Zoning Ordinance, so to
320 establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App.
321 Div. 1999).

322
323 14. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted
324 under the terms of this section, including a variance or other relief involving an inherently
325 beneficial use, without a showing that such variance or other relief can be granted without
326 substantial detriment to the public good and will not substantially impair the intent and the
327 purpose of the zone plan and zoning ordinance” (the so-called “negative criteria”).

328
329 15. The Board finds that the Applicants have also satisfied the statutory criteria as
330 required by N.J.S.A. 40:55D-70(d)(4) for FAR variance relief, and concludes that it is
331 appropriate to grant this variance relief requested by the Applicants to permit the proposed
332 construction. The Board is satisfied that the proposed construction is modest in size and similar
333 to other houses in the subject neighborhood. Although the proposed construction requires FAR
334 variance relief as set forth above, the deviation from the requirements are modest in light of the
335 size of the property and can be accomplished without undermining the intent and purpose of the
336 Township Zoning Ordinance. Although the application proposes to increase the FAR by 3.76%
337 (or 249 square feet) above the allowable FAR for the R-5 Zone, the increase is reasonable and
338 can be accommodated by the subject property and will not negatively impact neighboring
339 properties. Additionally, the application proposes no encroachment into the existing front yard
340 setback, and does not materially increase any of the subject property’s other existing
341 nonconforming conditions.

342
343 16. The Board concludes that the proposed construction is tasteful and modest,
344 preserves the character of the subject residence, and that any negative impact from the proposed
345 improvements is negligible and not a substantial detriment. Specifically, the subject property can
346 accommodate the negligible impact of the application’s proposed construction. The subject
347 property will accommodate any perceived problems associated with the proposed FAR larger
348 than that permitted by the Township Zoning Ordinance, so to establish special reasons. The
349 proposed construction will result in the residence on the subject property remaining similar in
350 size to other residences in the subject neighborhood. The scale and design of the proposed
351 addition is also in keeping with that of neighboring homes and properties.

352
353 17. The positive and negative criteria for FAR variance relief have therefore been met
354 by the Applicants. For the reasons stated above, the Board concludes that the granting of the
355 FAR variance relief requested relating to the proposed construction can be done without
356 substantial detriment to the public good and without substantially impairing the intent and
357 purpose of the Zone Plan and Township Zoning Ordinance.

358
359 18. The Board further finds that the Applicants have satisfied the statutory criteria of
360 N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief
361 requested by the Applicants to permit the proposed construction. The need for such variance
362 relief is related to existing conditions affecting the property, dwelling and other site
363 improvements as set forth above and contained in the application materials, specifically, the
364 subject property's undersized nature in lot area, width, and depth for the R-5 Zone. The Board
365 finds these conditions to be extraordinary and exceptional conditions affecting the property and
366 the structures thereon, which result in practical difficulties and undue hardship to the Applicants.
367 The Board further concludes, for all the reasons set forth above, that the granting of C1 variance
368 relief to permit the proposed addition can be accomplished without substantial detriment to the
369 public good and without substantially impairing the intent and purpose of the Zone Plan and
370 Zoning Ordinance.

371
372 **NOW, THEREFORE, BE IT RESOLVED** on this 6th day of June, 2022, that the
373 variance relief requested by the Applicants to permit the construction of a second-story addition
374 on a single-story dwelling, and a two-story addition in the rear, on property located at 58 Pine
375 Street, Millburn, New Jersey, granted by this Board at its meeting of May 2, 2022, is
376 memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following
377 conditions:

378
379 1. The Applicants shall apply for a building permit within 365 days from the date of
380 publication of this decision.

381
382 2. The Applicants shall be bound to comply with the representations made before
383 this Board by the Applicants and the Applicants' professionals and at the public hearing, and as
384 set forth in the Board's findings of fact contained in this resolution. The Board has relied upon
385 such representations in adopting its findings of fact and granting the approvals set forth herein.
386 Such representations are hereby made conditions of such approvals.

387
388 3. The Applicants shall remove all debris from the subject premises immediately
389 upon completion of construction and shall maintain the site in reasonable order during
390 construction.

391
392 4. The Applicants shall comply with all other rules, regulations and requirements
393 affecting development in the Township, County and State.

394
395 **CLERK CERTIFICATION**

396
397 I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of
398 Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and
399 exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the
400 Township of Millburn held on the 6th day of June, 2022.

401
402 -----

403
404 **Cal#3861-22, Dennis Hickey, 93 Slope Drive, Millburn**
405

406 Upon a motion made by Steve Togher, a second by Chandru Harjani, and with a roll-call
407 vote as follows:

- 408
409 Jyoti Sharma – yes
410 Joseph Steinberg – yes
411 Steve Togher – yes
412 Wolfgang Tsoutsouris – yes
413 Chandru Harjani – yes
414 Craig Ploetner – yes
415

416 the following memorializing resolution was adopted:

417
418 **DENNIS HICKEY**
419 **BLOCK 3101, LOT 7**
420

CAL. NO. 3861-22
JUNE 6, 2022

421 Mister Chairman, I move the adoption of the following resolution memorializing the
422 granting of certain variance relief requested by the applicant, Dennis Hickey (hereinafter the
423 “Applicant”), in Calendar No. 3861-22 to permit the expansion of an existing patio in both a side
424 yard and front yard, and the construction of a new outdoor kitchen, pergola and hot tub, on
425 property located at 93 Slope Drive, Millburn, New Jersey, and designated as Lot 7, Block 3101,
426 on the Official Tax Map of the Township of Millburn.

427
428 **RESOLUTION**
429

430 **WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the
431 “Board”) held a public hearing according to law on May 2, 2022, as to Calendar No. 3861-22 to
432 permit the expansion of an existing patio in both a side yard and front yard, and the construction
433 of a new outdoor kitchen, pergola and hot tub, on property located at 93 Slope Drive, Millburn,
434 New Jersey, and designated as Lot 7, Block 3101, on the Official Tax Map of the Township of
435 Millburn; and
436

437 **WHEREAS** the Board does hereby set forth the following findings of fact,
438 circumstances, reasons, and conclusions:
439

440 1. At the May 2, 2022 hearing, the application and service of notice were found to
441 be in order. The Applicant appeared with counsel, Anthony Prieto, Esq., and together with
442 Anthony Gallerano, P.E., P.P., the Applicants’ Engineer and Professional Planner, provided
443 sworn testimony in support of the application. There was no public opposition to the application.
444

445 2. The Applicant is the owner of the subject property, which contains a single-family
446 residence in the Township’s R-3 Zone District (the “R-3 Zone”). The subject property is a
447 “corner lot” pursuant to the Township Zoning Ordinance, and therefore has two front yards as

448 defined in the Township Zoning Ordinance. The Applicant proposes to expand an existing patio
449 in both a required side yard and front yard, and to construct a new outdoor kitchen, pergola and
450 hot tub in a side yard of the Oxford Drive-facing portion of the residence, which is technically
451 located in the area that would be considered the front yard setback for Oxford Drive.
452

453 3. The proposed construction would result in an accessory structure located within
454 80 feet of a front yard setback for a corner lot (17.2 feet from Oxford Drive and 10.3 feet from
455 Slope Drive), where accessory structures are not permitted to be located; and an accessory
456 structure located within 12 feet of a side yard setback (5.6 feet for the patio and 3.7 feet for the
457 pergola). Therefore, variance relief is required.
458

459 4. Both the Applicant and Anthony Gallerano, P.E., P.P., the Applicant’s Engineer
460 and Planner, testified that the subject property is a slightly undersized lot, located in a manner
461 that constitutes a “corner lot” facing both Slope Drive and Oxford Drive. He noted that the
462 pergola will only be seven to eight feet in height above the patio. Mr. Gallerano stated that the
463 proposed construction would be sufficiently screened by a combination of proposed plantings
464 (evergreen trees planted three feet above the root ball) and existing mature evergreen trees, and
465 that decorative elements of the proposal would match the decorative elements of the subject
466 residence that are visually similar to existing residences and structures in the subject
467 neighborhood.
468

469 5. Mr. Gallerano testified further that not only is this a “corner lot”, but there is
470 limited area available behind the residence for any improvements. He stated that the orientation
471 of the dwelling creates this hardship limiting the Applicant’s ability to improve the subject
472 property in conformance with the Township Ordinance.
473

474 6. Mr. Gallerano testified that the Applicant’s proposal meets special reason (g)
475 under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the “MLUL”), stating that there
476 is sufficient space in appropriate locations for residential use on the Property, and that the
477 proposal is a logical use of said space. Mr. Gallerano stated that in his opinion, “no one would be
478 disturbed on the other side of the property.” He stated that this is a clear hardship, as this is a
479 “tight” property based on the existing structure.
480

481 7. N.J.S.A. 40:55D-70c(1) states:
482 Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of
483 property, or (b) by reason of exceptional topographic conditions or physical features uniquely
484 affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional
485 situation uniquely affecting a specific piece of property or the structures lawfully existing
486 thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this
487 act would result in peculiar and exceptional practical difficulties to, or exceptional and undue
488 hardship upon, the developer of such property, grant, upon an application or an appeal relating to
489 such property, a variance from such strict application of such regulation so as to relieve such
490 difficulties or hardship[.]
491

492 8. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances
493 where a deviation from the Zoning Ordinances would advance the purposes of the Municipal
494 Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”), and the benefits of the deviation would
495 substantially outweigh any detriment.

496
497 9. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted
498 under the terms of this section, including a variance or other relief involving an inherently
499 beneficial use, without a showing that such variance or other relief can be granted without
500 substantial detriment to the public good and will not substantially impair the intent and the
501 purpose of the zone plan and zoning ordinance” (the so-called “negative criteria”).
502

503 10. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A.
504 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested by the
505 Applicant to permit the proposed construction. While accessory structures can only be located in
506 a rear yard in the R-3 Zone, the subject property’s status as a “corner lot”, with two front yards
507 pursuant to the Township Zoning Ordinance, creates an undue hardship for the Applicant when
508 considering the existing conditions affecting the property, dwelling and other site improvements,
509 as set forth above and contained in the application materials. The Board finds these conditions to
510 be extraordinary and exceptional conditions affecting the property and the structures thereon,
511 which result in practical difficulties and undue hardship to the Applicant.
512

513 11. Although the proposed construction requires variance relief to permit an
514 accessory structure located in a front yard, where accessory structures are not permitted to be
515 located, the deviations from the requirements are appropriate given the aforementioned “corner
516 lot” status of the subject property and the location of the existing home. Accordingly, it appears
517 the Applicant is using the available space on the subject property in a logical manner. The
518 existing and proposed landscaping will also provide an effective screen and buffer to adjacent
519 residential properties.
520

521 12. The Board further finds that, pursuant to N.J.S.A. 40:55D-70c(2), and the positive
522 criteria for meeting same, the Applicant’s proposal meets the special reasons set forth in the
523 MLUL to grant the requested variance relief.
524

525 13. The Board concludes that the proposed construction preserves the character of the
526 subject neighborhood given that it will not be visible to neighboring properties, and that any
527 negative impact from the proposed improvements is negligible and not a substantial detriment.
528 Therefore, the positive and negative criteria for variance relief have therefore been met by the
529 Applicant pursuant to both N.J.S.A. 40:55D-70c(1) and c(2). For the reasons stated above, the
530 Board concludes that the granting of the variance relief requested relating to the proposed
531 construction can be done without substantial detriment to the public good and without
532 substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.
533

534 **NOW, THEREFORE, BE IT RESOLVED** on this 6th day of June, 2022, that the
535 variance relief requested by the Applicant to permit the expansion of an existing patio in a side
536 yard and front yard, the construction of a new outdoor kitchen, as well as a new pergola with a

537 hot tub in a side yard, on property located at 93 Slope Drive, Millburn, New Jersey, granted by
538 this Board at its meeting of May 2, 2022, is memorialized pursuant to the provisions of N.J.S.A.
539 40:55D-10(g), subject to the following conditions:

540
541 1. The Applicant shall install evergreen trees to provide screening for the proposed
542 construction at a height of three feet above the root ball at the time of planting.

543
544 2. The Applicant shall apply for a building permit within 365 days from the date of
545 publication of this decision.

546
547 3. The Applicant shall be bound to comply with the representations made before this
548 Board by the Applicant and the Applicant’s professional and at the public hearing, and as set
549 forth in the Board’s findings of fact contained in this resolution. The Board has relied upon such
550 representations in adopting its findings of fact and granting the approvals set forth herein. Such
551 representations are hereby made conditions of such approvals.

552
553 4. The Applicant shall remove all debris from the subject premises immediately
554 upon completion of construction and shall maintain the site in reasonable order during
555 construction.

556
557 5. The Applicant shall comply with all other rules, regulations and requirements
558 affecting development in the Township, County and State.

559
560 **CLERK CERTIFICATION**

561
562 I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of
563 Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and
564 exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the
565 Township of Millburn held on the 6th day of June, 2022.

566
567 -----
568
569 **Cal#3863-22, David Williams, 86 Cedar Street, Millburn**

570
571 Upon a motion made by Jyoti Sharma, a second by Steve Togher, and with a roll-call
572 vote as follows:

- 573
574 Jyoti Sharma – yes
575 Joseph Steinberg – yes
576 Steve Togher – yes
577 Wolfgang Tsoutsouris – yes
578 Chandru Harjani – yes
579 Craig Ploetner – yes

580
581 the following memorializing resolution was adopted:

582
583 **DAVID WILLIAMS**
584 **BLOCK 302, LOT 17**

CAL. NO. 3863-22
JUNE 6, 2022

585
586 Mister Chairman, I move the adoption of the following resolution memorializing the
587 granting of certain variance relief requested by the applicant, David Williams (hereinafter the
588 “Applicant”), in Calendar No. 3863-22, to permit the construction of a master bedroom and
589 bathroom suite, along with a pool and terrace in the rear yard, on property located at 86 Cedar
590 Street, Millburn, New Jersey, and designated as Lot 17, Block 302, on the Official Tax Map of
591 the Township of Millburn.

592
593 **RESOLUTION**
594

595 **WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the
596 “Board”) held a public hearing according to law on May 2, 2022, as to Calendar No. 3863-22 to
597 permit the construction of a master bedroom and bathroom suite, along with a pool and terrace in
598 the rear yard, on property located at 86 Cedar Street, Millburn, New Jersey, and designated as
599 Lot 17, Block 302, on the Official Tax Map of the Township of Millburn; and
600

601 **WHEREAS** the Board does hereby set forth the following findings of fact,
602 circumstances, reasons, and conclusions:
603

604 1. At the May 2, 2022 hearing, the application and service of notice were found to
605 be in order. The Applicant appeared without counsel, and together with John James, A.I.A., the
606 Applicant’s Licensed Architect, provided sworn testimony in support of the application. There
607 was no public opposition to the application.
608

609 2. The Applicant is the owner of the subject property, which contains a single-family
610 residence located in the Township’s R-5 Zone District (the “R-5 Zone”) and within the Wyoming
611 historic district. The subject property currently contains existing deviations from the Township
612 Ordinance as to side yard setback requirements which will be intensified with the Applicant’s
613 proposal.
614

615 3. The application requires the following variance relief pursuant to the Township
616 Zoning Ordinance:
617

618 a. A side-yard setback (right side – over 18 feet) of 10.7 feet is existing and
619 proposed (5.55’ existing), where a minimum side-yard setback of 13.9 feet is required;
620

621 b. A side-yard setback (left side – over 18 feet) of 11.04 feet is existing and
622 proposed, where a minimum side-yard setback of 12.83 feet is required;
623

624 c. A height of 33.75 feet is existing and proposed, where the maximum
625 permitted height is 32 feet.
626

627 4. The Applicant and John James, A.I.A., the Applicant's Licensed Architect,
628 testified that the subject property constitutes an undersized lot (10,000 square feet vs. 14,500
629 square feet required) with deficient lot width. Mr. James stated that the proposed construction
630 would add a new master bedroom and bathroom, with a bathroom dormer on the third floor, and
631 a gable on the second floor. He testified further that the new construction would be aligned with
632 the existing side yards of the existing house. The new second floor addition will maintain the
633 existing non-conforming side yard setbacks. If the subject property had a standard lot width of 75
634 feet, the existing and proposed side yard setbacks would be compliant.

635
636 5. Mr. James noted that the proposed construction will be consistent with the
637 adjacent properties, and that the proposed design scheme was reviewed and approved by the
638 Township's Historic Preservation Commission.

639
640 6. N.J.S.A. 40:55D-70c(1) states:
641 Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of
642 property, or (b) by reason of exceptional topographic conditions or physical features uniquely
643 affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional
644 situation uniquely affecting a specific piece of property or the structures lawfully existing
645 thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this
646 act would result in peculiar and exceptional practical difficulties to, or exceptional and undue
647 hardship upon, the developer of such property, grant, upon an application or an appeal relating to
648 such property, a variance from such strict application of such regulation so as to relieve such
649 difficulties or hardship[.]

650
651 7. N.J.S.A. 40:55D-70 further states "[n]o variance or other relief may be granted
652 under the terms of this section, including a variance or other relief involving an inherently
653 beneficial use, without a showing that such variance or other relief can be granted without
654 substantial detriment to the public good and will not substantially impair the intent and the
655 purpose of the zone plan and zoning ordinance" (the so-called "negative criteria").

656
657 8. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A.
658 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested by the
659 Applicant to permit the proposed construction. While the current conditions of the Applicant's
660 property exceed the Township's Zoning Ordinance standards, the subject property is an
661 undersized and exceptionally narrow lot, and the proposal will maintain and not exacerbate said
662 existing zoning deviations.

663
664 9. Although the proposed construction requires variance relief to permit the
665 proposed improvements, the deviations from the requirements are appropriate given the
666 aforementioned "undersized lot" and nonconforming status of the subject property pursuant to
667 the Township Zoning Ordinance. The proposed construction is thoughtful and shows moderation
668 and restraint when compared to the size and design of other homes in the subject neighborhood.

669
670 10. The Board concludes that the proposed construction preserves the character of the
671 subject neighborhood, and that any negative impact from the proposed improvements is

673 negligible and not a substantial detriment. The positive and negative criteria for variance relief
674 have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1). For the reasons
675 stated above, the Board concludes that the granting of the variance relief requested relating to the
676 proposed construction can be done without substantial detriment to the public good and without
677 substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

678
679 **NOW, THEREFORE, BE IT RESOLVED** on this 6th day of June, 2022, that the
680 variance relief requested by the Applicant to permit the construction of a master bedroom and
681 bathroom suite, along with a pool and terrace in the rear yard, on property located at 86 Cedar
682 Street, Millburn, New Jersey, and designated as Lot 17, Block 302, on the Official Tax Map of
683 the Township of Millburn, New Jersey, granted by this Board at its meeting of May 2, 2022, is
684 memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following
685 conditions:

686
687 1. The Applicant shall apply for a building permit within 365 days from the date of
688 publication of this decision.

689
690 2. The Applicant shall be bound to comply with the representations made before this
691 Board by the Applicant and the Applicant’s professional and at the public hearing, as set forth in
692 the Board’s findings of fact contained in this resolution. The Board has relied upon such
693 representations in adopting its findings of fact and granting the approvals set forth herein. Such
694 representations are hereby made conditions of such approvals.

695
696 3. The Applicant shall remove all debris from the subject premises immediately
697 upon completion of construction and shall maintain the site in reasonable order during
698 construction.

699
700 4. The Applicant shall comply with all other rules, regulations and requirements
701 affecting development in the Township, County and State.

702
703 **CLERK CERTIFICATION**

704
705 I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of
706 Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and
707 exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the
708 Township of Millburn held on the 6th day of June, 2022.

709
710 -----

711
712 **Cal#3864-22, Srujana Adusumilli & Tarun Kothuri, 2 North Brook Drive, Short Hills**

713
714 Upon a motion made by Chandru Harjani, a second by Jyoti Sharma, and with a roll-call
715 vote as follows:

716
717 Jyoti Sharma – yes

718 Steve Togher – yes
719 Chandru Harjani – yes
720 Craig Ploetner – yes

721
722 the following memorializing resolution was adopted:

723
724 **SRUJANA ADUSUMILLI & TARUN KOTHURI**
725 **BLOCK 4204, LOT 15**

CAL. NO. 3864-22
JUNE 6, 2022

726
727 Mister Chairman, I move the adoption of the following resolution memorializing the
728 granting of certain variance relief requested by the Applicants, Srujana Adusumilli and Tarun
729 Kothuri (hereinafter the “Applicants”), in Calendar No. 3864-22 to permit the construction of an
730 80 foot long, 6 foot high white vinyl fence, along South Orange Avenue, on property located at
731 2 North Brook Drive, Short Hills, New Jersey, and designated as Lot 15, Block 4204, on the
732 Official Tax Map of the Township of Millburn.

733
734 **RESOLUTION**

735
736 **WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the
737 “Board”) held a public hearing according to law on May 2, 2022, as to Calendar No. 3864-22 to
738 permit the construction of an 80 foot long, 6 foot high white vinyl fence, along South Orange
739 Avenue, on property located at 2 North Brook Drive, Short Hills, New Jersey, and designated as
740 Lot 15, Block 4204, on the Official Tax Map of the Township of Millburn; and

741
742 **WHEREAS** the Board does hereby set forth the following findings of fact,
743 circumstances, reasons, and conclusions:

744
745 1. At the May 2, 2022 hearing, the application and service of notice were found to
746 be in order. The Applicant, Tarun Kothuri, appeared without counsel and provided sworn
747 testimony in support of the application. There was no public opposition to the application.

748
749 2. The Applicants are the owners of the subject property, which contains a single-
750 family residence located in the Township’s R-5 Zone District (the “R-5 Zone”). The subject
751 property is bound by roads on three sides. The Applicants propose to construct a six-foot tall
752 fence along the South Orange Avenue side of the residence, where a fence with a maximum
753 height of four-feet is permitted pursuant to the Township Zoning Ordinance. Therefore, variance
754 relief is required.

755
756 3. Mr. Kothuri testified that the Applicants desire to install a six-foot fence along
757 South Orange Avenue, a County roadway four lanes wide with a speed limit of 50 miles per
758 hour. Mr. Kothuri testified that the proposed fence would be similar in appearance to the fences
759 on other properties along the same roadway in the subject neighborhood. Mr. Kothuri also stated
760 that the Applicants propose to plant evergreen trees, four to six feet tall at planting, along the
761 side of the fence closer to the Applicants’ home, for additional screening. He testified further that
762 the fence installation will enhance safety and security for the Applicants’ family, will dampen

763 noise coming from the County roadway, and is intended to match the appearance of the other
764 properties in the neighborhood.

765
766 4. Based on questions from Board members, the Applicants agreed to install a
767 wooden fence (natural wood tone) in lieu of the originally proposed white vinyl fence originally
768 proposed.

769
770 5. Kar Palagugu, 7 Lawrence Drive, Short Hills, and Sai Nara, 30 Kilmer Drive,
771 Short Hills, both spoke in support of the Applicants' proposal.

772
773 6. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances
774 where a deviation from the Zoning Ordinances would advance the purposes of the Municipal
775 Land Use Law, N.J.S.A. 40:55D-1 et seq. (the "MLUL"), and the benefits of the deviation would
776 substantially outweigh any detriment.

777
778 7. N.J.S.A. 40:55D-70 further states "[n]o variance or other relief may be granted
779 under the terms of this section, including a variance or other relief involving an inherently
780 beneficial use, without a showing that such variance or other relief can be granted without
781 substantial detriment to the public good and will not substantially impair the intent and the
782 purpose of the zone plan and zoning ordinance" (the so-called "negative criteria").

783
784 8. The Board finds that the Applicants have satisfied the statutory criteria of
785 N.J.S.A. 40:55D-70c(2), and concludes that the Applicants' proposal satisfies several of the
786 stated purposes of zoning, as set forth in N.J.S.A. 40:55D-2, as the proposal promotes and
787 increases the safety and security on the Applicants' property along a busy stretch of County
788 roadway, as well as providing adequate light, air and open space and an aesthetically pleasing
789 and desirable fence design to match that of the surrounding neighborhood. While fences are
790 permitted at a maximum height of four feet, the subject property's location along a busy stretch
791 of roadway also creates an undue hardship for the Applicants. The need for variance relief is
792 related to the purposes of zoning, as well as other existing conditions affecting the property.
793 The Board concludes that the proposed construction preserves the character of the subject
794 neighborhood given that the proposed fence will match the neighboring properties, and that any
795 negative impact from the proposed improvement is negligible and not a substantial detriment.
796 The positive and negative criteria for variance relief have therefore been met by the Applicants
797 pursuant to N.J.S.A. 40:55D-70c(2). For the reasons stated above, the Board concludes that the
798 granting of the variance relief requested relating to the proposed construction can be done
799 without substantial detriment to the public good and without substantially impairing the intent
800 and purpose of the Master Plan and Zoning Ordinance.

801
802 **NOW, THEREFORE, BE IT RESOLVED** on this 6th day of June, 2022, that the
803 variance relief requested by the Applicants to permit the construction a six foot fence where
804 fences are permitted at a maximum height of four feet on property located at 2 North Brook
805 Drive, Short Hills, New Jersey, granted by this Board at its meeting of May 2, 2022, is
806 memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following
807 conditions:

808
809 1. The Applicants shall plant evergreen trees, four to six feet tall at the time of
810 planting, along the side of the fence closer to the Applicants' home.

811
812 2. The Applicants shall install a wooden fence (natural wood tone) in lieu of the
813 originally proposed white vinyl fence originally proposed.

814
815 3. The Applicants shall apply for a building permit within 365 days from the date of
816 publication of this decision.

817
818 4. The Applicants shall be bound to comply with the representations made before
819 this Board by the Applicants at the public hearing, as set forth in the Board's findings of fact
820 contained in this resolution. The Board has relied upon such representations in adopting its
821 findings of fact and granting the approvals set forth herein. Such representations are hereby made
822 conditions of such approvals.

823
824 5. The Applicants shall remove all debris from the subject premises immediately
825 upon completion of construction and shall maintain the site in reasonable order during
826 construction.

827
828 6. The Applicants shall comply with all other rules, regulations and requirements
829 affecting development in the Township, County and State.

830
831 **CLERK CERTIFICATION**

832
833 I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of
834 Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and
835 exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the
836 Township of Millburn held on the 6th day of June, 2022.

837
838 -----
839
840 **APPLICATIONS**

841 **CAL#3862-22, T-MOBILE NORTHEAST, 150 JFK PARKWAY, SHORT HILLS**

842
843 The matter was carried to July 18, 2022.

844
845
846 **CAL#3876-22, DRIOLA LLC, 150 ESSEX STREET, MILLBURN**

847
848 Craig Ploetner recused and left the meeting room. Steve Togher assumed the role of
849 Board Chair in his absence.

850
851 Anthony Cerciello, attorney for the applicant, stated his appearance. The applicant is
852 seeking approval to provide outdoor dining. The proposal is in violation of:

853
854 609.8 – second principal use on site
855 609.10 – sign variance
856

857 Board Attorney, Robert Simon, alerted Mr. Cerciello of the need for five affirmative
858 votes for the “d” variance being sought, and there are only six voting members. Mr. Cerciello
859 indicated that he was prepared to proceed at this time.
860

861 Richard Keller, P.E., P.P., appeared and was sworn. His credentials were presented and
862 accepted by the Board. Mr. Keller reviewed the Master Plan and Downtown Vision Plan. The
863 restaurant, La Pergola, operates on the site. The restaurant’s hours of operation are 11:30 AM -
864 10:00 PM, Monday through Saturday, and 11:30 AM – 9:00 PM on Sunday. On the busiest days,
865 there are typically 13 employees working at La Pergola. There is no plan to increase the number
866 of employees as part of this application.
867

868 The applicant proposes to utilize 2,585 SF of outdoor patio space, located at 150 Essex
869 Street, for outdoor dining in support of their existing restaurant at 120 Essex Street. This outdoor
870 seating area is limited to 62 seats.
871

872 In early 2020, the applicant sought to provide outdoor dining, since indoor dining was not
873 viable due to the COVID-19 pandemic. The restaurant has limited frontage along Essex Street,
874 and is not in proximity to Millburn Avenue, where public space for restaurants was made
875 available. The applicant saw the potential to create a safe outdoor dining space and entered into a
876 lease agreement with the owner of the subject lot to renovate the existing garden area for the
877 outdoor dining of their restaurant patrons.
878

879 Mr. Keller spoke to the variances being sought. He stated that the site is particularly
880 suited for the proposed outdoor dining given its proximity to the restaurant, the downtown
881 parking deck, and the train station. This is not intended to be supplemental seating, as the kitchen
882 can only handle the 80 seats inside the establishment.
883

884 Mr. Keller believes that this applications causes no detriment to the public good or the
885 intent and purpose of the Master Plan and Zoning Ordinance. The space was an underutilized,
886 barren terrace that was often populated by transient persons seeking to be off the surrounding
887 streets. The applicant has revitalized the area and created a meticulously maintained outdoor
888 dining area. It has become a cherished space within the community and has provided an aesthetic
889 improvement to the property.
890

891 Wolfgang Tsoutsouris asked if this variance would attach to the property. Rob Simon
892 stated that the variance would in fact run with the land.
893

894 Chandru Harjani asked if the owners of 120 Essex Street and 150 Essex Street are the
895 same persons. Anthony Cerciello indicated that they are two different owners.
896

897 Jyoti Sharma asked if the applicant will be increasing the restaurant's capacity. Mr.
898 Keller stated that the restaurant will continue taking reservations for in and out, but will not
899 exceed 80 seats in capacity. Jyoti Sharma also asked if there will be additional lighting. Mr.
900 Keller indicated that there will be small holiday lights on the trees, but no other additional
901 lighting.

902
903 Chandru Harjani asked how parking will be managed. Mr. Keller stated that there will be
904 no increase to patronage. Therefore, this application does not require a parking variance.

905
906 Jafar Tabib, 319 & 327 Millburn Avenue, Millburn, appeared and was sworn. He
907 objected to the applicant's request. Mr. Tabib fears he will lose access to his rear door which is a
908 fire exit. This will have a negative impact on future expansion of his building.

909
910 Donald Richards, 93 Wingfoot Drive, Livingston, appeared and was sworn. Mr. Richards
911 spoke to the character of the applicant and his restaurant. He stated that they have gone to great
912 lengths to beautify the outdoor area.

913
914 Heather Janquine, 201 Sagamore Road, Millburn, appeared and was sworn. She stated
915 that she is the Director of the Millburn Short Hills Chamber of Commerce. She stated that La
916 Pergola has been an important part of the community and emphasized how much the
917 establishment has revitalized the site.

918
919 Mary Joreich, 14 Talbot Court, Short Hills, appeared and was sworn. Ms. Joreich
920 believes the applicant has beautified the site. She feels the garden area has been a great benefit to
921 the community. She does not agree with the objections voiced by some community members.

922
923 Belle Bennett Cole, 156 Vintage Lane, Coral Gables, Florida, appeared and was sworn.
924 Ms. Bennett stated that she is the property owner of the subject site and the building was built in
925 1985. She believes the tenant maintains a beautiful restaurant. Ms. Bennett claims the
926 neighboring property owner does not maintain their property, which has resulted in unwanted
927 odor and vermin.

928
929 Anthony Cerciello summarized and respectfully requested a favorable outcome by this
930 Board. Steve Togher highlighted that the terms of prior approval will apply here. Rob Simon
931 reiterated that the use variance will require five affirmative votes. The applicant must
932 demonstrate special reasons and the proposed use must promote the general welfare while not
933 substantially impairing the zone plan/zoning ordinance.

934
935 Wolfgang Tsoutsouris is concerned with the easement area and the specified use. He felt
936 it is a great use of the space but would like the use, if granted, be specific as to the language.
937 Ashley Avigdor supported the variance for signs. She feels their sizing was adequate and
938 improves the surrounding area. Amy Lawrence mentioned that the space was created during the
939 COVID-19 pandemic and that this increased the number of customers wanting to dine outside.
940 She believes this would be an asset to the downtown. Chandru Harjani also supports this
941 application. He agrees that outdoor seating is important. He also indicated that there are no

942 single-family dwellings in the area that would be negatively impacted by the proposed use. Jyoti
943 Sharma also supports this application.

944

945 Upon a motion made by Chandru Harjani, a second by Amy Lawrence, and with a roll-
946 call vote as follows:

947

948 Amy Lawrence – yes

949 Jyoti Sharma – yes

950 Steve Togher – yes

951 Wolfgang Tsoutsouris – yes

952 Chandru Harjani – yes

953 Ashley Avigdor – yes

954

955 Cal#3876-22, Driola LLC, 150 Essex Street, Millburn, “c” sign variance relief was

956 **APPROVED.**

957

958 Upon a motion made by Wolfgang Tsoutsouris, a second by Amy Lawrence, and with a
959 roll-call vote as follows:

960

961 Amy Lawrence – yes

962 Jyoti Sharma – yes

963 Steve Togher – yes

964 Wolfgang Tsoutsouris – yes

965 Chandru Harjani – yes

966 Ashley Avigdor – yes

967

968 Cal#3876-22, Driola LLC, 150 Essex Street, Millburn, “d” use variance relief was **APPROVED.**

969

970 Craig Ploetner returned to the meeting room and resumed as the Board Chair.

971

972 **CAL#3867-22, KAPIL DHINGRA, 95 FALMOUTH STREET, SHORT HILLS**

973

974 Danial Dubinett, architect, and Kapil Ruchika, appeared and were sworn. Mr. Dubinett’s
975 credentials were presented and accepted by the Board. The applicant proposes a one-story
976 addition. Proposal is in violation of:

977

978 606.2e1d – Front yard setback

979 606.2e3d – garage facing/opening onto the public street

980

981 Entered as Exhibit A-1: 4 slides

982

983 The subject property is a corner lot with irregular lot lines. The existing garage is non-
984 conforming as it faces the front. The garage is proposed to be extended 7’, which will require
985 variance relief. The expansion also results in a small triangular area that encroaches into the

986 required front yard setback. The proposed expansion will have no negative impact on the zone
987 plan or surrounding properties.

988
989 Martin Woros, 52 Slayton Drive, asked if storm water management will be addressed as
990 part of the application. Dan Dubinett stated that the Engineering Department will require that
991 adequate storm water management be addressed.

992
993 Steve Togher feels that this was not an aggressive application and agrees that it would
994 have no negative impacts on the neighborhood. Amy Lawrence indicated the lot's irregular size
995 and configuration are hardships for the applicant. Craig Ploetner feels this application was a
996 reasonable request.

997
998 Upon a motion made by Steve Togher, seconded by Wolfgang Tsoutsouris, and with a
999 roll-call vote as follows:

- 1000
- 1001 Amy Lawrence – yes
- 1002 Jyoti Sharma – yes
- 1003 Joseph Steinberg – yes
- 1004 Steve Togher – yes
- 1005 Wolfgang Tsoutsouris – yes
- 1006 Chandru Harjani – yes
- 1007 Craig Ploetner – yes
- 1008

1009 Cal#3867-22, Kapil Dhingra, 95 Falmouth Street, Short Hills, was **APPROVED**.

1010
1011 **CAL#3870-22, DEBJIT & INDRANI BANERJEE, 100 CANOE BROOK ROAD, SHORT**
1012 **HILLS**

1013
1014 Tim Klesse, Architect, and Debjit Banerjee, appeared and were sworn. Mr. Klesse's
1015 credentials were presented and accepted by the Board. The applicant proposes to construct a one-
1016 story rear addition, deck and a small second floor addition and portico. Proposal is in violation
1017 of:

- 1018 606.2e2a – building coverage
- 1019 606.2e1f – combined side yard

1020
1021 Entered as Exhibit A-1: presentation of aerial photos

1022
1023 The building coverage of the existing structure is 13.5% (1,980 SF). The applicant is
1024 proposing a building coverage of 19.8%, where up 18% is permitted. The proposal is over by
1025 270 SF, which is about the size of the new bedroom.

1026
1027 Combined side yard setback variance relief is also required. The lot is 22' wider than
1028 required in the zone, which results in a larger combined side yard setback requirement. The
1029 applicant would be agreeable to planting 15 green giants along the left side property line and also
1030 along the rear property line.

1031
1032 Amy Lawrence indicated that the combined side yard setback is an existing non-
1033 conforming element of the site, which she understands is a hardship. However, she is concerned
1034 with the building coverage variance request.

1035
1036 Craig Ploetner stated that because this is an oversized lot, some creative engineering
1037 could propose a conforming coverage. Amy Lawrence agreed with this point. Steve Togher felt
1038 this house seems to be out of character for the neighborhood. Wolfgang Tsoutsouris felt this site
1039 has no significant hardship.

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1041 Joseph Steinberg disagreed with some of the comments made by Board members. He
1042 believes the overall building coverage is fairly small and that the proposal has great merit. Mr.
1043 Steinberg suggested that the applicant reposition the driveway away from the neighbor.

1044
1045 Tim Klesse emphasized that the applicant really wants to add a bedroom. They would
1046 agree to reduce the building coverage relief to 150 SF. The applicant amended their request to a
1047 1% variance (125 SF). Board members appreciated the reduction to requested building coverage.

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1049 Upon a motion made by Joseph Steinberg, seconded by Chandru Harjani, and with a roll-
1050 call vote as follows:

- 1051
1052 Amy Lawrence – yes
1053 Jyoti Sharma – yes
1054 Joseph Steinberg – yes
1055 Steve Togher – no
1056 Wolfgang Tsoutsouris – yes
1057 Chandru Harjani – yes
1058 Craig Ploetner – no

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1060 Cal#3870-22, Debjit & Indrani Banerjee, 100 Canoe Brook Road, building coverage variance
1061 relief was **APPROVED**.

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1063 Upon a motion made by Joseph Steinberg, seconded by Amy Lawrence, and with a roll-
1064 call vote as follows:

- 1065
1066 Amy Lawrence – yes
1067 Jyoti Sharma – yes
1068 Joseph Steinberg – yes
1069 Steve Togher – no
1070 Wolfgang Tsoutsouris – yes
1071 Chandru Harjani – yes
1072 Craig Ploetner – yes

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1074 Cal#3870-22, Debjit & Indrani Banerjee, 100 Canoe Brook Road, combined side yard setback
1075 variance relief was **APPROVED**.

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CAL#3872-22, THOMAS & ANN MCCARTHY, 6 RIVER LANE, MILLBURN

Christine Miseo, Architect, P.P., and Annie & Thomas McCarthy, appeared and were sworn. Applicants would like to construct an addition to the dwelling. Proposal is in violation of:

- 606.2e1e1b – side yard setback over 18’
- 606.2e1f – combined side yard
- 606.2e2d – floor area ratio
- 606.2e1a – rear yard unoccupied
- 606.2e1d – front yard setback

Christine Miseo’s credentials were presented and accepted by the Board. She gave a brief presentation of the applicant’s proposal.

Entered as Exhibit A-1: five photos

The applicant’s proposal includes a two-story addition to the rear of the dwelling to accommodate a kitchen, mudroom, master suite and a covered porch.

Steve Togher question the requested floor area ratio. Christine Miseo stated that the proposal is not as big as it may seem. Ms. Miseo indicated that this is an undersized lot, with an area of 5,140 SF in a zone where 6,000 SF is the minimum lot size.

Robert Simon stated that a “d” variance requires five affirmative votes. Mr. Simon asked if the site can accommodate problems associated with the deviation.

Steve Togher stated that he has never seen a 17.3% floor area ratio encroachment. He said he understands the needs of the family, but that they perhaps just need a bigger house. Wolfgang Tsoutsouris indicated that this is a very small lot that is typical for this area. He believes the proposal is too much for the lot. Craig Ploetner agrees with other Board members and thought the requests are too excessive.

This matter was carried to July 18, 2022.

CAL#3873-22, GASTON & KRISTEN HAUPERT, 47 CEDAR STREET, MILLBURN

Gaston & Kristen Hauptert, and Siro Prisco Tarquinio, Architect, appeared and were sworn. The applicant would like to alter the roof line of the family room area. Proposal is in violation of:

- 606.2e1e1a – side yard setback
- 606.2e1f – combined side yard setback

1120 Kristen Haupert gave a brief description of the proposal. The existing family room has a
1121 roof pitch of 2.5 on 12. They are proposing to alter that to 8 on 12. The Historic Preservation
1122 Committee has reviewed the project and granted their approval.
1123

1124 Craig Ploetner feels this is a thoughtful proposal. The rest of the Board also supports this
1125 application.
1126

1127 Upon a motion made by Steve Togher, seconded by Amy Lawrence, and with a roll-call
1128 vote as follows:
1129

1130 Amy Lawrence – yes
1131 Jyoti Sharma – yes
1132 Joseph Steinberg – yes
1133 Steve Togher – yes
1134 Wolfgang Tsoutsouris – yes
1135 Chandru Harjani – yes
1136 Craig Ploetner – yes
1137

1138 Cal#3873-22, Gaston & Kristen Haupert, 47 Cedar Street, was **APPROVED**.
1139

1140 **BUSINESS**
1141

1142 There were no members of the public who wished to speak on non-agenda items.
1143

1144 **ADJOURNMENT**

1145 A motion to adjourn was made by Steve Togher, seconded by Joseph Steinberg, and
1146 carried with a unanimous voice vote. (11:10 PM)
1147

1148 Eileen Davitt
1149 Board Secretary

1150 Motion:
1151 Second:
1152 Date Adopted: