

Township of Millburn
Minutes of the Zoning Board of Adjustment
January 23, 2023

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 23, 2023** at 7:00 PM at Millburn Town Hall.

Chairman Craig Ploetner opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Ashley Avigdor
Chandru Harjani
Amy Lawrence
Gary Rosen
Regina Truitt
Wolfgang Tsoutsouris
Jessica Glatt, Vice Chairperson
Craig Ploetner, Chairperson

Also present:

Robert Simon, Board Attorney
Eileen Davitt, Zoning Officer/Board Secretary

APPROVAL OF MINUTES

A motion to approve the minutes of January 9, 2023 was made by Wolfgang Tsoutsouris, seconded by Jessica Glatt, and carried with a unanimous voice vote.

BUSINESS

A motion to approve the resolution of the Zoning Board for the professional services of Robert Simon, memorializing the action taken by the Board at its 1/9/23 reorganization meeting was made by Jessica Glatt, seconded by Gary Rosen, and carried with a unanimous voice vote.

Cal#3807-21, Robert & Dana Iomazzo, 75 Wellington Avenue, Short Hills

Request for extension of variance relief

The Board briefly discussed the applicants' request for a 1-year extension of their variance relief, granted by resolution dated August 16, 2021. A motion to grant the applicants' request for a 1-year extension of variance relief, to expire August 19, 2022, was made by Jessica Glatt, seconded by Ashley Avigdor, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3892-22, Guido & Miriam Subotovsky, 356 Hartshorn Drive, Short Hills

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

Amy Lawrence – yes
Wolfgang Tsoutsouris – yes
Craig Ploetner – yes

the following memorializing resolution was adopted:

**GUIDO & MIRIAM SUBOTOVSKY
BLOCK 3201, LOT 9**

**CAL. NO. 3892-22
JANUARY 23, 2023**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of certain variance relief requested by the Applicants, Guido and Miriam Subotovsky (hereinafter the “Applicants”), in Calendar No. 3892-22, to permit the construction of a cabana and a patio in a rear yard, on property located at 356 Hartshorn Drive, Short Hills, New Jersey, and designated as Lot 9, Block 3201, on the Official Tax Map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on October 17, December 5 and December 19, 2022, as to Calendar No. 3892-22, to permit the construction of a cabana and a patio in a rear yard, on property located at 356 Hartshorn Drive, Short Hills, New Jersey, and designated as Lot 9, Block 3201, on the official 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 October 17, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their Architect, Daniel Dubinett, provided sworn testimony in support of the application.
2. The Applicants are the owner of the subject property, which contains a single-family residence located in the Township’s R-4 Zoning District (the “R-4 Zone”). The Applicants propose to construct a cabana and patio in the rear yard of the subject property to increase the functionality of same.
3. The proposed construction will result in a building coverage of 15.5% (4,650 square feet), when the existing building coverage is 14% (4,196 square feet), which is the maximum building coverage permitted; a lot coverage of 38.9% (11,676 square feet), where the

existing lot coverage is 35% (10,491 square feet), which is the maximum lot coverage permitted; and an accessory structure coverage of 25.3% (3,553 square feet), when the existing maximum accessory structure coverage is 16.8% (2,369 square feet), and where the maximum permitted accessory structure coverage is 25% (2,806 square feet). Therefore, variance relief is required.

4. The Board received and considered the following additional documents submitted by the Applicant in support of the application:

a. Photograph array exhibit, consisting of (4) photographs, taken on or about May, 2022, introduced into evidence as Exhibit A-1, on October 17, 2022;

b. A “marked up” colorized version of the plot plan, introduced into evidence as Exhibit A-2, on October 17, 2022;

c. Photograph array exhibit, consisting of nine (9) photographs, taken on or about October 10, 2022, and a colorized rendering of the proposed cabana, introduced into evidence as Exhibit A-3, on October 17, 2022; and

d. Photograph array exhibit, consisting of three (3) slides, including an architectural rendering, a three-dimensional (3-D) rendering, and photographs of the subject property, introduced into evidence as Exhibit A-4, on December 5, 2022.

5. Mr. Dubinett, the Applicants’ Architect, testified that the proposed construction will result in the need for the three (3) coverage variances identified above. Referencing Exhibit A-1, he testified that the Applicants’ requested variance relief falls under the standards set forth Subsection 70(c)1 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”), as the subject property sits in a valley (or, in Mr. Dubinett’s terms, an “oasis”), and there will not be any adverse impacts on light, air and open space.

6. Referencing Exhibit A-2, Mr. Dubinett testified that the subject property is already heavily landscaped; the pool has already been installed; and the Applicants’ proposed cabana will contain a bathroom along with small changing and storage areas.

7. Referencing Exhibit A-3, Mr. Dubinett testified that the Applicants’ proposal is approximately 145 feet from the closest neighbor, with many mature trees and a significant elevation change between the two (2) properties.

8. Following the introduction of the Exhibits A-1, A-2 and A-3, Mr. Dubinett testified to the following:

a. The Applicants’ proposal will be relatively invisible to neighbors, thus causing no adverse impacts to same;

b. The Applicants have planted additional evergreen trees along the fence line for additional screening;

c. The Applicants reached out to its neighbors, all of whom allegedly did not have any objections to the proposal;

d. Water and sewer lines will be necessary for the installation of the bathroom;

e. No cooking will take place in the cabana's "bar" area;

f. The cabana will not be used as a guest house;

g. The subject property is 50% over the minimum required lot size;

h. The subject property includes some unique site conditions, including a swale; and

i. On-site stormwater (including that from the additional coverage) can be appropriately managed by the existing seepage pits on the subject property, even with the proposed additional lot coverage.

9. Returning to the Board on December 5, 2022, Mr. Subotovsky testified that the application's proposal has been revised to eliminate the need for the previously requested variance for excessive accessory structure coverage.

10. Referencing Exhibit A-4, Mr. Subotovsky testified that the proposed cabana has been reduced by approximately 83 square feet, along with a reduction in the square footage associated with the patio and walking paths areas. He testified further that not only has the requested accessory structure coverage variance been eliminated, but the proposed lot coverage has been reduced by over 434 square feet (4.1%), reducing the proposed lot coverage to 36.4%, where the maximum permitted lot coverage in the R-4 Zone is 35%. He testified further that, in addition to the modifications listed above, the cabana's building height has also been slightly reduced.

11. Mr. Subotovsky testified that the Applicants' requested variance relief will also be sought pursuant the standards set forth in Subsection 70(c)2 of the MLUL, stating that the benefits of the Applicants' proposal outweigh any of its detriments. He testified that there will not be any detriments, as neighboring properties are not visible from the rear yard of the subject property, and that none of the neighboring property owners expressed any objections to the proposal as presented to them by the Applicants.

12. Returning to the Board on December 19, 2022, Mr. Subotovsky testified that the proposal has been further revised to require a lot coverage of 36.2%, a reduction of 362 square feet, where the maximum permitted lot coverage is 35%, a deviation of 3.4%; and a building coverage of 14.9%, a reduction of 298 square feet, where the maximum permitted building coverage permitted is 14%.

13. 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[.]

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

15. 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” (the so-called “negative criteria”).

16. The Board finds that the Applicants have not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested variance relief to permit the proposed cabana and patio in the rear yard of the subject property. The Board found that there were not enough proofs provided to the Board by the Applicants that the subject property is different in size or shape from other properties in the neighborhood or the R-4 Zone; no extraordinary topographic conditions were presented to the Board that distinguish the property from other properties in the neighborhood or in the R-4 zone; and no competent evidence was provided by the Applicants to demonstrate that the style or layout of the existing single family home on the property provides a hardship in this matter, as the subject property has sufficient lot area, lot width and lot depth for the R-4 zone. The Applicants also failed to identify other properties in the R-4 zone that received similar lot coverage and building coverage variance relief in connection with the installation of an accessory use or structure similar in size to that of the proposed cabana. The Board finds further that the proposal continues to be too large for the “overdeveloped” property, which will be out of character to the neighborhood. Further, no substantiated testimony was provided by the Applicants, who have the burden of proof as to the variance relief requested, to demonstrate that there would be no substantial impairment to the intent and the purpose of the zone plan and zoning ordinance of the Township of Millburn.

17. Similarly, the Board finds that the Applicants have also failed to satisfy the criteria for variance relief under N.J.S.A. 40:55D-70c(2), as the Applicants failed to demonstrate that the application constitutes a better zoning alternative for the subject property. The Board finds that the application will only benefit the Applicants, not the surrounding neighborhood, and

that they failed to satisfactorily demonstrate that the application advances any of the purposes of the MLUL, or how the benefits of the deviations for which variance relief was sought would substantially outweigh any detriment. Further, the Board finds that the Applicants' property is overdeveloped as it currently exists and that the application's proposal is still too big for the subject property. The Board finds that the variances triggered by the application would not advance the purposes of the MLUL, do not provide a better zoning opportunity for the property, nor would any potential benefits of the application substantially outweigh its detriments.

18. The development proposed by the application is excessive given the subject property's oversized lot area; does not further the purposes of providing sufficient space for residential use or a desirable visual environment; and any benefits of the proposal fails to substantially outweigh the application's detriments imposed by exceeding the bulk requirements contained in the Township Zoning Ordinance, and as otherwise set forth above. The positive and negative criteria for variance relief have therefore not been met by the Applicant pursuant to N.J.S.A. 40:55D-70c. For all the reasons stated above, the Board concludes that the variance relief requested relating to the proposed construction cannot be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 23rd day of January, 2023, that the variance relief requested by the Applicants, denied by this Board at its meeting of December 19, 2022, is hereby 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 23rd day of January, 2023.

Cal#3905-22, New Cingular Wireless (AT&T), 30 Bleeker Street, Millburn

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

Amy Lawrence – yes
Wolfgang Tsoutsouris – yes
Cahndru Harjani – yes
Ashley Avigdor – yes
Jessica Glatt – yes
Craig Ploetner – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, New Cingular Wireless PCS, LLC, a/k/a “AT&T” (hereinafter the “Applicant”), in Calendar No. 3905-22, to permit the upgrade of an existing wireless telecommunications facility with the replacement and/or repositioning of nine (9) of the existing twelve (12) wireless telecommunications antennas at a center line of 90 feet on an existing, 100 foot monopole (102 feet to the top of the highest antenna), the installation of new and/or repositioned existing RRRH units on the mount behind the antennas, and other related improvements, on property located at 30 Bleeker Street, Millburn, New Jersey, and designated as Lot 2, Block 1005, on the Official 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 19, 2022 as to Calendar No. 3905-22 to permit the upgrade of an existing wireless telecommunications facility with the replacement and/or repositioning of nine (9) of the existing twelve (12) wireless telecommunications antennas, at a center line of 90 feet, on an existing, 100 foot monopole (102 feet to the top of the highest antenna), the installation of new and/or repositioned existing RRRH units on the mount behind the antennas, and other related improvements, on property located at 30 Bleeker Street, Millburn, New Jersey, and designated as Lot 2, Block 1005, on the Official 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 19, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared with Judith Fairweather, Esq., the Applicant’s Attorney, Peter Smith, P.E., the Applicant’s Professional Engineer, and Andrew Peterson, the Applicant’s Radio Frequency Engineer, all of whom provided sworn testimony in support of the application. There was no public opposition to the application.

2. Ms. Fairweather began the hearing by explaining to the Board that the Applicant is the owner of a certain wireless telecommunications facility and associated equipment located on the subject property. She stated that the Applicant seeks to upgrade an existing wireless telecommunications facility with the replacement and/or repositioning of nine (9) of the existing twelve (12) wireless telecommunications antennas, at a center line of 90 feet, on an existing, 100 foot monopole (102 feet to the top of the highest antenna), the installation of new and/or repositioned existing RRRH units on the mount behind the antennas, and other related improvements, on the subject property. Ms. Fairweather stated that the Applicant is seeking “d” variance relief as (1) wireless communications antennas are not a permitted use in the Zone; and

(2) the wireless telecommunications antennas will constitute a second principal use on the subject property.

3. Mr. Smith, the Applicant's Professional Engineer, testified that the subject property currently contains an existing, 100 foot wireless telecommunications monopole with twelve (12) wireless telecommunications antennas mounted on same, along with a wireless telecommunications equipment cabinet in the existing ground level equipment compound. He testified further that the Applicant's wireless communications facility on the subject property will operate in the same manner as that is existing.

4. Mr. Smith testified that there will not be any change to the height or width of the existing structure. He testified that the Applicant will be replacing six (6) of the Applicant's wireless telecommunications antennas with nine (9) new antennas, each of which will be shorter than the antennas that are being replaced.

5. Mr. Smith testified that, while the Applicant does not propose to add any new mounts, it will be adding a few radio heads. He testified that, while the Applicant's proposal will be nearly indistinguishable from the existing wireless telecommunications facility, it will be adding new frequencies, including a "c" band frequency, a 5G frequency in the "c" band, and a frequency band at 3,500 MHz, with each antenna representing a separate band.

6. Mr. Smith testified that the Applicant is a federally licensed wireless telecommunications carrier and therefore, the Applicant's proposal promotes the general welfare. He testified that while two (2) primary uses are not permitted on the subject property, the proposed second use, while already existing, will not generate any additional (if any at all) traffic, parking or similar problems associated with a second principal use since the facility will be unmanned and only serviced occasionally.

7. Mr. Smith testified further that to satisfy the remainder of the positive criteria, the Applicant must demonstrate the particular suitability of this site. He testified that the site is particularly suitable because (i) the wireless telecommunications tower already exists in a location and was previously deemed appropriate for the use without the need for a new tower; (ii) the Applicant is replacing six (6) existing antennas with a mere nine (9) new antennas, which is not a substantial difference; and (iii) the existing tower and subject property.

8. As for the negative criteria, Mr. Smith testified that the Applicant's proposal will not be a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. He testified that the proposal will not produce any noise, vibration, smoke, dust, odors, heat, or glare, and it will not require any municipal services such as water, sewer, police or fire, with infrequent maintenance to same. Mr. Smith testified that the proposal will not have any adverse impacts on adjoining properties, and, in fact, the proposed upgrades to the facility will provide improved wireless telecommunication service in the area, which will enhance safety by allowing people to report accidents and crimes, and provide an enhanced ability for people to communicate on both personal and business matters.

He testified that, on balance, the public benefit far outweighs any potential detrimental effect of the Applicant's proposal.

9. Next, Mr. Peterson, the Applicant's Radio Frequency Engineer, testified that he has analyzed the coverage and capacity needs in the area of the subject property, as Applicant currently holds a Federal Communications Commission ("FCC") license to operate wireless telecommunications facilities, and the FCC requires sufficient and reliable coverage by its licensed wireless telecommunications providers. He testified that the purpose of the Application is to upgrade the existing wireless telecommunications facility to relieve any significant gaps in service in AT&T's wireless network caused by insufficient coverage and capacity. He testified that the operation of the facility will enable the Applicant to provide reliable wireless service to certain residences and businesses in Short Hills, and to remedy any service gap in the area and support the increased demand for service. Mr. Peterson testified that after performing an independent radio frequency analysis, he concluded that the facility's upgrades, along with the existing monopole height, is essential to AT&T's network design for Millburn Township.

10. Finally, Mr. Peterson testified that the wireless telecommunications facility will operate within the permissible exposure limits under both Federal and New Jersey State Law, thus creating a safe environment for the surrounding community.

11. N.J.S.A. 40:55D-70d(1) allows for departures from zoning regulations to permit a use or principal structure in a district restricted against such use or principal structure in certain circumstances involving "non-inherently beneficial uses" wherein an applicant must demonstrate: (1) that the proposed use promotes the general welfare because the property is particularly suitable for the proposed use; and (2) that the applicant can satisfy its enhanced burden of proof to demonstrate that the granting of the variance relief requested is not inconsistent with the intent and purpose of the municipality's master plan and zoning ordinances. In considering the issue of particular suitability, the applicant must prove: (1) that there will be a gap in service or inadequate existing capacity if the proposed upgrades are not performed; (2) the signal strength level is required to continue to fill possible gaps in service, including an inadequate existing capacity; (3) that the placement of the antennas at the subject location and at the proposed height will improve wireless telecommunications in the service area; and (4) whether the same result could be achieved by placing the wireless telecommunications antennas on some other existing structure, by erecting the facility in a more suitable location, and/or by placing the antennas at a lower height. See *Sica v. Wall Township Board of Adjustment*, 127 N.J. 152 (1992).

12. In addition, while a "d" variance may be warranted by virtue of the applicant proving the positive criteria, the Board may not exercise its power to grant such a variance unless the so-called "negative criteria" has been satisfied, see *Smart SMR v. Fair Lawn Board of Adjustment*, 152 N.J. 309 (1998), whereupon a "d" variance can only be granted if granting same can be done without causing substantial detriment to the public good and substantial impairment of the intent and purpose of the zone plan and zoning ordinance. *Sica*, supra, 127 N.J. at 166.

13. The Smart Court, supra, 152 N.J. at 332, incorporated the four step "balancing" test established in *Sica v. Wall Township Board of Adjustment*, 127 N.J. 152 (1992), so the

Applicant's burden of proof with respect to satisfying the negative criteria for a wireless telecommunications facility is significantly less than with respect to a typical non-inherently beneficial commercial use. There is no "enhanced quality of proof" requirement. Instead, the Board must balance the positive and negative criteria and determine whether, on balance, "d" variance relief can be granted without causing substantial detriment to the public good and substantial impairment of the intent and purpose of the zone plan and zoning ordinance. *Sica*, supra, 127 N.J. at 166. In undertaking this balancing, the Board must follow the following four (4) steps:

a. First Step: First, identify the public interest at stake and make a finding on how compelling the public interest at issue actually is, which would include but not be limited to determining what type of wireless communications system is being proposed and identifying the proposed users and public benefits flowing from the proposed facility. The first step of the *Sica* balancing test requires the Board to explore how compelling the public interest in the proposed use is with the focus being on the actual public benefit flowing from the proposed use;

b. Second Step: Second, identify the detrimental effects that may ensue from the grant of the variance. Some issues may not be considered, however. For example, radiation emissions, if complying with state and federal law, cannot be considered detrimental to the public good. See *Smart*, supra, 152 N.J. at 336; *Cell South v. West Windsor Zoning Board of Adj.*, 172 N.J. 75, 87-88 (2002);

c. Third Step: Third, determine whether any legitimate detrimental effects can be reduced by imposing reasonable conditions on the use, such as, but not limited to, concealing the antennas in a "stealth tower" or otherwise making the tower and equipment cabinet/compound more aesthetically acceptable. See *Smart*, supra, 152 N.J. at 335 (recognizing that antennas can be concealed in "stealth towers" and located on existing structures to blend in with the existing structures); and

d. Fourth Step: Fourth and last, analyze the positive and negative criteria and determine whether, on balance, the "d" variance can be granted without causing substantial detriment to the public good and substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

14. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d(1) for the requested use variance relief, and that it is appropriate to grant this variance relief to permit the proposed installation and/or replacement of the Applicant's wireless telecommunications antennas on the existing monopole located on the subject property and as a second principal use. The application's proposed use promotes the general welfare because the Applicant is a FCC license holder, and the subject property is particularly suitable for the proposed use, as the existing monopole and equipment cabinet area will not require any significant enlargement or modification, and the existing monopole is equipped to handle the additional telecommunications antenna and the placement and/or modification of the Applicant's equipment cabinet will not present any substantial change as the equipment is and will continue to be located within the existing equipment compound, which will benefit Township residents,

all without negatively impacting any nearby residential uses. Additionally, the granting of the use variance relief requested is not inconsistent with the intent and purpose of the Township's Master Plan and Zoning Ordinance, as the Applicant's proposal would further multiple goals of the Township's Master Plan and its stated intent for the CMO Zone. The Board also finds that the Applicant has reconciled the application's proposed use with the Township's continued omission of the proposed use in the CMO Zone by demonstrating that the proposal is beneficial by improving the quality of wireless communications within the Township. Therefore, for the reasons stated above, the use variance relief requested can be granted without any substantial impairment to the Township Zoning Ordinance or Master Plan.

NOW, THEREFORE, BE IT RESOLVED on this 23rd day of January, 2023, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70d(1), to permit the upgrade of existing wireless telecommunications antennas and equipment, which use is not a permitted use in the CMO Zone, for the property located at 30 Bleeker Street, Millburn, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

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

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

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

4. The Applicant shall 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 23rd day of January, 2023.

Cal#3898-22, Kim & Tim Milton, 144 Highland Avenue, Short Hills

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

Amy Lawrence – yes
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes
Jessica Glatt – yes

the following memorializing resolution was adopted:

**KIMBERLEY REICHARD & TIM MILTON
BLOCK 3003, LOT 12**

**CAL. NO. 3898-22
JANUARY 23, 2023**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Kimberley Reichard and Tim Milton (hereinafter the “Applicants”), in Calendar No. 3898-22 to permit the construction of a second story addition over a one-story portion of the existing dwelling, along with roof dormers, an entry door porch at the rear of the dwelling, a small terrace, a pergola and an outdoor fireplace, all on property located at 144 Highland Avenue, Short Hills, New Jersey, and designated as Lot 12, Block 3003, on the Official 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 19, 2022 as to Calendar No. 3898-22 to permit the construction of a second story addition over a one-story portion of the existing dwelling, along with roof dormers, an entry door porch at the rear of the dwelling, a small terrace, a pergola and an outdoor fireplace, all on property located at 144 Highland Avenue, Short Hills, New Jersey, and designated as Lot 12, Block 3003, on the Official 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 19, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their Architect, John James, who provided sworn testimony in support of the application.

2. The Applicants are the owners of the subject property, which is an undersized lot, with road exposure on three (3) sides of the lot and contains a single family residence, located in the Township’s R-3 Zoning District (the “R-3 Zone”). The Applicants propose to construct a

second story addition over a one-story portion of the existing dwelling, along with roof dormers, an entry door porch at the rear of the dwelling, a small terrace, a pergola and an outdoor fireplace. The application's proposed construction intends to make the subject property and existing dwelling more functional by the addition of same.

3. The subject property is an irregularly shaped lot, with roadways on three (3) sides. The proposed construction would result in a side yard setback over 18 feet in height of 8.4 feet, when 7.4 feet is existing, and where the minimum side yard setback over 18 feet in height is 25 feet; a lot coverage of 35.1%, where a maximum lot coverage of 35% is permitted; an accessory use side yard setback of 7.4 feet, where the minimum permitted accessory use side yard setback is 12 feet; and an accessory use, which is only permitted in a rear yard, proposed to be in a front yard on the subject property in the R-3 Zone. Therefore, variance relief is warranted.

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

a. A photo array containing seven (7) photographs and a site plan rendering, introduced into evidence as Exhibit A 1 on December 19, 2022

5. At the December 19, 2022 hearing, John James, the Applicants' architect, testified that the application is for the construction of a second story addition over a one-story portion of the existing dwelling, along with roof dormers, an entry door porch at the rear of the dwelling, a small terrace, a pergola and an outdoor fireplace. Referencing Exhibit A-1, he testified that the subject property is an irregularly shaped lot, which causes the lot width to be narrower in the rear; it is an undersized lot, 25% smaller than the required minimum lot area in the R-3 Zone; and it has three (3) front yard or roadway exposures, with no rear yard, all of which combined, requires four (4) variances for the Applicants' proposal. Mr. James testified further that, notwithstanding the need for variance relief, the Applicants' intend to maintain the existing landscaping on the subject property and the proposed additions to the property are a significant distance from any neighboring residences.

6. Mr. James testified further that the construction of the proposed second floor addition above the existing first floor and within the single story roof structure is the least obtrusive to the adjacent properties, and if the subject property had the required lot area and did not have three front yard exposures, the existing and proposed side yard setbacks would likely be compliant.

7. Finally, Mr. James testified that the Applicants' proposed design scheme was reviewed and approved by the Township's Historic Preservation Commission at its October 6, 2022 meeting.

8. 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[.]

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

10. 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” (the so-called “negative criteria”).

11. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the subject property’s narrow undersized lot area, as well as the aforementioned location of the subject residence and surrounding roads, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the subject property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants. The deviations from the applicable requirements for the R-3 Zone are relatively modest, especially given the hardships imposed by the subject property and lawfully existing structures thereon, which result in practical difficulties and undue hardship to the Applicants.

12. The Board also finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(2) for the requested variance relief. The application advances multiple goals of the Municipal Land Use Law, N.J.S.A. 40:44D-1, et seq. (the “MLUL”), specifically, Subsection -2, goals (c) – to provide adequate light, air and open space; and, (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The Board finds the application’s proposed construction is consistent with the character of the subject neighborhood, while improving overall functionality of the Applicants’ property. The Board finds these goals and objectives are furthered by the application’s proposed construction, which fits within the character of the surrounding neighborhood, that the proposal was tastefully done, and along with the maintenance of the existing landscaping, will provide a significant amount of screening around the subject property.

13. Although the proposed construction requires variance relief to permit a side yard setback over 18 feet in height of 8.4 feet, where the minimum permitted side yard setback over 18 feet in height is 25 feet; a lot coverage of 35.1%, where a maximum lot coverage of 35% is permitted; an accessory use side yard setback of 7.4 feet, where a minimum accessory use side yard setback of 12 feet is permitted; and an accessory use in a front yard, when an accessory use is permitted in a rear yard only in the R-3 Zone, the deviations from the aforementioned requirements are relatively modest. The Board finds that the proposed deviations are modest and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance or the Master Plan, and can be accommodated by the subject property.

14. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The subject property can accommodate the negligible impact of the application's proposed construction. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1) and (2). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 23rd day of January, 2023 that the variance relief requested by the Applicants to construct second story addition over a one-story portion of the existing dwelling, along with roof dormers, an entry door porch at the rear of the dwelling, a small terrace, a pergola and an outdoor fireplace on property located at 144 Highland Avenue, Short Hills, New Jersey, granted by this Board at its meeting of December 19, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

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

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

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

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

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 23rd day of January, 2023.

Cal#3899-22, Sreevishnu Byrakur/Reena Matthews, 5 Chestnut Place, Short Hills

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

- Amy Lawrence – yes
- Wolfgsng Tsoutsouris – yes
- Chandru Harjani – yes
- Jessica GLatt – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**SREEVISHNU BYRAKUR & REENA MATHEWS
BLOCK 2204, LOT 7**

**CAL. NO. 3899-22
JANUARY 23, 2023**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Sreevishnu Byrakur & Reena Mathews (hereinafter the “Applicants”), in Calendar No. 3899-22 to permit the construction of a second floor addition over the garage of the existing dwelling on property located at 5 Chestnut Place, Short Hills, New Jersey, and designated as Lot 7, Block 2204, on the Official 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 19, 2022 as to Calendar No. 3899-22 to permit the construction of a second floor addition over the garage of the existing dwelling on property located at 5 Chestnut Place, Short Hills, New Jersey, and designated as Lot 7, Block 2204, on the Official 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 19, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with the Applicants' Architect, Daniel Dubinett, provided sworn testimony in support of the application.

2. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township's R-3 Historic Zoning District (the "R-3 Zone"). The Applicants propose to construct a second floor addition over the garage of the existing dwelling. The application's proposed construction intends to make the existing residence more functional while creating a master bedroom suite on the second floor.

3. The subject property is undersized and irregularly shaped (a trapezoid, not a square or rectangle), which, with the proposed addition, will result in a second story side yard setback of 21 feet, where a minimum permitted second story setback of 25 feet is required in the R-3 Zone, and a combined side yard setback of 33.2 feet, where a minimum combined side yard setback permitted for the subject property in the R-3 Zone is 39.5 feet. Therefore, variance relief is required.

4. At the December 19, 2022 hearing, Daniel Dubinett, the Applicants' Architect, testified that the subject property has existing non-conformities, inter alia, being undersized at 15,456.7 square feet, where 29,000 square feet of lot area is required (with an existing lot width at the front yard setback of 113 feet, where the minimum lot width of 115 feet is required) and being irregularly shaped, making it difficult to add onto the existing dwelling without creating additional non-conformities. Mr. Dubinett testified that there will not be any alterations to the first floor of the existing dwelling or any change in the dwelling's footprint, as the addition will add a master bedroom suite to the second floor only, which will be located over the existing garage.

5. It was Mr. Dubinett's opinion that the undersized nature of the lot, its irregular shape and the location of the existing dwelling thereon creates an undue hardship, and that the addition will not have any negative impact on light, air and open space, as the nearest neighboring dwelling is located a significant distance away from the proposed addition.

6. Mr. Dubinett testified further that the Applicants' proposal will balance out the architecture of the existing dwelling and that no trees will be removed as part of same.

7. 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[.]

8. 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” (the so-called “negative criteria”).

9. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the subject property’s undersized lot area, irregular shape and the location of the home on the lot are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

10. Although the proposed construction requires variance relief to permit a second story side yard setback of 21 feet, where existing side yard setback is 21 feet and a minimum second story side yard setback of 22 feet is required in the R-3 Zone, the deviations from the aforementioned requirements are relatively modest. The Board finds that the proposed deviations are modest and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance or the Master Plan, and can be accommodated by the subject property.

11. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 23rd day of January, 2023 that the variance relief requested by the Applicants to construct a second floor addition to the existing dwelling resulting in a second story side yard setback of 21 feet, where a minimum permitted second story side yard setback is 25 feet, and a resulting in a combined side yard setback of 33.2 feet, where the minimum combined side yard setback of 39.5 feet is permitted in the R-3 Zone, on property located at 5 Chestnut Place, Short Hills, New Jersey, granted by this Board at its meeting of December 19, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

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

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

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

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

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 23rd day of January, 2023.

APPLICATIONS

CAL#3906-22, A. ABBASI/N. MALLICK, 42 JEFFERSON AVENUE, SHORT HILLS

A. Abbasi, N. Mallick, and Richard Keller, P. E., appeared and were sworn. The applicants would like to construct a cabana on their property. Proposal is in violation of:

606.2e2a – Building coverage

Richard Keller's credentials were presented and accepted by the Board. He gave a brief description of the applicants' proposal.

Entered as A-1: marked up sheet A-1 of submitted plans
Entered as A-2: photo board #1
Entered as A-3: aerial photo

The property is an undersized lot located in the R-3 zone district. The applicants are proposing a 106 SF cabana in order to provide a small changing area/shower/bathroom. The house is currently under construction with the required building permits. This small cabana will not be visible to the neighboring properties or the street due to the existing buffer on the side and rear property lines. There is in-fill landscaping proposed, as well. The cabana is proposed to be 11.2 feet tall, well below the allowable height of 18 feet.

Garen Sarafin, 35 Barnsdale Road, asked if the proposed cabana would have any structural impact on the retaining wall. Mr. Keller stated that there will be no effect on the retaining wall.

Craig Ploetner struggled with this request. Wolfgang Tsoutsouris would like to see additional screening to lessen the cabana's visual effect, and Chandru Harjani agrees. Jessica Glatt believes this is a minimal request with little visual impact. She is in favor of this application.

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

Ashley Avigdor – yes
Chandru Harjani – yes
Amywrence – yes
Wolfgang Tsoutsouris – yes
Gary Rosen – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3906-22, A. Abbasi/N. Mallick, 42 Jefferson Avenue, Short Hills was APPROVED.

CAL#3908-22, ARTHUR/MARIA SZABELA, 271 MILLBURN AVENUE, MILLBURN

Priscilla Triolo, Attorney for the applicants, stated her appearance. The applicants are seeking use variance relief with a request for a loading space requirement to allow a medical use in the B-4 zone, where medical offices are not a principal permitted use. The applicants are Arthur Szabela, dentist, and Maria Szabela, doctor of infectious diseases.

Arthur and Maria Szabela appeared and were sworn. Mr. and Mrs. Szabela are the proprietors of Garden State Dental Design. Mr. Szabela gave a brief description of their proposal. The proposal consists of a low volume, boutique-style dental office. Services provided on site would include minimally invasive procedures and state of the art aesthetic-dentistry.

Rob Simon asked if any efforts were made to have the space used for a permitted use and why the proposed use is a better alternative than the permitted use. Ms. Triolo indicated that the site has been vacant for well over a year and suggested that this use is complimentary to Millburn's Downtown Vision Plan. Craig Ploetner asked how many people would be on site. Mr. Szabela stated that there would be 8 staff members and that a maximum of 5 patients would be anticipated on site at one time. Wolfgang Tsoutsouris asked if deliveries will be anticipated. The applicants are expecting to receive deliveries from UPS trucks every 2 weeks, and medical waste would be collected every 2 months. Hours of operation would be 8:00 AM - 6:00 PM Monday-Friday, and 8:00 AM - 2:00 PM on Saturdays.

Entered as Exhibit A-1: Certificate of occupancy for 704/5

Lyndsay Knight, P.P., appeared and was sworn. Her credentials were presented and accepted by the Board. Ms. Knight indicated that the site is located in the B-4 central business district. The site also lies on the edge of the downtown abutting the R-O zone. Ms. Knight referred to the Master Plan Re-Examination Report. She believes this report promotes appropriate mix of uses. In regards to the application's positive criteria, Ms. Knight stated that this site is particularly suited for this use, location and parking are contained on site, and it is near other compatible uses. It is Ms. Knight's professional opinion that this application has no substantial detriment to the zoning plan, Master Plan, or surrounding area. There are 25 parking spaces on site, 4 of which are designated for residential apartments.

Ms. Knight respectfully requests a favorable vote of this application, as she believes this is a unique opportunity for the Millburn community and a complementary business to the Downtown Vision.

Regina Truitt struggled with accepting the proposed use. She highlighted that it is not a permitted use in the zone but is a permitted use in the surrounding zones. Wolfgang Tsoutsouris believes the site is a logical location. He believes the proposed use has a unique service and would be a positive addition to the town. Jessica Glatt pointed out that the building has been vacant. She feels this is a unique concept in dentistry limited in terms of clientele. Ms. Glatt feels this is a good use for this area and agrees with the location given the proximity to other medical offices deemed to be permitted. Craig Ploetner is in favor of this application given that it is a low-volume operation on a contained property with contained parking.

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

Ashley Avigdor – yes
Chandru Harjani – yes
Amy Lawrence – yes
Wolfgang Tsoutsouris – yes
Gary Rosen – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3908-22, Arthur/Maria Szabela, 271 Millburn Avenue, Millburn "d" use-variance was APPROVED.

Upon a motion made by Ashley Avigdor, a second by Gary Rosen, and with a roll-call vote as follows:

Ashley Avigdor – yes
Chandru Harjani – yes
Amy Lawrence – yes
Wolfgang Tsoutsouris – yes
Gary Rosen – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3908-22, Arthur/Maria Szabela, 271 Millburn Avenue, Millburn, loading space variance 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 Wolfgang Tsoutsouris, seconded by Chandru Harjani, and carried with a unanimous voice vote. (9:35 PM)

Eileen Davitt
Board Secretary

Motion: JG
Second: RT
Date Adopted: 2/6/23