

Township of Millburn
Minutes of the Zoning Board of Adjustment
January 24, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 24, 2022** at 7:00 PM via Zoom webinar.

Board Attorney, Robert Simon, administered the oath of office to Ashley Avigdor as Alternate #2.

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
Jessica Glatt, Vice Chairwoman
Craig Ploetner, Chairman

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of November 1, 2021 was made by Jessica Glatt, seconded by Steve Togher, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3816-21, Hamid Saghari, 90 Undercliff Road, Millbrn

Upon a motion made by Jessica Glatt, 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:

**HAMID SAGHARI
BLOCK 501, LOT 13**

**CAL. NO. 3816-21
JANUARY 24, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Hamid Saghari (hereinafter the “Applicant”), in Calendar No. 3816-21 to permit the construction of first and second floor additions, a deck, and a garage on property located at 90 Undercliff Road, Millburn, New Jersey, known and designated as Lot 13, Block 501, on the 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 4, 2021, and November 15, 2021, as to Calendar No. 3816-21 to permit the construction of first and second floor additions, a deck, and a garage, on property located at 90 Undercliff Road, Millburn, New Jersey, known and designated as Lot 13, Block 501, 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 October 4, 2021 and the November 15, 2021 hearings, 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 contains a single family residence with an attached garage, and is located in the Township’s R-6 Zone District (the “R-6 Zone”). The subject property is a corner lot pursuant to the Township Zoning Ordinance, located at the intersection of Undercliff Road and Rahway Road. The Applicant proposes to add a deck facing Rahway Road, a bedroom in the attic, two (2) bedrooms on the second floor, one (1) bedroom and a powder room on the first floor, expand the existing first floor living space, and to rotate the existing attached garage 90 degrees so it will be a front-facing garage when viewed from Undercliff Road.

3. The subject property contains four (4) non-conforming conditions pursuant to the Township Zoning Ordinance requirements for the R-6 Zone: (a) a minimum front yard setback of 40 feet for a corner lot is required, and the subject property has an existing front yard setback of 22 feet for a corner lot; (b) a minimum side yard setback of 8 feet for a building up to 18 feet in height is required, and the subject property has an existing side yard setback of 6.95 feet for a building up to 18 feet in height; (c) a minimum side yard setback of 10.9 feet for a building up to

32 feet in height is required, and the subject property has an existing side yard setback of 6.95 feet for a building up to 32 feet in height; and (d) a minimum rear yard unoccupied area of 25% (1,705 square feet) of the lot area is required, and the subject property has an existing rear yard unoccupied area of 20.6% (869 square feet).

4. The proposed development would result in a front yard setback of 15.3 feet for a corner lot, where 40 feet is the minimum required front yard setback for a corner lot; a side yard setback of 7 feet for a building up to 18 feet in height, where 8 feet is the required minimum side yard setback for a building up to 18 feet in height; a side yard setback of 7 feet for a building up to 32 feet, where 10.9 feet is the required minimum setback for a building up to 32 feet in height; and a Floor Area Ratio (“FAR”) of 37.2%, where 36% is the maximum allowable FAR. Therefore, variance relief was required.

5. Due to comments and concerns expressed by the Board at the October 4, 2021 application hearing, the Applicant submitted a revised application prior to the November 15, 2021 hearing. The revised application would result in a 15.3 feet front yard setback for a corner lot, where 40 feet is the minimum required front yard setback for a corner lot; a side yard setback of 7 feet for a building up to 18 feet in height, where 8 feet is the required minimum side yard setback for a building up to 18 feet in height; and a side yard setback of 7 feet for a building up to 32 feet, where 10.9 feet is the required minimum setback for a building up to 32 feet in height. The revised application eliminated the need for FAR variance relief. However, bulk variance relief was still required.

6. At the November 15, 2021 hearing, the Board received and considered the following additional document submitted in support of the application:

A. Presentation of the subject property, consisting of 11 sheets, prepared by the Applicant on October 25, 2021, introduced into evidence as Exhibit A-1, on November 15, 2021.

7. The Applicant, a licensed Architect in the State of New York, testified that he has difficulty accessing the existing garage due to the wedge shape of the subject property. The Applicant stated that he seeks to rotate the existing garage 90 degrees so that it will be front-facing when viewed from Undercliff Road and easier to access, while keeping the garage attached to the subject residence. The Applicant stated that the revised application’s proposed construction would reduce the existing impervious coverage from 32.6% to 30.5%, and eliminated the need for FAR variance relief. The Applicant also stated that the proposed construction would make the home more conforming to other residences in the subject neighborhood in orientation, size, and architectural style.

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[.]

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.” See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

9. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested bulk variance relief, and that it is appropriate to grant this variance relief to permit the proposed construction. The need for the requested variance relief is related to several pre-existing nonconforming conditions affecting the property and structures lawfully thereon. Specifically, the existing location of the subject residence, coupled with the property’s unique wedge shape and status as a corner lot, are hardships unique to the property, and therefore impose an undue burden on the Applicant. As a corner lot property, it is difficult to perform any modification of the subject residence in its existing nonconforming location without violating the Township Zoning Ordinance, and creates practical difficulties and an undue hardship on the Applicant.

10. Although the proposed construction requires variance relief for a 15.3 feet front yard setback for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, a side yard setback of 7 feet for a building up to 18 feet in height where 8 feet is the required minimum side yard setback for a building up to 18 feet in height, and a side yard setback of 7 feet for a building up to 32 feet where 10.9 feet is the required minimum setback for a building up to 32 feet in height, the requested deviations from the requirements of the Township Zoning Ordinance are not excessive and can be granted without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. In fact, the proposed construction brings the subject residence into closer conformity with the R-6 Zone’s corner lot front yard setback requirement, while simultaneously reducing the property’s overall impervious coverage. The Board finds that the proposed construction will result in the subject residence looking more similar in shape, size, and style to existing residences in the subject neighborhood and the R-6 Zone. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed construction 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 Zone Plan and the Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 24th day of January, 2022, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70c(1), to permit the construction of first and second floor additions and a garage rotation, resulting in a 15.3 feet front yard setback for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, a side yard setback of 7 feet for a building up to 18 feet in height where 8 feet is the required minimum side yard setback for a building up to 18 feet in height, and a side yard setback of 7 feet for a building up to 32 feet where 10.9 feet is the required minimum setback for a building up to 32 feet in height, for property located at 90 Undercliff Road, Millburn, approved by this Board at its meeting of November 15, 2021, 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 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 24th day of January, 2022.

Cal#3836-21, Dapperdad, LLC, 35 Sinclair Terrace, Short Hills

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

- Chandru Harjani – yes
- Joseph Steinberg – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**DAPPERDAD, LLC
BLOCK 2604, LOT 6**

**CAL. NO. 3836-21
JANUARY 24, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Laura And David Janay, on behalf of Dapperdad, LLC (hereinafter the “Applicants”), in Calendar No. 3836-21 to permit the construction of an enclosed indoor/outdoor living space addition on property located at 35 Sinclair Terrace, Millburn, New Jersey, and designated as Lot 6, Block 2604, 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 20, 2021 as to Calendar No. 3839-21 to permit the construction of an enclosed indoor/outdoor living space addition on property located at 35 Sinclair Terrace, Millburn, New Jersey, and designated as Lot 6, Block 2604, 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 20, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared with their attorney, Richard S. Schkolnick, Esq., and, together with their engineer, Mark Gimigliano, and their planner, Paul Ricci, provided sworn testimony in support of the application. There was no public opposition to 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 Zone District (the “R-3 Zone”), and is a corner lot pursuant to the Township Zoning Ordinances. Although the subject property only abuts Sinclair Terrace, the property qualifies as a corner lot due to the curvature of Sinclair Terrace. The Applicants propose to construct a 1,100 square foot single story indoor/outdoor living space addition to enclose the existing spa and sauna.

3. The proposed construction would result in a building coverage of 15.4%, where 13% is the maximum permitted building coverage. Therefore, variance relief is required.

4. At the December 20, 2021 hearing, the Board received and considered the following additional documents submitted in support of the application:

A. Plot Plan, consisting of two (2) sheets, prepared by Mark Gimigliano on March 19, 2021, introduced into evidence as Exhibit A-1, on December 20, 2021; and

B. Aerial Map & Photographs of the subject residence, consisting of three (3) sheets, taken by the Applicants, introduced into evidence as Exhibit A-2, on December 20, 2021.

5. The Applicants testified that the proposed construction was intended to enclose their existing spa, sauna, and patio, and to install a wet bar in the proposed enclosed area. The Applicants also stated that the application proposed to add landscaping and drywells to help with the existing drainage condition on the subject property.

6. Mark Gimigliano, the Applicant's engineer, testified that the subject property was a pie-shaped lot, and was also a corner lot under the Township Zoning Ordinance due to the extreme curvature of Sinclair Terrace. Mr. Gimigliano stated that the proposed construction was a 1,100 square foot single story addition along the side property line, which adds 2,100 square feet of overall impervious coverage. Mr. Gimigliano stated that the existing spa and sauna faced the rear of the subject property. Mr. Gimigliano stated that the application also proposed to add large glass doors as part of the proposed construction. Mr. Gimigliano stated that there would be two (2) 1,000-gallon drywells collecting any water runoff from the roof of the proposed construction, and that there would not be any increase in overall runoff as a result of the application.

7. Due to comments and concerns expressed by the Board at the December 20, 2021 application hearing, the Applicants agreed to install additional buffer trees and plantings beyond what was proposed in the application. The Applicants agreed to supplement the existing landscaping to screen the proposed construction from neighborhood views since some of the existing landscaping has died, and that the supplemental landscaping will be 12 feet to 14 feet in height at the time of planting. The Applicants also agreed to subsequently consult with the Township Forrester as to the supplemented landscaping plan.

8. Paul Ricci, the Applicants' planner, stated that the proposed construction was largely concealed from view by neighboring properties by the existing residence and existing landscaping, was reasonably sized and scaled, and met all height and setback requirements for the R-3 Zone. Mr. Ricci also stated that the proposed construction would provide the Applicants with year-round recreation opportunities, and it was reasonable to have back yard amenities as proposed by the Applicants given the surrounding neighborhood. Mr. Ricci stated that the application's proposed 2.4% increase above the maximum allowable building coverage for the R-3 Zone was not a substantial detriment to the Zone Plan and Township Zoning Ordinance, and that the proposed construction would be mitigated by additional landscaping and the two (2) proposed drywells. Mr. Ricci also stated that the proposed construction met the maximum lot coverage and Floor Area Ratio ("FAR") requirements for the R-3 Zone.

9. Mr. Ricci stated that the application promoted the following purposes of zoning pursuant to N.J.S.A. 40:55D-2: (c) to provide adequate light, air and open space; (g) to provide sufficient space in appropriate locations for a variety of residential uses; and (i) to promote a desirable visual environment through creative development techniques and good civic design and arrangement. Mr. Ricci informed the Board that the subject property was adjacent to the boundary of the R-4 Zone; that the R-4 Zone had a 14% maximum allowable building coverage;

and that other properties in the subject neighborhood have building coverages that exceed the amount permitted in the respective Zone District. Mr. Ricci stated that the application would promote the aforementioned MLUL purposes, was similar in style and scope to other properties in the subject neighborhood, and that the proposed construction could be accomplished without impairing the purpose or intent of the Zoning Ordinance.

10. 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[.]

11. 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”).

12. 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. 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. The deviations from the applicable requirements are relatively modest in light of the hardships imposed by the subject property and lawfully existing structures thereon. The application only proposes modest increases of 110 square feet from the existing building coverage. The Board also finds that the supplemental plantings agreed to by the Applicants will provide adequate screening for the proposed construction, and that for the reasons set for above, the proposed construction can be accomplished without undermining the intent or purpose of the Zone Plan or the Township Zoning Ordinance.

13. 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, and that it is appropriate to permit the proposed construction. The application advances multiple goals of the MLUL, specifically, goal (c) – to provide adequate light, air and open space; goal (g) – to provide sufficient space in appropriate locations for a variety of residential uses; and, goal (i) – to promote a desirable visual environment through creative development techniques and good civic

design and arrangement. The application's proposed construction is modest and consistent with the character of the subject neighborhood, and creatively utilizes the proposed construction to advance the aforementioned MLUL goals. The Board finds these goals and objectives are furthered by the application's proposed construction.

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). Therefore, for the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be accomplished 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 24th day of January, 2022 that the variance relief requested by the Applicants to construct an enclosed indoor/outdoor living space addition, resulting in a building coverage of 15.4% where 13% is the maximum permitted building coverage, on property located at 35 Sinclair Terrace, Millburn, New Jersey, granted by this Board at its meeting of December 20, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall install additional buffer trees and plantings beyond those shown on the Applicants' development plan to supplement the existing landscaping and to adequately screen the proposed construction from neighborhood views. The supplemental landscaping shall be 12 feet to 14 feet in height at the time of planting. The Applicants shall also consult with the Township Forrester as to the additional plantings to be used by the Applicants.

2. The Applicants shall insure that all plantings, whether existing or proposed, shall be maintained in order to sufficiently screen the application's proposed construction.

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

4. 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.

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 24th day of January, 2022.

Cal#3838-21, Jeffrey Rosen, 21 Dryden Terrace, Short Hills

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

- Chandru Harjani – yes
- Joseph Steinberg – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**JEFFREY ROSEN
BLOCK 3603, LOT 5**

**CAL. NO. 3838-21
JANUARY 24, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Jeffrey Rosen (hereinafter the “Applicant”), in Calendar No. 3838-21 to permit the construction of a pool and patio on property located at 21 Dryden Terrace, Short Hills, New Jersey, known and designated as Lot 5, Block 3603, 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 20, 2021, as to Calendar No. 3838-21 to permit the construction of a pool and patio on property located at 21 Dryden Terrace, Short Hills, New Jersey, known and designated as Lot 5, Block 3603, 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 20, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel, and together with Rich Keller,

the Applicant's Engineer and Planner, 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 contains a single-family residence with a rear-facing garage, and is located in the Township's R-5 Zone District (the "R-5 Zone"). The Applicant seeks to construct an 18 foot by 36 foot (567 square feet) Hampton-style pool, and replace the existing 667 square foot patio and spa with a 436 square foot patio, a 64 square foot steppingstone walkway, and a 42.5 square foot automated pool cover enclosure. The subject property has one (1) nonconforming pre-existing condition pertaining to the Township Zoning Ordinance for the R-5 Zone: a maximum lot coverage of 35% (5,088 square feet) is permitted, and the subject property has an existing lot coverage of 36.2% (5,266 square feet).

3. The proposed development would result in a 40.96% (5,955 square feet) lot coverage, where 35% (5,088 square feet) is the maximum permitted lot coverage for the R-5 Zone. Therefore, variance relief is required.

4. At the December 20, 2021 hearing, the Board received and considered the following additional documents submitted in support of the application:

A. Variance Application Plan with Landscaping Plan, dated December 20, 2021, prepared by Casey & Keller, Inc., and introduced into evidence as Exhibit A-1, on December 20, 2021; and

B. Annotated Photographs of the Poet Section of Short Hills, consisting of seven (7) photographs, dated December 20, 2021, taken by the Applicant, and introduced into evidence as Exhibit A-2, on December 20, 2021.

5. Both the Applicant and Rich Keller, the Applicant's engineer and planner, testified that the subject property contained a rear-facing garage with a very large driveway turn-around area in the rear yard of the property. Mr. Keller stated that the total driveway area was 1,800 square feet, which accounted for 12.4% of the total lot area, and further accounted for over one-third (1/3) of the allowable lot coverage for the R-5 Zone. Mr. Keller stated that the existing rear-facing garage and large overall driveway area created a hardship for the Applicant, as the subject property was already over the allowable lot coverage for the R-5 Zone, and that the rear-facing garage and large driveway limit the amount of backyard use on the subject property. Mr. Keller clarified that if the garage was front-facing, the subject property would be fully compliant with the R-3 Zone's lot coverage requirement (both as existing and subsequent to the application's proposed construction).

6. Mr. Keller stated that the existing 667 square foot patio and spa would be removed and replaced with a more efficiently proportioned 436 square foot patio. Mr. Keller stated that the Hampton-style pool proposed by the application was intended to prevent further increases in lot coverage, and that the proposed pool would not have any contiguous walkways or patios on three (3) of its sides. Mr. Keller also stated that the application proposed a 64 square

foot steppingstone walkway connecting the proposed patio to the shallow end of the proposed pool. Mr. Keller stated that there was also a drywell proposed in connection with the application to capture stormwater runoff.

7. Mr. Keller stated that the application proposed to remove one (1) tree, but further proposed to install 13 evergreen trees (Green Giant Arborvitae or similar), installed at 7 feet to 8 feet in height from the root ball at the time of installation. Mr. Keller stated that the proposed plantings, combined with the existing board on board fence, trees and landscaping, would sufficiently screen the proposed construction from Dryden Terrace. Mr. Keller concluded by stating that the proposed construction was similar in style and in scale to existing pools and patios on residences in the subject neighborhood, that the proposed construction would enhance the overall safety of the subject property, and that the property had sufficient space for the proposed construction so that the application could be approved without causing any impairment to the intent and purpose of the Township Zoning Ordinances.

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-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.”).

10. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested lot coverage variance relief, and that it is appropriate to grant this variance relief to permit the proposed construction. The need for the requested variance relief is related to the subject property’s excessive lot coverage caused by the existing driveway and rear-facing garage, a pre-existing condition adversely affecting the property, dwelling and other site improvements. The driveway and rear-facing garage account for a burdensome amount of the overall lot coverage on the subject property. The Board finds that if the existing garage was front-facing, the subject property would conform with the Township Zoning Ordinance requirements for lot coverage, and that the rear-facing garage and driveway with a large turnaround area, accounting for 1,800 square feet, or 12% of the overall lot area, creates an undue hardship upon the Applicant. The Board finds these conditions to be

exceptional circumstances uniquely affecting the property and the lawfully existing structures thereon, which result in practical difficulties and undue hardship to the Applicant.

11. The Board also finds that the Applicant has 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 MLUL; specifically, goal (c) – to provide adequate light, air and open space, and goal (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The application’s proposed construction is modest and also consistent with the objectives of the Township’s Master Plan by promoting the character of residential neighborhoods. The Board finds these goals and objectives are furthered by the application’s proposed construction.

12. The requested deviations from the requirements of the Township Zoning Ordinance are modest and can be granted without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. Although the proposed construction will only result in an increase of 689 square feet in lot coverage over existing conditions, the deviations from the Township Zoning Ordinance are directly related to the specific conditions of the subject property and the lawful structures thereon, and the proposed construction can be accomplished consistent with the goals and objectives of the MLUL, the Township’s Master Plan, and the Township Zoning Ordinance. Additionally, the proposed construction will be adequately screened from view from neighboring properties by the proposed and existing plantings, and the existing fence on the subject property.

13. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed construction is negligible and not a substantial detriment, especially given the adequate screening and the presence of pools in the subject neighborhood. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested under N.J.S.A. 40:55D-70c(1) and (2), 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 Township’s Master Plan and the Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 24th day of January, 2022, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70c(1) and (2), to permit the construction of a pool and patio, resulting in a 40.96% (5,955 square feet) lot coverage, where 35% (5,088 square feet) is the maximum permitted lot coverage for the R-5 Zone, on property located at 21 Dryden Terrace, Short Hills, 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 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 24th day of January, 2022.

Cal#3839-21, Mary & Paul Grossman, 32 Haddonfield Road, Short Hills

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

- Chandru Harjani – yes
- Joseph Steinberg – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**MARY JOHNSON & PAUL GROSSMAN
BLOCK 1203, LOT 4**

**CAL. NO. 3839-21
JANUARY 24, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Mary Johnson and Paul Grossman (hereinafter the “Applicants”), in Calendar No. 3839-21 to permit the construction of a mud room, family room, detached garage, and kitchen renovations, on property located at 32 Haddonfield Road, Short Hills, New Jersey, and designated as Lot 4, Block 1203, 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 20, 2021 as to Calendar No. 3839-21 to permit the construction of a mud room, family room, detached garage, and kitchen

renovations, on property located at 32 Haddonfield Road, Short Hills, New Jersey, and designated as Lot 4, Block 1203, 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 20, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, John James, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which contains a single family residence with an attached one-car garage, located in the Township's R-6 Zone District (the "R-6 Zone"). The Applicants propose to renovate and expand the existing kitchen, convert the existing attached one-car garage area to a family room with an adjoining mud room, and to construct a new Tutor-style detached two-car garage.

3. The subject property contains two (2) existing nonconforming conditions pursuant to the R-6 Zone: (a) a minimum front yard setback of 40 feet is required, and the subject property has an existing front yard setback of 31.7 feet; and (b) a minimum rear yard unoccupied area of 25% of the lot area (2,000 square feet) is required, and the subject property has an existing rear yard unoccupied area of 20.6% (1,646 square feet).

4. The proposed construction would result in a rear yard unoccupied area of 17.9% (1,398 square feet), where 25% of the lot area (2,000 square feet) is required; and an accessory structure located in a side yard, where accessory structures are only permitted in a rear yard. Therefore, variance relief is required.

5. Both the Applicants and John James, the Applicants' architect, testified that the subject residence, situated in the middle of the subject property with a longer length than width, created an undersized rear yard area. Mr. James stated that the application's proposed construction would mostly occur within the existing building footprint. Mr. James also stated that the existing attached one-car garage would be converted into a family room and adjoining mud room, and the existing kitchen would be expanded and renovated. Mr. James informed the Board that the proposed detached two-car garage would be located in the rear corner of the subject property, where it would connect to the existing driveway, and would be well-screened by existing plantings.

6. Mr. James stated that the proposed detached two-car garage would extend into the side yard by 3 – 4 feet, and that variance relief was therefore required. Mr. James also stated that the proposed construction on the subject residence was designed to keep the overall size of the residence smaller and similar to the size of residences in the subject neighborhood, and to improve the overall functionality of the subject residence with minimal impact to the already-undersized rear yard. Mr. James informed the Board that the proposed construction would still be well under the R-6 Zone's minimum building coverage, lot coverage, and Floor Area Ratio

(“FAR”) requirements. Mr. James concluded by stating that the shape and the placement of the subject residence imposed a hardship upon the Applicants.

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 small rear yard area for the R-6 Zone, as well as the aforementioned location of the subject residence, 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. The deviations from the applicable requirements are relatively modest especially given the hardships imposed by the subject property and lawfully existing structures thereon. The application only proposes a modest increase of 602 square feet from the existing rear yard unoccupied area, and the detached two-car garage only extends into the subject property’s side yard by a minimal 3-4 feet. The Board also finds that the existing plantings will provide adequate screening for the proposed construction, and that the proposed construction can be accomplished without substantially undermining the intent or purpose of the Zone Plan or the Township Zoning Ordinance for the reasons set forth above.

10. 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, and that it is appropriate to permit the proposed construction. The application advances multiple goals of the MLUL, specifically, goal (c) – to provide adequate light, air and open space, and goal (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The application’s proposed construction is modest and consistent with the character of the subject neighborhood, and creatively utilizes the existing one-car garage to keep

the application's proposed construction mostly within the building footprint while improving overall functionality of the Applicants' home. The Board finds these goals and objectives are furthered by the application's proposed construction.

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. 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 24th day of January, 2022 that the variance relief requested by the Applicants to construct a mud room, family room, detached garage, and kitchen renovations, resulting in a rear yard unoccupied area of 17.9% (1,398 square feet) where 25% of the lot area (2,000 square feet) is required, and an accessory structure located in a side yard where accessory structures are only permitted in a rear yard, on property located at 32 Haddonfield Road, Short Hills, New Jersey, granted by this Board at its meeting of December 20, 2021, 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 24th day of January, 2022.

Cal#3840-21, Gina & Joseph Smith, 60 Milton Street, Millburn

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

- Chandru Harjani – yes
- Joseph Steinberg – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Crag Ploetner – yes

the following memorializing resolution was adopted:

**GINA & JOSEPH SMITH
BLOCK 408, LOT 12**

**CAL. NO. 3840-21
JANUARY 24, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Gina and Joseph Smith (hereinafter the “Applicants”), in Calendar No. 3840-21 to permit the construction of a detached garage with second floor office space, on property located at 60 Milton Street, Millburn, New Jersey, and designated as Lot 12, Block 408, 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 20, 2021 as to Calendar No. 3840-21 to permit the construction of a detached garage with second floor office space, on property located at 60 Milton Street, Millburn, New Jersey, and designated as Lot 12, Block 408, 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 20, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Tim Klesse, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which contains a single family residence with a detached garage, located in the Township's R-6 Zone District (the "R-6 Zone"). The Applicants propose to renovate the existing detached garage and construct a 325 square foot office space on the second floor above the renovated detached garage.

3. The subject property contains four (4) existing nonconforming conditions pursuant to the R-6 Zone: (a) a minimum front yard setback of 40 feet is required, and the subject property has an existing front yard setback of 3.3 feet; (b) a minimum side yard setback of 8 feet for a structure up to 18 feet in height is required, and the subject property has an existing side yard setback of 7.4 feet for a structure up to 18 feet in height; (c) a minimum side yard setback of 12 feet for a structure up to 32 feet in height is required, and the subject property has an existing side yard setback of 7.5 feet for a structure up to 32 feet in height; and (d) a minimum rear yard setback of 12 feet for an accessory structure is required, and the subject property has an existing rear yard setback of 4.1 feet for an accessory structure.

4. The proposed construction would result in a rear yard accessory structure setback of 4.1 feet, where 12 feet is the minimum required rear yard accessory structure setback; and an accessory structure height of 20 feet, where 18 feet is the maximum accessory structure height. Therefore, variance relief is required.

5. At the December 20, 2021 hearing, the Board received and considered the following additional document submitted in support of the application:

A. Four (4) photographs of the subject residence and property, taken by the Applicants during October of 2021, introduced into evidence as Exhibit A-1, on December 20, 2021.

6. Both the Applicants and Tim Klesse, the Applicants' architect, testified that the existing detached garage on the subject property is over 100 years old and in very fragile condition. Mr. Klesse stated that the proposed construction would utilize the existing foundation and would maintain the existing dimensions of the detached garage, while also maintaining a the second floor of the detached garage to accommodate 325 square feet of office space. Mr. Klesse confirmed to the Board that the proposed office space is strictly for the Applicants' personal use, would only have electrical wiring and would not have any plumbing installed.

7. Mr. Klesse stated that the subject property was adjacent to a commercial medical building in the rear located in a commercial zone district. Mr. Klesse also stated that both the existing and proposed detached garage were well below street level and would be set back 100 feet from the street right-of-way. Mr. Klesse concluded by informing the Board that the subject property had excessive existing side yard setbacks, and that the proposed construction would keep the subject property similar in size and aesthetics to both the residential and commercial uses of the subject neighborhood.

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-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”).

10. 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 location of the existing detached garage is a hardship 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. The deviations from the applicable requirements are relatively modest in light of the hardships imposed by the subject property and lawfully existing structures thereon. Additionally, the application only proposes a modest increase of 3 feet in height for the existing detached garage, and no increase in the existing detached garage’s rear yard setback. The Board also finds that the presence of a medical building and a commercial zoning district adjacent to the rear of the subject property, the proposed construction’s large setback from the public right-of-way, and the subject property’s existing excessive side yard setbacks prevent the application’s proposed construction from being detrimental to the subject neighborhood, and that the proposed construction can be accomplished without undermining the intent or purpose of the Zone Plan or the Township Zoning Ordinance.

11. 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, and that it is appropriate to permit the proposed construction. The application advances multiple goals of the MLUL, specifically, goal (c) – to provide adequate light, air and open space, and goal (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The application’s proposed construction is modest and consistent with the character of the subject neighborhood, and creatively utilizes the existing detached garage to keep the application’s proposed construction mostly within the existing structure’s footprint while improving overall functionality of the garage space. The Board finds these goals and objectives are furthered by the application’s proposed construction.

12, 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. Specifically, the subject property can accommodate the negligible impact of the application's proposed construction, especially given the sufficient side yard setbacks and that it is adjacent to a large commercial building located in a commercial zoning district. 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 24th day of January, 2022 that the variance relief requested by the Applicants to construct a detached garage with second floor office space, resulting in a rear yard accessory structure setback of 4.1 feet where 12 feet is the minimum required rear yard accessory structure setback, and an accessory structure height of 20 feet where 18 feet is the maximum accessory structure height, on property located at 60 Milton Street, Millburn, New Jersey, granted by this Board at its meeting of December 20, 2021, 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 24th day of January, 2022.

Cal#3831-21, Williams Owolabi, 46 Maple Street, Millburn

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

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

the following memorializing resolution was adopted:

**WILLIAMS & OYIN OWOLABI
BLOCK 209, LOT 14**

**CAL. NO. 3831-21
JANUARY 24, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Williams and Oyin Owolabi (hereinafter the “Applicants”), in Calendar No. 3831-21 to permit the expansion of a deck on property located at 46 Maple Street, Millburn, New Jersey, known and designated as Lot 14, Block 209, 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 November 15, 2021, as to Calendar No. 3831-21 to permit the expansion of a deck on property located at 46 Maple Street, Millburn, New Jersey, known and designated as Lot 14, Block 209, 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 November 15, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel, and together with Mike Morse, the Applicants’ Builder, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which is a single-family residence with a detached garage, located in the Township's R-5 Zone District (the "R-5 Zone"). The Applicants propose to replace an existing 12 feet by 8 feet (96 square feet) elevated concrete deck with a new 28 feet by 12 feet (336 square feet) elevated concrete deck. The proposed deck will be the same elevation and level as the existing deck. The Applicants desire to install the proposed deck in order to utilize an existing French door on the subject residence, which is currently not useable due to the lack of a deck underneath the existing French door.

3. The subject property contains multiple non-conforming conditions pursuant to the Township Zoning Ordinance, including: (a) a minimum lot area of 14,500 square feet is required, and the subject property has an existing lot area of 5,000 square feet; (b) a minimum lot width of 75 feet is required, and the subject property has an existing lot width of 55 feet; (c) a minimum lot depth of 125 feet is required, and the subject property has an existing lot depth of 90.91 feet; (d) a minimum accessory structure side yard setback of 12 feet is required, and the subject property has an existing side yard accessory structure setback of 4.8 feet; and (e) a maximum lot coverage of 35% is required, and the subject property has an existing lot coverage of 45.8%. The proposed development would result in an accessory structure side yard setback of 4.8 feet, where 12 feet is the minimum required accessory structure side yard setback; an accessory structure coverage of 24.5% (516 square feet), where 20% (420 square feet) of the rear yard area is the maximum allowable accessory structure coverage; and a lot coverage of 50.5% (2,529 square feet), where 35% (1,750 square feet) is the maximum allowable lot coverage. Therefore, variance relief is required.

4. At the November 15, 2021 hearing, the Board received and considered the following additional documents submitted in support of the application:

A. Photograph of the existing French door, consisting of 1 sheet, taken by the Applicants in October of 2021, introduced into evidence as Exhibit A-1, on November 15, 2021;

B. Photograph of the back of the existing deck, consisting of 1 sheet, taken by the Applicants in October of 2021, introduced into evidence as Exhibit A-2, on November 15, 2021;

C. Photograph of the rear elevation of the existing deck, consisting of 1 sheet, taken by the Applicants in October of 2021, introduced into evidence as Exhibit A-3, on November 15, 2021.

5. The Applicants testified that the proposed deck was necessary because the existing deck was rotting and not safe. The Applicants stated that their neighbor has a deck that was much bigger than the deck proposed in the application, and that the Applicants' neighbor had the same lot size as that of the Applicants' property. The Applicants also stated that they are unable to use their existing French door, as it is elevated but does not have a deck beneath it, and that the proposed deck would alleviate their "door to nowhere" existing condition.

6. Mike Morse, the Applicant's Builder, stated that the proposed deck would be at the same elevation as the existing deck, and that the proposed deck would not be visible from the street. Mr. Morse stated that the existing deck does not function adequately in its current condition, and was also unsafe. Mr. Morse also stated that steps would be built into the proposed deck. Mr. Morse stated that the proposed deck was similar in size and style to the Applicants' neighbor's deck, but slightly smaller. Mr. Morse concluded by stating that there was nowhere else on the property where the proposed deck could be located due to the location of the existing residence, and that the subject property's extremely undersized condition imposed an undue hardship on the Applicants.

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." See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called "negative criteria.").

9. The Board finds that the Applicants has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested bulk variance relief, and that it is appropriate to grant this variance relief to permit the proposed construction. The need for the requested variance relief is related to several pre-existing conditions affecting the property. Specifically, the existing location of the subject residence, coupled with the property's extremely undersized nature, being approximately half of the required minimum lot area for the R-5 Zone, prevents the Applicants from complying with the subject Ordinance requirement. The subject property's undersized width, depth, and area creates practical difficulties and an undue hardship on the Applicants.

10. Although the proposed construction would result in an accessory structure side yard setback of 4.8 feet where 12 feet is the minimum required accessory structure side yard setback, an accessory structure coverage of 24.5% (516 square feet) where 20% (420 square feet) of the rear yard area is the maximum allowable accessory structure coverage, and a lot coverage of 50.5% (2,529 square feet) where 35% (1,750 square feet) is the maximum allowable lot coverage, the requested deviations from the requirements of the Township Zoning Ordinance are

not excessive and without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. The Board concludes that the proposed development is reasonable, similar to existing structures in the subject neighborhood, preserves the character of the subject neighborhood, and that any negative impact from this proposed construction 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 Zone Plan and the Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 24th day of January, 2022, that the variance relief requested by the Applicants pursuant to N.J.S.A. 40:55D-70c(1), to permit the expansion of a deck, which would result in an accessory structure side yard setback of 4.8 feet where 12 feet is the minimum required accessory structure side yard setback, an accessory structure coverage of 24.5% (516 square feet) where 20% (420 square feet) of the rear yard area is the maximum allowable accessory structure coverage, and a lot coverage of 50.5% (2,529 square feet) where 35% (1,750 square feet) is the maximum allowable lot coverage, for the property at 46 Maple Street, Millburn, New Jersey, approved by this Board at its meeting of November 15, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), 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 24th day of January, 2022.

APPLICATIONS

CAL#3841-21, C. CHU/K. RYDER, 9 SOUTH MOUNTAIN ROAD, MILLBURN

Kathleen Ryder, Clifford Chu, and Ying Li, Architect, appeared and were sworn. The applicants would like to construct an addition and deck to their dwelling. Proposal is in violation of:

- 606.2e2a – Building coverage
- 606.2e2b – Lot coverage
- 606.2e3a – Accessory structure side yard setback
- 606.2e1g – Rear yard unoccupied
- 609.1c – Maximum accessory coverage

Ying Li's credentials were presented and accepted by the Board. She gave a brief description of the applicants' proposal. The applicants are proposing a rear addition to the dwelling to accommodate a dining room and family room. The property currently has an oversized 23 foot by 24 foot detached garage which encompasses a large portion of the building coverage and lot coverage. The driveway leading to the garage also contributes to the lot coverage.

The addition has been kept to a relatively small size in order to minimize the extent of variance relief required. Ms. Li spoke to the variances being requested. A building coverage variance is required to allow 25% building coverage where 23% is permitted; Lot coverage variance is required to permit 48% where 45% is allowable; Rear yard unoccupied variance relief is required to allow 19.2% where 25% is required; Accessory coverage variance relief is required to allow 29.1% where 20% is permitted; Accessory structure setback relief is required to allow a setback of 8.6 feet where 12 feet is required.

Amy Lawrence questioned whether the applicant would consider demolishing a portion of the existing oversized garage, Ms. Li indicated that it would require the total demolition of the garage and rebuilding. Financially, it would be very costly for the homeowners. In response to an inquiry in shifting the deck to the right, Ms. Li indicated that if the deck is moved to the right, driveway access to the garage would be obstructed.

Several members felt that screening along the proposed deck area with evergreens would afford the applicants the ability to enjoy the outdoors while also providing privacy for the adjoining property owner and screening from street view.

Amy Lawrence indicated that she was troubled with the variances being requested. She stated that this is an oversized lot for the R-6 zone and she did not see a hardship.

Other members were supportive of the application and felt the existing structures on the property caused a hardship and the relief being requested was not excessive.

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

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

Cal#3841-21, C. Chu/K. Ryder, 9 South Mountain Road, was **APPROVED** with the condition that 6-7 evergreen/arborvitae, 6 feet above the root ball at time of planting, be installed in an L-shape around the deck area to screen it from street/adjoining property view.

CAL#3844-21, ERNEST & JENNIE CHO LIM, 40 HOLLY DRIVE, SHORT HILLS

Ernest & Jennie Cho Lim, Richard Keller, P. E., P. P., and Steven Hockstein, Architect, appeared and were sworn. The applicants are proposing to construct a new dwelling on the property. Proposal is in violation of:

608.3 – Steep slope disturbance
301.9a – Maximum height from lowest elevation

Steven Hockstein’s credentials were presented and accepted by the Board. He gave a brief description of the applicants’ proposal. He indicated that this is a steeply slope lot. Due to the severe topography, the dwelling exceeds the allowable height from the lowest elevation. The steep slope ordinance only permits disturbance of 1000 SF of designated slope area. The applicant is proposing a new dwelling that will disturb 4000 SF of slope area, thereby requiring variance relief.

Entered as A-1: colorized rendering

Richard Keller’s credentials were presented and accepted by the Board.

Entered as A-2: Lim-Cho pre-demo conditions

Mr. Keller stated that the existing driveway is at a 22.5% slope and is extremely dangerous. The proposal calls for the driveway to be re-located 3-5 feet to the left and be re-graded for a more functional and safe driveway. The driveway will lead to the attached side-facing garage under. The proposed new house is in scale with the neighboring houses. The existing house was in disrepair and replacing it with a new dwelling was a better option. The height of the dwelling complies with the height requirement from the average grade. However, the garage area had to be lowered from the existing grade in order to allow for safer driveway

maneuvering. This is a 22,314 SF lot and the proposed disturbance of 4003 SF equates to 17.9% of the lot. The dwelling complies with all other bulk variances.

Ed Tang, 36 Holly Drive, asked how this development with steep slope variance will impact the flow of water. Richard Keller indicated that there will be adequate drainage as per the Township Engineering requirements. There will be no change to the direction of the water flow.

Board members were in support of the application and felt the topography presented a hardship. They were pleased with the design and felt it would be a positive improvement to the neighborhood.

Upon a motion made by Jessica Glatt, seconded by Wolfgang Tsoutsouris, and 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

Cal#3844-21, Ernest & Jennie Cho Lim, 40 Holly Drive, was **APPROVED**.

CAL#3845-21, DAVID & NATALIE REICHMAN, 29 JEFFERSON AVENUE, SHORT HILLS

David & Natalie Reichman, John James, Architect, Ed Clark, Landscape Architect, and Richard Keller, P. E., P. P., appeared and were sworn. The applicants would like to install an in-ground pool on their property. Proposal is in violation of:

609.1b – Accessory structure shall be in rear yard
609.6a – Front yard fences are prohibited

John James' credentials were presented and accepted by the Board. He gave a brief description of the applicants' proposal. The subject property is a through lot with frontage on Jefferson Avenue and Madison Terrace. The applicants are proposing outdoor amenities in the Madison Terrace front yard, which functions as their rear yard. He described the architecture of the pool house.

Edward Clark's credentials were presented and accepted by the Board. He spoke to the existing and proposed rear yard landscape plan.

Entered as A-1: 9 page photo exhibit

Mr. Clark stated that the proposed landscape plan will provide a dense buffer that will completely screen the pool/pool house from street view.

Richard Keller's credentials were presented and accepted by the Board. He spoke to the variance relief required. He stated that this is a through lot with no ordinance accommodations that would allow for the installation of accessory structures. If this were a standard lot, there would be no variance relief required as the plan would not exceed the 20% accessory coverage allowance, and would meet the 25% rear yard unoccupied requirement.

Entered as A-2: aerial photo (3/21/21)

Entered as A-3: 5 page photo exhibit

Mr. Keller spoke to exhibit A-3 which depicted the surrounding area. He explained that the proposed installation will have no negative impact on the surrounding properties or the streetscape.

Overall, Board members felt the through lot status of the property created a hardship. They felt the landscaping proposed was beautiful and indicated their support for the application.

Upon a motion made by Jessica Glatt, seconded by Steve Togher, and 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

Joseph Steinberg – yes

Cal#3845-21, Natalie & David Reichman, 29 Jefferson Avenue, was **APPROVED**.

CAL#3848-21, D. BHATTACHARYYA, 1 RIDGE TERRACE, SHORT HILLS

Anjali Katoch, Debraj Bhattacharyya and Malathi Ananthkrishnan, Architect, appeared and were sworn. The applicants would like to construct a 2nd floor addition. Proposal is in violation of:

606.2e1d – Front yard setback

606.2e2d – Floor area ratio

Malathi Ananthkrishnan's credentials were presented and accepted by the Board. She stated that the dwelling is a tudor style, 3 BR, 1 BA dwelling. The 5,416 SF lot is an undersized lot in the R-6 zone, which has a minimum lot requirement of 6,000 SF. The proposal is to add a second floor to accommodate a master bedroom with master bath and closet. The existing front

yard setback is deficient at 23.12 feet and the proposed addition will be built directly over the existing.

Entered as A-1: photoboard of 4 elevation photos

Entered as A-2: photoboard of 4 interior photos

Floor area ratio variance relief is also required to permit 38.4% where 36% is the maximum allowed by ordinance in this zone. This equates to approximately 130 SF over the allowable.

Jessica Glatt indicated that she was initially concerned with the floor area ratio request. She stated that after visiting the site and listening to tonight's testimony, she is satisfied that the site can adequately accommodate a floor area ratio greater than allowed. Wolfgang Tsoutsouris and Steve Togher agreed and felt there was no negative impact with this modest proposal. Chandru Harjani felt it was a thoughtful and modest project.

Upon a motion made by Steve Togher, seconded by Chandru Harjani, 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#3848-21, D. Bhattacharyya, 1 Ridge Terrace, “d” variance for floor area ratio was **APPROVED**.

Upon a motion made by Jessica Glatt, seconded by Amy Lawrence, 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#3848-21, D. Bhattacharyya, 1 Ridge Terrace, “c” variance relief was **APPROVED**.

CAL#3849-21, JONATHAN SHEHEE, 97 OAKVIEW TERRACE, SHORT HILLS

Golchehreh Abtahian and Thomas Singer, Architect, P. P., appeared and were sworn. The applicants would like to construct an addition to the dwelling. Proposal is in violation of:

- 606.2e1e1a – Side yard setback
- 606.2e1e1b – Addt'l side yard setback
- 606.2e1d – Front yard setback
- 606.2e1f – Combined side yard setback

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

Entered as A-1: presentation of 26 slides

Mr. Singer stated that the property is in the R-6 zone and backs up to the Cora Hartshorn Arboretum. The home was constructed in 1936 and is in need of some modification. The applicants propose to raise the roof line approximately 5.4 feet on the left side of the house to allow for the creation of additional bedroom space.

The dwelling has an existing front yard setback of 25.2 feet. The proposal will not encroach any further into the front yard. The combined side yard setback is also deficient at 15.1% where 35% is required. Side yard setback variance is also required to permit 6.8 feet where 8 feet is required up to 18 feet in height and 12 feet is required at 32 feet in height.

Overall, Board members felt the relief required were existing conditions and were not being made worse. They were not overly happy with the design as they felt it looked bulky. However, they felt they could support the applicants' variance request.

Upon a motion made by Steve Togher, seconded by Jessica Glatt, 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#3849-21, Jonathan Shehee, 97 Oakview Terrace, 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 Steve Togher, and carried with a unanimous voice vote. (10:15 PM)

Eileen Davitt
Board Secretary

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