

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
January 10, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 10, 2022** at 7:00 PM via Zoom webinar.

Board Attorney, Robert Simon, administered the oath of office to Amy Lawrence & Chandru Harjani.

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

The following members were present for the meeting:

Jessica Glatt  
Chandru Harjani  
Amy Lawrence  
Craig Ploetner  
Jyoti Sharma  
Joseph Steinberg – arrived at 7:15 PM  
Steve Togher  
Wolfgang Tsoutsouris

Also present:

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

**ORGANIZATION OF THE BOARD**

Eileen Davitt asked for a nomination for Chairman of the Zoning Board.

A motion to nominate Craig Ploetner for Chairman was made by Jessica Glatt, seconded by Steve Togher, and carried with a roll-call vote as follows:

Jessica Glatt – yes  
Chandru Harjani – yes  
Amy Lawrence – yes  
Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes

The meeting was turned over to Chairman Craig Ploetner who made a motion to nominate Jessica Glatt for Vice Chairwoman. A second was made by Jyoti Sharma and carried with a roll-call vote as follows:

Chandru Harjani – yes  
Amy Lawrence – yes  
Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Craig Ploetner – yes

A motion to appoint Robert Simon as Board Attorney was made by Craig Ploetner, seconded by Jessica Glatt, and carried with a roll-call vote as follows:

Amy Lawrence – yes  
Jyoti Sharma – yes  
Joseph Steinberg – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

A motion to appoint Eileen Davitt as Board Secretary was made by Craig Ploetner, seconded by Steve Togher, and carried with a roll-call vote as follows:

Amy Lawrence – yes  
Jyoti Sharma – yes  
Joseph Steinberg – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

\*Joseph Steinberg arrived at this time and the oath of office was administered to him by Board Attorney, Rob Simon.

**ANNUAL NOTICE**

Upon a motion made by Craig Ploetner, seconded by Jessica Glatt, and with a unanimous roll-call vote, the 2022/23 annual notice was adopted.

**APPROVAL OF MINUTES**

A motion to approve the minutes of October 27, 2021 was made by Joseph Steinberg, seconded by Amy Lawrence, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3835-21, Eden Hong Cai, 14 Claremont Drive, Short Hills**

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

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

the following memorializing resolution was adopted:

**EDEN CAI  
BLOCK 1804, LOT 16**

**CAL. NO. 3835-21  
JANUARY 10, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of variance relief requested by the Applicant, Eden Cai (hereinafter the “Applicant”), in Calendar No. 3835-21 for permission to maintain a 744 square foot paver patio located at the rear of the residence on property located at 14 Claremont Drive, Short Hills, New Jersey, known and designated as Lot 16, Block 1804, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on December 6, 2021, as to Calendar No. 3835-21 for permission to maintain a 744 square foot paver patio located at the rear of the residence on property located at 14 Claremont Drive, Short Hills, New Jersey, known and designated as Lot 16, 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. At the December 6, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel and provided sworn testimony in support of the application. There was no public opposition to the application.
2. The Applicant is the owner of the subject property, which is located in the Township’s R-6 Zone District (the “R-6 Zone”). The Applicant previously received permission from the Township to construct a 12 foot by 16 foot (192 square feet) paver patio in the rear of the subject property. However, upon inspection, it was discovered that the Applicant installed a

much larger, 744 square foot paver patio. The Applicant seeks to maintain the existing size and location of the 744 square foot paver patio.

3. The subject property contains a single-family residence. The proposed application would result in a 3.59 foot accessory structure side yard setback, where 12 feet is the minimum required accessory structure side yard setback; a 5.95 foot accessory structure rear yard setback, where 12 feet is the minimum required rear yard accessory structure setback; and a 36.14% accessory use coverage, where 20% is the maximum allowable accessory use coverage permitted in the R-6 Zone. Therefore, variance relief is required.

4. The Applicant desires to maintain an existing 744 square foot paver patio in the rear of the subject property. The Applicant received prior approval to construct a 12 foot by 16 foot paver patio. However, it was discovered that the patio installed by the Applicant exceeded the approved and permitted size and was installed in a location that violates the Township Zoning Ordinance.

5. The Applicant testified that the paver patio was screened from street view by existing plantings and landscaping. The Applicant stated that the patio was used by neighborhood children for recreation, and that the subject property was enclosed by an existing fence. The Applicant also stated that the subject property was lower in elevation than the neighboring properties. The Applicant confirmed that the patio installed was 744 square feet and that the Applicant only received approval for a 192 square foot patio. The Applicant was willing to install additional stormwater management utilities (to compensate for the difference in lot coverage between 192 square feet and 744 square feet) and apply for a grading permit as conditions if the application received Board approval. The Applicant concluded by stating that the patio was good for the neighborhood and for the children that use the patio.

6. Amit Mahale, 16 Claremont Drive, Short Hills, testified in support of the application and stated that although there was some water flow on their property, it had not increased since the Applicant installed the patio.

7. Sahana Rao, 22 Canterbury Lane, Short Hills, testified in support of the application and stated that children used to play in the street but now play at the subject property instead.

8. Jianmin Zou, 15 Claremont Drive, Short Hills, testified in support of the application and stated that the patio benefits the neighborhood children.

9. June Wang, 29 Wellington Avenue, Short Hills, testified in support of the application and stated that the lawn on the subject property is not level and easier for children to trip, and that the patio provides a safer playing surface.

10. Arthur Housman, 12 Claremont Drive, Short Hills, testified that the Applicant informed Mr. Housman that approval for the patio installation at its current size of 744 square

feet had been received from the Township, and that Mr. Housman planted trees on his property to provide additional screening of the patio area on the Applicant's property.

11. N.J.S.A. 40:55D-70c(1) states:

Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

12. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.” See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

13. The Board finds that the Applicant has not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) and concludes that it is not appropriate to grant the variance relief requested by the Applicant to permit the paver patio in violation of the Township Zoning Ordinance. The subject property is neither exceptionally narrow, shallow, nor shaped in a way that the application of the Township Zoning Ordinance would result in an undue hardship upon the Applicant. There are no exceptional topographical conditions or physical features that uniquely affect the subject property. There are no extraordinary and exceptional situations that uniquely affect the subject property. The need for variance relief is related to the size, scope, and location of the construction itself, not the subject property, and does not satisfy the “positive criteria” factors enumerated in N.J.S.A. 40:55D-70c(1). The Applicant has not satisfied her burden of proving that the size and location of the construction is necessary or that the Applicant will suffer a hardship if the size or location of the construction is changed. The Applicant failed to present any testimony addressing the positive or negative criteria required to grant the requested variance relief. The Board's determination is supported by the lack of testimony that the Applicant made any attempt to comply with the previous Township approval received by the Applicant which would have avoided noncompliance with the Township Zoning Ordinance. The Applicant also offered no expert testimony in support of her request for variance relief. The Board further questioned the Applicant's explanation as to why the paver patio comprises 744 square feet when only a 192 square foot paver patio was approved by the Township.

14. The Board concludes that the negative impact on the surrounding neighbors from maintaining the patio and the contemplated activities to take place on the patio at its current, non-conforming size and location is a substantial detriment to the surrounding properties that

cannot be effectively mitigated by screening or a landscaped buffer. For all the reasons stated above, the Board finds that the Applicant failed to demonstrate that the variance relief requested could be granted without substantially impairing the intent and purpose of the Township's Zoning Ordinance and Master Plan and without causing substantial detriment to the public good. Further, the Board further finds that the Applicant did not present any evidence, legal argument, or proofs to address or satisfy the statutory criteria as required by N.J.S.A. 40:55D-70c(2).

**NOW, THEREFORE, BE IT RESOLVED** on this 10<sup>th</sup> day of January, 2022, that the variance relief requested by the Applicant to maintain a 744 square foot paver patio, resulting in a 3.59 foot accessory structure side yard setback where 12 feet is the minimum required accessory structure side yard setback; a 5.95 foot accessory structure rear yard setback where 12 feet is the minimum required rear yard accessory structure setback; and a 36.14% accessory use coverage, where 20% is the maximum allowable accessory use coverage permitted in the R-6 Zone, for the property located at 14 Claremont Drive, Short Hills, New Jersey, denied by this Board at its meeting of December 6, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 10<sup>th</sup> day of January, 2022.

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**APPLICATIONS**

**CAL#3800-21, CHAI CENTER, 437-439 MILLBURN AVENUE/7 BODWELL TERRACE, MILLBURN**

The matter was carried to February 7, 2022.

**CAL#3833-21, QING ZHAO, 15 MEADOWBROOK ROAD, SHORT HILLS**

The matter was carried to February 7, 2022.

**CAL#3834-21, JACQUELINE STEIN, 37 KEAN ROAD, SHORT HILLS**

The matter was carried to February 7, 2022.

**CAL#3821-21, SYDRA & GRANT MILLER, 60 STEWART ROAD, SHORT HILLS**

The application was withdrawn by the applicant.

**CAL#3837-21, PRAVEEN & SWETHA KANDULA, 44 CANOE BROOK ROAD, SHORT HILLS**

\*Joseph Steinberg recused and left the meeting.

\*Amy Lawrence and Jyoti Sharma, absent from the December 20, 2021 testimony on the matter, stated that they watched the December 20, 2021 video of the meeting and are eligible to vote on the matter.

Douglas Miller, Architect, Praveen & Swetha Kandula, appeared and remain sworn. The applicant stated that they took the feedback they received from the Board at the December 20, 2021 meeting and revised their plans. They feel their revisions have taken into account the concerns expressed by the Board and neighboring residents.

Douglas Miller spoke to the changes that the applicants have made to the plans. The proposed roof-top deck has been removed from the plans in order to be respectful of the privacy concerns that were voiced by several neighbors. The dwelling was pushed further back in order to reduce the requested front yard setback variance to 61.31 feet, where the original request was for 66.28 feet. They have removed the proposed parking area and have opted to install a circular driveway.

Entered as A-2: photoboard (1/10/22)

Mr. Miller indicated that a dwelling with fully conforming setbacks would result in a very small dwelling. The shape of the lot limits the design that can be built without requiring variance relief. The proposal submitted is scale-appropriate for the neighborhood.

Upon being sworn in, the following residents offered positive feedback and voiced support of the application:

Varun Rastogi, 57 Thackeray Drive, Short Hills; Rohit Mittal, 21 Fielding Road, Short Hills; Mohan Akula, 131 Silver Spring Road, Short Hills; Jacqueline Jones, 50 Canoe Brook Road, Short Hills; Kiran Bathula, 87 Great Hills Road, Short Hills; Deepa Penulbarthi, 487 Long Hill Drive, Short Hills; Karthik Paladugu, 7 Lawrence Drive, Short Hills; Manish Banduri, 21 Wordsworth Road, Short Hills; Brian Nielson, 45 Wordsworth Road, Short Hills; Sumit Chahbra, 56 Browning Road, Short Hills

Jeffrey Waters, 35 Canoe Brook Road, appeared and was sworn. He stated that the applicants made no compelling reason to be granted variance relief. He indicated that he was not in favor of the proposal.

Several Board members expressed concern with the proposed optional balcony on the 2<sup>nd</sup> floor. There was concern with a potential privacy issue. Other Board members felt the balcony posed no concern. The applicant's indicated that they would like to retain the option to install a small balcony off the bedroom area.

Overall, Board members felt the changes made to the plans addressed the concerns expressed by the Board and neighboring residents. They felt that the shape of the lot created a hardship that made it difficult for any construction to take place without the need for variance relief.

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

Chandru Harjani – yes  
Amy Lawrence – yes  
Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#3837-21, Praveen & Swetha Kandula, 44 Canoe Brook Road, was **APPROVED**.

\*Joe Steinberg returned to the meeting.

**CAL#3842-21, DAVID & BARRIE LEIBOWITZ, 38 QUAKER ROAD, SHORT HILLS**

David & Barrie Leibowitz, and Daniel Angel Roma, Architect, appeared and were sworn. Daniel Roma's credentials were presented and accepted by the Board. The applicants would like to construct an addition to the rear of the dwelling. Proposal is in violation of:

606.2e1f – Combined side yard setback

Entered as A-1: series of 2 photos

Mr. Roma stated that the applicants are proposing a small addition to the dwelling that will allow them to extend their kitchen area and add an office space on the 1<sup>st</sup> floor. A master bedroom is proposed on the 2<sup>nd</sup> floor.

The irregularly shaped lot with the tapering side property line results in the need for variance relief.

Entered as A-2: photoboard of 6 photos

Entered as A-3: google photo

Jessica Glatt questioned if the roof line of the addition is higher than the existing roof line. Mr. Roma stated that is about 3-1/2 feet higher in order to accommodate a higher 1<sup>st</sup> floor ceiling height.

Katherine Roberts, 34 Quaker Road, appeared and was sworn. She stated that she supports the application and feels it will improve the area.

Overall, Board members felt the irregular lot configuration caused a hardship and felt the addition was appropriate in size and scale. There was concern expressed with the proposed height of the addition and the roof line issues. The applicants indicated that they needed the additional 1<sup>st</sup> floor height.

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

Amy Lawrence – yes  
Jyoti Sharma – yes  
Joseph Steinberg – yes  
Steve Togher – no  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#3842-21, David & Barrie Leibowitz, 38 Quaker Road, was **APPROVED**.

\* Amy Lawrence recused and left the meeting.

**CAL#3843-21, ALLYSON & STEVEN BITTERMAN, 20 HAWTHORNE ROAD, SHORT HILLS**

Allyson & Steven Bitterman, and Danial Dubinett, Architect, appeared and were sworn. Danial Dubinett's credentials were presented and accepted by the Board. The applicants would like to construct an addition. Proposal is in violation of:

606.2e2d – Floor area ratio

Entered as A-1: 4 slides

Mr. Dubinett gave a brief description of the applicants' proposal. The applicants would like to construct an addition to add a master bathroom and walk-in closet. The existing floor area ratio is 37.3% and the addition will result in a floor area ratio of 40% (280 SF over the allowable).

Mr. Dubinett stated that the proposal will have no negative impact on the streetscape or adjoining properties.

Overall, Board members felt the addition was a modest in size and there was a large distance from the addition to the neighbor's house.

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

Chandru Harjani – yes  
Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#3843-21, Allyson & Steven Bitterman, 20 Hawthorne Road, was **APPROVED**.

\*Amy Lawrence returned to the meeting.

\* Wolfgang Tsoutsouris recused and left the meeting.

**CAL#3846-21, ALEXY GASHKEVICH, 86 LOCUST AVENUE, MILLBURN**

Alexy Gashkevich appeared and was sworn. He would like to construct a portico and a small 4 foot extension on the 2<sup>nd</sup> floor. Proposal is in violation of:

606.2e1d – Front yard setback

Mr. Gashkevich stated that the existing front yard setback is non-conforming. He is proposing a 2<sup>nd</sup> floor addition that will have a front yard setback of 34.5 feet, where 40 feet is the ordinance requirement. The proposed portico will be an aesthetic improvement and will afford them some protection from weather conditions.

Overall, Board members felt the addition was very modest and expressed their support.

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

Chandru Harjani – yes  
Amy Lawrence – yes  
Jyoti Sharma – yes  
Joseph Steinberg – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#384-21, Alexy Gashkevich, 86 Locust Avenue, 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 Steve Togher, seconded by Wolfgang Tsoutsouris, and carried with a unanimous voice vote. (9:40 PM)

Eileen Davitt  
Board Secretary

Motion: ST  
Second: CH  
Date Adopted: 3/7/22