

Township of Millburn
Minutes of the Zoning Board of Adjustment
February 6, 2023

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, February 6, 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
Graham Petto, Township Planner
Eileen Davitt, Zoning Officer/Board Secretary

APPROVAL OF MINUTES

A motion to approve the minutes of January 23, 2023 was made by Jessica Glatt, seconded by Regina Truitt and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3800-21, Chai Center, 437-439 Millburn Avenue/7 Bodwell Terrace, Millburn

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

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

the following memorializing resolution was adopted:

**CHAI CENTER FOR LIVING JUDAISM, INC.
BLOCK 1208, LOTS 1, 2 and 13**

**CAL. NO. 3800-21
FEBRUARY 6, 2023**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of relief requested by the Applicant, Chai Center for Living Judaism, Inc. (hereinafter the “Applicant”), in Calendar No. 3800-21, to permit the construction of a house of worship on property located at 437-439 Millburn Avenue / 7 Bodwell Terrace, Millburn, New Jersey, and designated as Lots 1, 2 and 13, Block 1208, 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 February 7, April 18, June 20, September 19, November 21 and December 19, 2022, as to Calendar No. 3800-21, to permit the construction of a house of worship on property located at 437-439 Millburn Avenue / 7 Bodwell Terrace, Millburn, New Jersey, and designated as Lots 1, 2 and 13, Block 1208, on the Official Tax Map of the Township of Millburn;

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

1. At the February 7, 2022 hearing, the application and service of notice were found to be in order. Michael T. Lavigne, Esq., the Applicant’s Attorney, John McDonough, P.P. and Matthew Flynn, P.P., the Applicant’s Professional Planners, Michael Lanzafama, P.E., the Applicant’s Professional Engineer, Rabbi Mendel Bogomilsky, the spiritual leader of the Applicant’s congregation, and Daniel Dubinett, the Applicant’s Licensed Architect, each appeared on behalf of the Applicant and provided sworn testimony in support of the application.

2. The Applicant is the owner of the properties, which contain two (2) single-family residential dwellings located in the Township’s R-6 Residential Zoning District (the “R-6 Zone”). The Applicant proposed to demolish the existing dwellings and construct a house of worship thereon. As part of the application, Lots 1, 2, and 13 in Block 1208 were to be consolidated into one lot (the “Property”).

3. The Applicant’s proposal to construct a house of worship at the Property required preliminary and final site plan approval and a “d(3)” conditional use variance pursuant to N.J.S.A. 40:55D-70d(3) of the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163 (the “MLUL”) to permit the following deviations from the conditional use standards applicable to houses of worship in the R-6 Zone, including the following:

a. A lot area of 0.85 acres, when the minimum lot area of three (3) acres is required pursuant to the Millburn Township Development Regulations and Zoning Ordinance (the “Ordinance”), Section 606.2.d.1(b);

b. A front yard setback of 69.87 feet (from Millburn Avenue) and 40 feet (from Bodwell Terrace), when, as a corner lot, a minimum front yard setback of 100 feet is required for both front yards pursuant to Ordinance Section 606.2.d.1(g);

c. A 7.9 foot buffer between the Applicant’s proposal and the nearest residential zone, when a minimum required distance of 25 feet is required pursuant to Ordinance Section 606.2.d.1(g); and

d. A 7.90 foot parking setback, when the minimum parking setback of 20 feet is required pursuant to Ordinance Section 606.2.d.1(k).

4. The propose construction also required “c” bulk variance relief pursuant to N.J.S.A. 40:55D-70c of the MLUL, with respect to the following deviations:

a. A steep slope disturbance of 6,008 square feet, when the maximum permitted steep slope area of disturbance is 1,000 square feet pursuant to the Ordinance; and

b. Twenty-five (25) parking stalls proposed, when the Ordinance requires a minimum of 52 parking stalls pursuant to the Ordinance.

5. The proposed construction also required design waivers for the following:

a. With respect to site lighting, where the application proposed 2.6 foot candles of site lighting across the Property, when the Ordinance permits a maximum of one (1.0) foot candle of site lighting; and

b. With respect to site circulation, the application proposed one (1) dead end aisle, when dead end aisles shall be avoided whenever possible pursuant to the Ordinance.

6. Beyond the application materials submitted in support of the application, the Board received and considered the following additional documents submitted by the Applicant:

a. Photograph array exhibit, consisting of seven (7) slides, introduced into evidence as Exhibit A-1, on June 20, 2022; and

b. A six (6) page exhibit regarding existing houses of worship in the Township of Millburn, introduced into evidence as Exhibit A-2, on November 21, 2022.

7. Mr. Lavigne explained that the Applicant proposed to demolish the existing structures on the Property and replace same with a house of worship, parking lot, driveways and other associated site improvements. He stated that the Applicant sought a d(3) conditional use

variance, as a house of worship is a conditionally permitted use in the R-6 Zone, but certain required conditions of said proposed use cannot be met by the Applicant.

8. A threshold issue identified by the Board was whether a prior conditional use variance application heard by the Board concerning the development of a house of worship on the Property in the R-6 Zone (BOA Application No.: 2284(a)), denied on or about the 12th day of December, 2001 after several hearings (the “Previous Application”), precluded the Board from considering the current application under the legal doctrine of res judicata.

9. As part of the Applicant’s submissions, the Applicant supplied the Board with the memorializing Resolution and site plan from the Previous Application. No information was provided to the Board to indicate that the Board’s denial of the Previous Application was appealed to the Superior Court or otherwise challenged.

10. Based on the Resolution from the Previous Application, the applicant (Chai Center c/o Rabbi Mendel Bogomilsky) presented professional planning testimony in support of the Previous Application as follows:

a. The proposed post-merger lot area of the Property is unusually large for a lot in a residential district in Millburn Township;

b. The Property is close to the center of the Township, most of which lots are residential, both conforming and nonconforming in size, and usually less than 10,000 square feet in lot area;

c. The size of the Property allows “ample” room for the Chai Center building and required parking;

d. The Property is located on Millburn Avenue, a major county road that would not be significantly impacted by the kind of traffic to be generated by the religious use;

e. Three of the four adjacent sides of the Property are non-residential (cemetery and two streets) and therefore are not subject to land use conflicts; and

f. The Chai Center was established in the tradition of a small local facility serving the religious needs of the neighborhood, as congregation members need to be within walking distances of their congregations.

g. All religious institutions, such as the Chai Center, are traditionally and frequently incorporated into the established character of a residential area, and considered whether there are any inherent planning or land use problem created on the Property of less than the three (3) acres, which is required for a religious institution use;

h. The Chai Center fits the proportions or scales set out in the conditional use requirements for a three (3) acre lot;

i. The proposed use will have an unsubstantial impact on the neighbors and adjacent uses; and

j. All Chai Center activities occur “indoors” and that nothing happens outdoors that could impact the residential qualities of the area.

11. In support of the Previous Application, the applicant provided testimony from a professional traffic engineer, who described the on-site layout of parking and circulation as adequate and in conformance with Ordinance requirements; how there would not be an increase in traffic generation; that there is no conflict between the impacts of the nearby high school and that of the Chai Center to the traffic patterns; and that the impact of the proposed use on the Master Plan would “almost be unrecognizable”.

12. The Board’s Resolution memorializing denial of the Previous Application concluded as follows:

a. Considering the number of persons accessing the Property for religious uses, the proposed on-site parking is inadequate;

b. The Ordinance requirement for a minimum of three (3) acres for a house of worship is precisely the type of safeguard that a residential neighbor would rely upon in evaluating what types of changes might occur in his neighborhood at some time in the future, which was especially true when three (3) separate residentially zoned building lots are proposed to be merged to create a significantly undersized, nonresidential location (0.84 acres verses 3.0 acres required).

c. The site will not accommodate the problems associated with the proposed use as it was established that there exists occasional instances when the capacity of the Property and its site design “is and will be absolutely overwhelmed”, clearly resulting in substantial detrimental impact to the public good and surrounding neighbors;

d. Traffic circulation and safety impacts in the neighborhood, including impacts on Bodwell Terrace and noise, will conflict with the existing residential and educational use patterns in the neighborhood and constitute a detrimental impact on the neighborhood;

e. The frequency of events and the expansion of the intensity of the activities on the Property, if approved, is likely to increase in the future.

13. As to the Previous Application, the Board concluded in 2001 that the Property could not sustain the applicant’s proposal, given its size, inadequate buffering to the adjacent residential neighbor, inadequate on-site parking, and that the congregation's use would result in substantial detrimental impact to the public good and a substantial impairment to the Zone Plan and Zoning Ordinance.

14. The Applicant also supplied the Board with a Township of Millburn Planning Board Resolution from 1994 which denied a request to merge the two (2) lots known as 437 and 439 Millburn Avenue as being inconsistent with the residential character of the neighborhood.

15. As to the threshold issue of res judicata, the Board Attorney instructed the Board that if the same applicant (or their privies) seeks the same relief in the same factual setting, a development application can be denied by a land use board on the grounds that it has already been decided.

16. The Board Attorney instructed the Board that in order for the doctrine of res judicata to be applicable, it must be shown that:

- a. The second application is substantially similar to the first;
- b. The same parties or their privies are involved;
- c. There must be no substantial change in the application itself or conditions surrounding the property; and
- d. There must have been an adjudication on the merits in the first case;

17. As to these four criteria, there was no dispute from the Applicant that the same parties or their privies are involved, and that there was an adjudication on the merits in the first case. However, the Applicant contended that the current application is not substantially similar to the Previous Application, and that there have been substantial changes made to the current application and to the conditions surrounding the property so to preclude the applicability of the doctrine of res judicata. As to these contentions of the Applicant, the Board notes that when greater relief is requested in the second application, it may be barred by the doctrine of res judicata. *Pieretti v. Bloomfield*, 35 N.J. 382 (1961).

18. As an initial matter, the Board requested that the Applicant address this threshold issue concerning the applicability of the legal doctrine of res judicata with evidence and testimony from appropriate witnesses.

19. Mr. McDonough, one of the Applicant's Professional Planners, appeared and spoke to the issue of res judicata, and identified what he believed were the differences between the two (2) applications, as follows:

- a. The statutory test to determine site suitability has changed;
- b. There are factual distinctions between the two applications; namely, whereas the Previous Application was for the re-purposing of the existing dwelling for both residential and house of worship use, the current application proposes the demolition of the existing structure and the construction of a new house of worship building; and

c. There is also a change in circumstances in that many people currently participate in their respective worship practices “remotely”.

20. Mr. Lanzafama, P.E., the Applicant’s Professional Engineer, testified and provided a comparison of the Previous Application to the current application. He indicated that the Previous Application was to create a house of worship within an existing residence, which would have been a “combined use” consisting of a residential dwelling and a house of worship, while the current application is only for a house of worship. Mr. Lanzafama testified further that the Previous Application (1) provided less parking spaces than the current application; (2) proposed a front yard setback off Millburn Avenue of 43.72 feet, when the current application proposes a front yard setback off Millburn Avenue of 69.87 feet; (3) provided a front yard setback off Bodwell Terrace of 39.16 feet, when the current application proposes a front yard setback off Bodwell Terrace of 40 feet; (4) provided a side yard setback of 39 feet on the Millburn Avenue side of the Property and a side yard setback of 55 feet on the Bodwell Terrace side of the Property, when the current application proposes a side yard setback of 75 feet on the Millburn Avenue side of the Property and a 40 foot side yard setback on the Bodwell Terrace side of the Property; and (5) forty-five (45) sanctuary seats, when the current application proposes 135 sanctuary seats.

21. Mr. McDonough returned to the Board and testified that there have also been significant changes to the surrounding neighborhood since the Previous Application, as (1) a mausoleum has been constructed on the lot adjacent to the Property; (2) Millburn High School diagonally across from the Property has been expanded at least twice, and the enrollment is at least 60% higher than it was in 2001; (3) a significant portion of the High School parking lot has been replaced with a school gym and the athletic fields are used at a higher intensity than before; (4) the former Wells Fargo site on Millburn Avenue was recently approved to be developed into approximately 50 – 60 residential units and 3,000 SF of retail space; (5) the former Chanticleer property was redeveloped with approximately 30 townhomes; (6) approximately 1/3 of a mile down Millburn Avenue, the former “Saks” site is being redeveloped at the time of the current application with approximately 200 housing units (the “Saks” site actually falls in Springfield, but the access thereto are through Millburn and onto Millburn Avenue); and (7) a “complete streets” project was constructed on Millburn Avenue, the goal of which was to calm traffic by removing one lane of traffic and adding bump-outs.

22. Mr. McDonough concluded by stating all of these factors contribute to the changed characteristics in the area between the time of the Previous Application (2000 – 2001) and today, with the prior denial being concerned about potential impact to the surrounding area, and that a transformation of the nature and character of the neighborhood has taken place within the ensuing time period. In the 21 years since the Previous Application, Mr. McDonough believed that the subject neighborhood has more pedestrian and vehicular activity, is less residential in character, and is more accommodating to a development as currently proposed.

23. After considering the testimony of Mr. McDonough and Mr. Lanzafama on the issue of res judicata, the Board determined that it wanted to hear additional testimony so that the Applicant had a full and fair opportunity to demonstrate why the doctrine of res judicata did not

apply to the present application. The Applicant did not object to the Board proceeding in this manner.

24. On June 20, 2022, Mr. Lavigne presented Daniel Dubinett, the Applicant's Architect, who presented and entered Exhibit A-1 into evidence. Mr. Dubinett testified that the existing site consists of three (3) lots, which would be merged if the Applicant's proposal is approved, the two (2) single-family dwellings will be demolished, and that he considered the architecture of the homes in the surrounding area in order to design a structure that would complement the neighborhood.

25. Mr. Dubinett thereafter referred to the zoning table previously submitted by the Applicant, reviewed the bulk requirements as they relate to the R-6 Zone, testified with regard to the conditional use requirements set forth in the Ordinance, and indicated that the application complies with the majority of the conditional use requirements that are applicable to houses of worship, including the requirements that the property front on a primary, secondary or collector street; minimum lot frontage of 200 feet; minimum lot depth of 250 feet; vehicle access from other than a local street; maximum allowable lot coverage; side yard setback; rear yard setback; and maximum building height. Mr. Dubinett testified as to the architectural character of the proposed house of worship, referenced slide #4 of Exhibit A-1, and showed a rendering of the building, including the elevations of the Applicant's proposal from both Millburn Avenue and Bodwell Terrace.

26. Mr. Dubinett testified that the proposed house of worship will be accessed from the main entrance off the parking lot; the first floor will be 4,323 square feet and will contain a gathering space, kosher kitchen, coat room, storage area, sanctuary, office space, and restrooms; the basement will be 4,323 square feet and will contain several "flex" classrooms, a small reception area, mikvah, mechanical room and storage room; the second floor will contain 1,674 square feet and will contain four (4) classrooms, a storage room and restrooms; and the building will be constructed with Hardi Plank siding with an asphalt shingle roof. In response to comments received in the Board Planner's report, Mr. Dubinett testified that the Applicant proposes to use a portion of the interior (basement) of the proposed house of worship to hold trash until pick-up, which will be by a private vendor, and all utilities will be underground.

27. Rabbi Mendel Bogomilsky, the spiritual leader of the Applicant's congregation, testified that there are approximately 100 families in said congregation, a number that has been relatively stable for the past 10 years. Rabbi Bogomilsky described a typical weekday/weekend service at the current house of worship, which is located in the existing dwelling on the Property. He testified that there are currently two (2) services during the week (Monday and Thursday mornings, from 7:00 a.m. to 8:00 a.m.), which is attended by approximately 10 people and currently held virtually. He testified further that there are usually two (2) evening classes attended by approximately four (4) to five (5) people, which is also currently conducted remotely. Rabbi Bogomilsky testified that there is a Sunday morning service at 8:30 a.m., and a Hebrew school from 9:00 a.m. and 12:00 p.m., which is attended by approximately 20 children from 7 to approximately 12 years of age, along with a Saturday morning service of about 30 to 35 people, from 9:30 a.m. to 12:00 p.m., followed by a small brunch for the attendees.

28. Rabbi Bogomilsky testified that most intense usage of the current house of worship is during the High Holidays of Rosh Hashanah and Yom Kippur, with services held throughout the day and evening, with approximately 100 to 150 attendees. Rabbi Bogomilsky indicated that 95% of the time, the 25 proposed parking spaces will be more than adequate for the proposed use, with the highest parking demand to occur during the High Holidays. He stated that he has spoken to the pastor at Saint Rose's Church, who advised that some parking spaces could be used by the proposed house of worship congregants and that Millburn High School, which is across the street, typically does not have school during the High Holidays. Rabbi Bogomilsky stated that, to his knowledge, there is not another Orthodox Jewish congregation in Millburn/Short Hills, and approval of this application would allow for members of the congregation to worship together. When questioned about the eight (8) classrooms and whether a nursery school would be offered, Rabbi Bogomilsky stated that there are no plans for a nursery school; the classroom spaces are intended to be flexible and age-appropriate; and some classrooms will be set up specifically for young children to play in when services are being held.

29. No parking study, traffic study, pedestrian circulation study, or vehicular circulation study was submitted by the Applicant, and no testimony by a professional traffic engineer was provided by the Applicant in support of the application.

30. Mr. Lanzafama, P.E., the Applicant's Professional Engineer, responded to questions as they pertained to the emergency vehicle egress drive onto Bodwell Terrace, which is designed as a "grid system" placed on the top soil, which will be seeded to look like a lawn, and will not be an actively used driveway.

31. At the September 19, 2022, Matt Flynn, P.P., one of the Applicant's Professional Planners, provided a review of the application and spoke to the variance relief requested. Mr. Flynn testified that the Applicant designed the building to be sensitive to the neighbors, and indicated that the proposal is for a small-scale house of worship fulfilling the needs of the community's members of the Orthodox Jewish faith. He stated that the proposed house of worship is an inherently beneficial use, not a prohibited use, and a conditionally permitted use. He testified as to the 4-prong test set forth in the New Jersey Court's Sica decision, which applies to an inherently beneficial use. Mr. Flynn testified to the following four steps as follows:

a. Identify the public use at stake, which in this matter, is the freedom of religion, a fundamental constitutional right, and that the approval of the Applicant's proposal will serve to further religious practice in the Township;

b. Identify the potential impacts of the Applicant's proposal, which in this matter, there has been a substantial amount of testimony provided by the Applicant's professionals indicating that the proposed use will have minimal impact on the surrounding area and will not cause substantial traffic congestion, and that the Applicant's professionals looked at the architectural integrity of the surrounding homes and designed a structure that was respectful of the surrounding area;

c. Identify any mitigating measures, which in this matter, the Applicant has done through substantial landscaping and plantings; and

d. Balance the benefits against any impacts, which in this matter, testimony has been provided to show the benefits of the proposed house of worship far outweighing any negative impacts.

32. When asked if he has looked into other houses of worship in the Township of Millburn, and how this application compares to them, Mr. Flynn testified all local houses of worship required some sort of conditional use relief. Township Planner, Graham Petto, followed by asking which residential zones these conditionals use requirements for a house of worship are applicable to, upon which Mr. Flynn testified that the same conditional uses are applied to all residential zones within the municipality (i.e., the R-3, R-4, R-5, R-6, R-7, R-8 Zones), along with the CMO zone, with many parcels of property in the CMO Zone being adjacent to single family dwellings in the R-6 zone. Thereafter, Mr. Flynn also indicated that most, if not all, of the houses of worship in the Township are non-compliant as to the parking spaces required on such sites. Mr. Flynn further indicated that there are 18 residential Property in the Township that comply with the required three (3) acre lot size requirement; however, to his knowledge, they are not currently available for sale.

33. In response to questions from the public as to the proposed driveway access opening onto Bodwell Terrace and the potential safety impact of same on the surrounding neighborhood, Mr. Flynn believed that the proposed site can function safely and efficiently and that a collapsible chain will restrict access to and from Bodwell Terrace to emergency vehicles only, and that the site will be policed by the Applicant's staff.

34. In response to questions from the public concerning the residential nature of the subject neighborhood, Mr. Flynn noted that Millburn Avenue is not a purely residential roadway; there are some non-residential uses within a five (5) minute walking distance from the Applicant's site; and that a house of worship being conditionally permitted within residential zones in the Township indicates that houses of worship were contemplated to be located within residential neighborhoods.

35. At the November 21, 2022 hearing, Mr. Flynn appeared and indicated that he prepared an analysis that compares this proposed house of worship with existing houses of worship in the Township, and entered Exhibit A-2, a six (6) page exhibit with an analysis of conforming Property in terms of the required lot area of three (3) acres for a house of worship in a residential zone. Mr. Flynn indicated that there are 18 properties within the Township that meet the three (3) acre minimum lot area requirement, and of those 18 properties, 11 properties also meet the bulk requirements of having frontage on a primary, secondary, or collector street, a minimum lot width of 200 feet, and a minimum lot depth of 250 feet. Mr. Flynn testified that of these 11 properties, only four (4) did not have existing houses of worship or schools and are currently developed with single-family dwellings.

36. Mr. Flynn stated that he also compiled a list of the 12 houses of worship within Millburn Township and rated them in terms of lot area, whereupon he found that there are five (5) houses of worship located on lots smaller in lot area than what the Applicant proposes in this application. He testified that in terms of building footprint, this application is on the “lower end” of the existing houses of worship, proposing a smaller building relative to lot area if compared to the other houses of worship. Mr. Flynn indicated that this is a small house of worship in terms of the Zoning Ordinance as well as “what is actually seen on the ground.”

37. Mr. Flynn testified that while the Applicant is requesting some conditional use variance relief, these variances do not have a negative impact on the neighborhood or the Township Zoning Plan. He stated that in addition to this application proposing an inherently beneficial use, this proposal is substantially smaller than the other houses of worship in the Township.

38. Mr. Flynn was unaware of how many of the existing houses of worship pre-date the Township Zoning Ordinance or have a parking space deficiency relative to current Ordinance requirements, other than noting that the Mount Zion and Wyoming Presbyterian houses of worship have no parking at their respective sites.

39. Jack Gordon, 27 Bodwell Terrace, was duly sworn and expressed that this application presents an identical application that was presented on at least two (2) prior occasions. Mr. Gordon noted that the Planning Board heard a similar application in 1994, which it denied, wherein the Planning Board indicated that combining 437 and 439 Millburn Avenue was inconstant with its surroundings and is not keeping with the residential character of the neighborhood. He noted that the Zoning Board of Adjustment thereafter denied a similar application in 2001 (noted above) to combine the same lots and connect same to Bodwell Avenue, wherein the Board found that the Property could not sustain the proposed house of worship use, there is inadequate buffering, inadequate parking and the proposal, as presented, constituted a substantial detriment to public good, and that permitting a house of worship in residential zone on such a small lot would be a substantial impairment to zone plan and zoning ordinance, including the deficient size of the lot. Mr. Gordon testified that throughout the hearings on this current application, he heard virtually the identical testimony as previously presented in the two previous applications, and the doctrines of res judicata and collateral estoppel must apply to deny the application.

40. Mr. Gordon further testified that he found at least four (4) other possible sites within the Township that would not require variances for lot size while also having dual access to both main and auxiliary roads. Mr. Gordon believed that the Applicant failed to adequately compare the differences between the existing houses of worship in the Township; which houses of worship were constructed before the Ordinance was promulgated; and noted that the Applicant admitted that it was unaware of which houses of worship contained a single-story and had adequate parking (including off-site). Mr. Gordon testified that the Applicant failed to consider Property in CMO Zone instead of R-6 Zone, where variances may not be required for the proposed use.

41. Mr. Gordon stated that the Applicant's proposal is inconsistent with the surrounding residential neighborhood for the following reasons:

- a. The proposed lot size is less than 1/3 the lot size that is required for the proposed use;
- b. Twenty-five (25) parking spaces are proposed, which is less than ½ of the 52 parking spaces that are required;
- c. A side yard setback of 40 feet is proposed, which is less than ½ of the side yard setback of 100 feet that is required;
- d. A parking setback of eight (8) feet, which is less than ½ of the required parking setback of 20 feet;
- e. A buffer to a residential use of less than eight (8) feet is proposed, which is less than 1/3 of the 25 foot buffer that is required;
- f. An increase in impervious coverage that is 25% greater than what is currently existing, in a municipality with a history of flooding;
- g. A steep slope disturbance of more 600% that what currently exists; and
- h. Proposed exterior lighting made upon of at least ½ dozen lights on 16-foot light poles, creating a lighting level three times brighter than permitted in the R-6 Zone, which requires a design waiver.

42. Solomon Lama, 438 Millburn Avenue, was duly sworn and presented and entered into evidence as Exhibit Lama1, a police report for the area of Millburn Avenue where the subject Property are located. He testified as to severe traffic congestion in the area, and that the proposed house of worship will further contribute to an already existing hazardous condition.

43. Yasir Imtiaz, 9 Bodwell Terrace, was duly sworn and stated that the Applicant has not presented any testimony that indicates this is a different application than what had previously been presented to the Board and denied, and that this proposal will be an extreme detriment to his quality of life and will negatively impact the surrounding residential area.

44. Priti Goswani, 24 Bodwell Terrace, was duly sworn and stated that she is concerned about the impact of this proposal and how it will affect the children who play in the neighborhood.

45. Samir Navani, 6 Bodwell Terrace, was duly sworn and stated that the Applicant's proposal will have a negative impact on the surrounding area and will make the current traffic congestion worse.

46. Mariappan Asokan, 14 Bodwell Terrace, was duly sworn and testified that she participated in the 2002 hearing, that nothing in the proposal has been changed, the traffic is already heavy in the area, and this proposal will make an already difficult traffic situation worse.

47. John Vergara, 22 Bodwell Terrace, was duly sworn and testified that he values the residential area that Bodwell Terrace provides, and feels that this proposal will negatively impact the residential character of the neighborhood.

48. Sowmya Jairam, 17 Bodwell Terrace, was duly sworn and testified that the proposal will have a negative impact on the residential character of their street.

49. Leslie Shulman, 10 Bodwell Terrace, was duly sworn and testified that the proposal is an all-around negative application.

50. At the December 19, 2022 hearing, Mr. Lavigne gave a brief summation of the application, stating that the application currently before the Board is significantly different than the previous applications, specifically the Previous Application, and that the current application proposes a complete demolition of the current structures on Property and the construction of a new structure (a house of worship), which respects the front yard setbacks much more than the previous application. Mr. Lavigne stated further that there has been extensive testimony as to the parking on site as well as the size of the congregation, the number of parking spaces being provided is 40% greater than that proposed in the Previous Application, and that the January 31, 2022 report from Township Engineer, Martha Callahan, referenced a “substantial buffer of evergreen trees.” Mr. Lavigne further reflected on the change of the character of the neighborhood over the years, adding that there have been multi-family developments constructed in the nearby areas.

51. The Board proceeded to decide whether the doctrine of res judicata applied to the present application.

52. As instructed by the Board Attorney, whether or not the doctrine of Res Judicata is applicable to this instant matter is a decision to be made by a Board of Adjustment in the first instance. When looking to apply the doctrine of res judicata, the question is whether the same parties or their predecessors have previously sought the same relief from the Board of Adjustment in the same factual setting. If so, the case may be dismissed on the grounds that it has already been decided.

53. The elements that must be present in order for the doctrine of Res Judicata to be applicable are as follows:

- a. The second application is substantially similar to the first;
- b. The same parties or their privies are involved;

- c. There must be no substantial change in the application itself or conditions surrounding the property;
- d. There must have been an adjudication on the merits in the first case; and
- e. Both applications must involve the same cause of action.

54. The Board Attorney explained to the Board that where greater relief is requested in the second application, it may be barred by res judicata. *Pieretti v. Bloomfield*, 35 N.J. 382 (1961). In *Pieretti*, the Supreme Court concluded that the second application made by the same applicant for variance relief for minimum lot area and depth filed by the same parties regarding the same property was barred by res judicata where the second application proposed a more intense use. *Id.* at 287. Finding the doctrine of res judicata applicable, the Supreme Court in *Pieretti* found:

The proposed building is larger and would have two stories, containing more than three times the amount of floor space as set forth in the prior application. There was to be a 32 car parking lot, new water facilities installed, and an apparent reduction in the buffer zone between it and the residential Property in the area.

[*Id.* at 388-89.]

55. The Board found the following differences between the Previous Application and the current application as constituting an intensification of the Applicant's proposal - including its impact on the Bodwell Terrace residential neighborhood:

- a. Size of the House of Worship:
 - i. Previous Application: Conversion of a 2.5 story single family residence to a house of worship, with an accessory residence to remain, all within the same structure; and
 - ii. Current application: house of worship only, with 4,323 square feet on the first floor including a gathering space, kosher kitchen, coat room, storage area, sanctuary, office space, and restrooms; 1,674 square feet on the second floor including four (4) classrooms, a storage room and restrooms; and 4,323 square feet in the basement, including several "flex" classrooms, a small reception area, mikvah, mechanical room and storage room.
- b. Building Coverage:
 - i. Previous Application: 3,305 square feet; and
 - ii. Current Application: 4,324 square feet.
- c. Lot Coverage:

- i. Previous Application: 13,594 square feet; and
 - ii. Current Application: 16,274 square feet.
- d. Driveway Location:
 - i. Previous Application: 120 feet from Bodwell Terrace; and
 - ii. Current Application: 80 feet from Bodwell Terrace.
- e. Number of Parking Spaces:
 - i. Previous Application: 18 parking spaces (70 seats per the Rabbi's testimony, requiring 24 spaces at a ratio of one space per three seats - a 6 space deviation); and
 - ii. Current application: 25 parking spaces (135 seats, requiring 52 spaces at a ratio of one space per three seats - a 27 space deviation).
- f. Location of Parking Spaces:
 - i. Previous Application: In excess of 20 feet from the adjacent residential property on Bodwell Terrace; and
 - ii. Current application: Approximately 10 feet from the adjacent residential property on Bodwell Terrace;
- g. Sanctuary seating:
 - i. Previous Application: 45 sanctuary seats per the floor plan, and 70 seats per the Rabbi's testimony; and
 - ii. Current application: 135 seats.
- h. Side yard setback (Bodwell Terrace):
 - i. Previous Application: 55 feet; and
 - ii. Current application: 40 feet.
- i. Buffer to the residential zone:
 - i. Previous Application: 17 feet; and
 - ii. Currently Application: 7.9 feet.

- g. Emergency Driveway access from Bodwell Terrace:
 - i. Previous Application: none; and
 - ii. Current Application: proposed.
- h. Sidewalk access from Bodwell Terrace:
 - iii. Previous Application: none; and
 - iv. Current Application: proposed.
- i. Steep Slope disturbance:
 - i. Previous Application: none identified in Resolution or plans; and
 - ii. Current Application: a steep slope disturbance of 6,008 square feet, when the maximum permitted steep slope area of disturbance is 1,000 square feet pursuant to the Ordinance.

56. In contrast, the Board found the following development elements to constitute a “reduction” in the intensity of the proposal as contained in the current application:

- a. Front yard setbacks (Millburn Avenue):
 - i. Previous Application: 43.72 feet;
 - ii. Current application: 69.87 feet.
- b. Front yard setback (Bodwell Terrace):
 - i. Previous Application: 39.16 feet;
 - ii. Current Application: 40 feet.
- c. Side yard setbacks (Millburn Avenue):
 - i. Previous Application: 39 feet; and
 - ii. Current application: 75 feet.
- d. Retaining Wall:
 - i. Previous Application: retaining wall along the residential property line; and

- ii. Current Application: no retaining wall.
- e. Stormwater management:
 - v. Previous Application: unknown (not addressed); and
 - vi. Current Application: 3 to 4 drywells (increased capacity reflective of the larger building).

57. Based on the testimony and the Board’s familiarity with the community and the subject neighborhood, the Board disagrees with Mr. McDonough’s finding that a “transformation of the nature and character of the neighborhood” has taken place since the Previous Application was denied by the Board in 2001. The evidence cited by the Applicant of changed circumstances does not apply to the neighborhood to be impacted by the proposed development. There is no evidence that the neighborhood is currently less residential in character as compared the neighborhood in 2001. The additional residential development approved since 2001 is located a significant distance from the subject Property. Further, no traffic or pedestrian activity study was presented by the Applicant to demonstrate impacts of traffic from Millburn High School, the additional residential development, or otherwise affecting Bodwell Terrace since the Previous Application.

58. Contrary to the Applicant’s contention that there has been a change in land use law since 2001 as to house of worship uses, the Board Attorney advised the Board that both the Sica balancing test and consideration of houses of worship as inherently beneficial uses have been in effect since prior to the Previous Application, and that changes in the law are not a criteria to consider as to the applicability of the legal doctrine of res judicata. Further, no evidence was presented that any “remote” worship via Zoom or other internet service will be continued by the Applicant on a permanent basis – significant given that use variances have no time limitation and are to “run with the land.”

59. As set forth above, the proposed changes between the Previous Application and the current application constitute a significant intensification of the house of worship project. No previously requested variances were eliminated, and four (4) new variances were requested by the Applicant (three (3) due to changes in the Ordinance, and one (1) due to the increase in the number of sanctuary seats). The concerns addressed in the Resolution from the Previous Application, including the Property’s deficient size, inadequate buffering to the adjacent residential neighbors, and inadequate on-site parking, have not been addressed by the current application – said deviations have only been magnified given the expansion of the house of worship project. As set forth above, the increased setbacks from Millburn Avenue, the removal of a retaining wall, and a less than one foot increase in the setback from Bodwell Terrace as compared to the Previous Application pale in comparison to the significantly increased size and scope of the current application on the same Property.

60. The Board concludes that the doctrine of res judicata applies, and that the application must be dismissed on legal grounds, for all the reasons set forth above and herein, including the following:

- a. The size and scale of this project is now much larger, extensive and intense as compared to the proposal in the Previous Application, with all of the same site plan concerns still present but with significantly increased impacts upon, and less protection for, residential neighbors.
- b. The parking deficiency is intensified with the proposed buffer reduced;
- c. The seating capacity is being more than doubled from the Previous Application; and
- d. The conditions surrounding the Property have not materially changed;

61. The Board finds for all the reasons set forth herein and above that the elements are present for the doctrine of Res Judicata to be applicable:

- a. The second application is substantially similar to the first;
- b. The same parties or their privies are involved;
- c. There is no substantial change in the application itself given that the application significantly exacerbates the conditions and factors that caused the Board to deny the Previous Application in 2001;
- d. There is no substantial change in the conditions surrounding the property;
- e. There was an adjudication on the merits in the first case – and no appeal was taken from the denial of the Previous Application; and
- f. Both applications involve the same cause of action.

62. The Board subsequently determined by motion that it was not necessary for it to deliberate and vote on the merits of the application and the underlying variances given that the application had already been dismissed on legal grounds based on the doctrine of res judicata.

NOW, THEREFORE, BE IT RESOLVED on this 6th day of February, 2023, that the application submitted by the Chai Center for Living Judaism to permit the construction of a house of worship, denied as a matter of law by this Board pursuant to the doctrine of res judicata, at its meeting of December 19, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 6th day of February, 2023.

Cal#3902-22, C. Skay/J. Lukasiewicz, 7 Ivy Terrace, Millburn

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

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

the following memorializing resolution was adopted:

**COURTNEY SKAY & JOSEPH LUKASIEWICZ
BLOCK 502, LOT 23**

**CAL. NO. 3902-22
FEBRUARY 6, 2023**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Courtney Skay & Joseph Lukasiewicz (hereinafter the “Applicants”), in Calendar No. 3902-22 to permit the construction of a second floor addition over the garage of the existing dwelling on property located at 7 Ivy Terrace, Millburn, New Jersey, and designated as Lot 23, Block 502, 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 January 9, 2023 as to Calendar No. 3902-22 to permit the construction of a second floor addition over the garage of the existing dwelling on property located at 7 Ivy Terrace, Millburn, New Jersey, and designated as Lot 23, Block 502, 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 January 9, 2023 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with the Applicants' Architect, Timothy Klesse, 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-6 Zoning District (the "R-6 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.

3. The subject property is a corner lot per the Township Zoning Ordinance, which, with the proposed addition, will result in a front yard setback of 35.75 feet, where a minimum permitted front yard setback of 40 feet is required in the R-6 Zone. Therefore, variance relief is required.

4. At the January 9, 2023 hearing, the Board received and considered the following additional documents submitted in support of the application:

a. A "marked up" version of Sheet BOA-3, previously submitted to the Board, prepared by Timothy Klesse on September 28, 2022, introduced into evidence as Exhibit A-1, on January 9, 2023; and

b. A "marked up" version of Sheet BOA-4, previously submitted to the Board, prepared by Timothy Klesse on September 28, 2022, introduced into evidence as Exhibit A-2, on January 9, 2023.

5. At the hearing, Mr. Lukasiewicz, one of the Applicants, testified as to the purpose of the proposed addition, will include, inter alia, additional office space, a renovated kitchen, and an area for the children.

6. Timothy Klesse, the Applicants' Architect, testified that the subject property has an existing non-conforming front yard setback of 25.9 feet, and along with the subject property being a corner lot, it is difficult to add onto the existing dwelling without creating additional non-conformities. He testified that the Applicants' proposal includes a kitchen alteration, an office above the garage, which will include dormers that will be seen from the abutting street, and a mudroom.

7. Mr. Klesse testified that there will not be any alterations to the dwelling's footprint, as the addition will add additional dwelling area to the second floor only, which will be located above the existing garage. He testified that the proposed window dormers, which will show to the street, will be 35.75 feet from the front lot line, and 10 feet further back than the dwelling's existing front yard setback.

8. Mr. Klesse testified that there are no other proposed Zoning Ordinance violations, other than the front yard setback.

9. 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[.]

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 being a corner lot 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.

12. Although the proposed construction requires variance relief to permit a front yard setback of 35.75 feet, where existing front yard setback is 25.9 feet and the minimum front yard setback required in the R-6 Zone is 40 feet, the deviation from the aforementioned requirement is relatively modest. The Board finds that the proposed deviation is 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.

13. 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 6th day of February, 2023 that the variance relief requested by the Applicants to construct a second floor addition to the existing dwelling resulting in a front yard setback of 35.75 feet, where a minimum permitted front yard setback is 40 feet in the R-6 Zone, on property located at 7 Ivy Terrace, Millburn, New Jersey,

granted by this Board at its meeting of January 9, 2023, 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 6th day of February, 2023.

Cal#3900-22, M. Comeros/P. Maness, 670 Ridgewood Road, Millburn

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

- Ashley Avigdor – yes
- Amy Lawrence – yes
- Gary Rosen – yes
- Wolfgang Tsoutsouris – 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 Applicants, Peter Maness & Mai Comeros (hereinafter the “Applicants”), in Calendar No. 3900-22 to permit the construction of a second-story deck over an existing patio on the side of the existing dwelling on property located at 670 Ridgewood Road, Millburn, New Jersey, and designated as Lot 1, Block 406, 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 January 9, 2023 as to Calendar No. 3900-22 to permit the construction of a second-story deck over an existing patio on the side of the existing dwelling on property located at 670 Ridgewood Road, Millburn, New Jersey, and designated as Lot 1, Block 406, 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 January 9, 2023 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and 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-6 Zoning District (the “R-6 Zone”). The Applicants propose to construct a second-story deck over an existing patio on the side of the existing dwelling. The application’s proposed construction intends to make the existing residence more functional while creating additional outdoor space.
3. The subject property is irregularly shaped (a triangle, not a square or rectangle), which means that it has no side yard to the west of the existing dwelling, and with the proposed second-story deck, will result in a front yard setback of 21.15 feet to the deck stairs, and 28.19 feet to the proposed deck itself, when a minimum permitted front yard setback of 40 feet is permitted in the R-6 Zone. Therefore, variance relief is required.
4. At the January 9, 2023 hearing, the Board received and considered the following additional documents submitted in support of the application:
 - a. A photo array consisting of four (4) photographs, introduced into evidence as Exhibit A-1, on January 9, 2023.

5. Referencing Exhibit A-1, Peter Maness, one of the Applicants, testified that the subject property has existing non-conformities, inter alia, front, side and rear yard setbacks, and being irregularly shaped, it is difficult to add onto the existing dwelling without creating additional or exacerbating existing non-conformities. Mr. Maness testified that there are no existing windows on the western side of the dwelling, and the new deck will be constructed over an existing patio. He testified further that the existing side yard setback is 24 feet, 3 inches, and the proposal will result in a front yard setback of 21.15 feet to the proposed deck stairs, which will be concealed behind a fence. Mr. Maness testified that in addition to the substantial screening on the subject property, the proposed deck will be concealed by arborvitae. Finally, he testified that the proposal will not result in any impact on neighbors, and the closest existing dwelling is 150 feet away, across the existing railroad track.

6. 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[.]

7. 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”).

8. 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 irregular shape and the location of the existing dwelling 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.

9. Although the proposed construction requires variance relief to permit a front yard setback of 21.15 feet, where existing front yard setback is 24.31 feet and a minimum front yard setback of 40 feet is required in the R-6 Zone, the deviations from the aforementioned requirements are relatively 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.

10. 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 6th day of February, 2023 that the variance relief requested by the Applicants to construct a second-story deck over an existing patio on the side of the existing dwelling resulting in a front yard setback of 21.15 feet, where a minimum permitted front yard setback is 40 feet in the R-6 Zone, on property located at 670 Ridgewood Road, Millburn, New Jersey, granted by this Board at its meeting of January 9, 2023, 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 6th day of February, 2023.

BUSINESS

Cal#3735-19, Mansi & Anuj Kapadia, 15 Park Road, Short Hills

Request for 3-year extension of variance relief

The Board discussed the residents’ request for an extension of variance relief. They explained that the variance was granted to the previous homeowners. They purchased the property in 2020 and put off acting on the variance due to supply chain concerns during COVID. The original variance was granted in 2020 and expired in 2021. The applicants would like the variance relief extended for 3 years in order to allow them to construct the addition in accordance with the approvals given.

Ying Li, applicants’ architect indicated that the construction would be the same but exterior façade would be different as would some windows.

The Board felt that the variance granted was based on the plans that were presented to them at that time. Those plans were also done by a different architect. For those reasons, the Board opted not to grant an extension of variance relief. The applicants were instructed to submit an application for an amended approval.

APPLICATIONS

CAL#3909-22, TRIFECTA EVENT SPACE, LLC, 156 MAIN STREET, MILLBURN

Anthony Cerciello, attorney for the applicant, stated his appearance. The applicant is proposing to operate an event space and is seeking “d” use variance approval, preliminary and final site plan approval, a parking variance and sign variance. The applicant is seeking a waiver from the requirement to submit an EIS as well as providing storm water runoff provisions. The applicant is also seeking several design waivers as they relate to lighting. Proposal is in violation of:

- 606.4b – not a permitted use
- 607.2b – required parking
- 609.10a – wall graphic area/height

Richard Keller, P. E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. The property in question is located in the R-8 zone district and the building on the property has been vacant for approximately 20 years. The building formerly housed the Millburn Train and Hobby Store.

- Entered as A-1: photo board of 6 photos
- Entered as A-2: aerial photo

The property is a 6,729 SF lot currently improved with a 1-story vacant commercial building. There is a paved driveway on the south side of the lot and paving in the rear of the

property. The property is located in a special flood hazard area making it unsuitable for dwellings. There is no outward expansion of the building proposed.

Richard Keller spoke to the applicants' request for a parking variance and indicated that the applicants have entered into a parking agreement with Dr. Krosser, owner of the building located at 175 Main Street, which is approximately 200 feet from the subject property. The agreement allows the applicants to utilize the parking lot located at 175 Main Street during specific hours when the dental practice on sight is not open. The agreement allows the use of 16 parking spaces. The required parking for the proposed use is 1 space/3 seats or 5 spaces/1000 SF, whichever is greater. Based on this demand, the required parking for the proposed use is 27 spaces. There is no parking on site. The applicant proposes to remove the paving at the rear of the property along with the invasive Ailanthus trees on the property.

Lisa Landers, architect for the applicant, appeared and was sworn. Her credentials were presented and accepted by the Board. Ms. Landers spoke to the existing conditions of the subject property. The roof has asphalt shingles and there are trims, moldings, lighting, windows and doors to be updated. The existing awnings and HVAC unit are to be removed and replaced.

Ms. Landers referred to:

- Sheet A-1: proposed interior layout
- Sheet A-2: the existing elevations
- Sheet A-4: proposed interior elevations

Entered as Exhibit A-3: exterior paint color

Entered as Exhibit A-4: aluminum storefront sample

Regina Truitt asked if there will be any kitchen amenities or HVAC units installed. Ms. Landers stated that the kitchen will have a warming oven, an electric range for heating, a refrigerator and a freezer. Most of the amenities will be residential appliances. The HVAC unit will be installed on an elevated platform at the rear of the building.

April Owusu, owner of Trifecta Event Space LLC, appeared and was sworn. Ms. Owusu stated that 156 Main Street came across as a perfect fit for her event space business, given that it is located on a busy road with high visibility and close proximity to Taylor Park. Hours of operation would be open seven days per week, starting at 11:00 AM until closing by appointment only.

Dr. Scott Krosser, owner of the building at 175 Main Street, appeared and was sworn. Dr. Krosser authorized Trifecta Event Space to utilize his parking lot when his dental practice is not open. Dr. Krosser spoke to a resolution he received in 1995 regarding use approval for his dental practice at 175 Main Street.

Richard Keller spoke to the requested relief. In regards to the "d"(1) use-variance, he spoke to the positive criteria of this application and its special reasons. Mr. Keller stated that this

proposal advances sections A and G of the MLUL. Mr. Keller discussed the shared parking being encouraged and showed how the site is particularly suited for this area, given the site's size and close to proximity to the downtown area. Mr. Keller believes there is no substantial detriment to the surrounding area, and shared that this proposal addresses Goal #4 of the Master Plan which is to encourage development and re-development within the downtown.

Jessica Glatt is not against the proposed use, but does not think she can agree that this site is particularly suited. The parking agreement is concerning and the noise ordinances are not loosely enforced. She is not sure if the benefits outweigh the detriments. Craig Ploetner believes that the parking agreement is incredibly restrictive.

Amy Lawrence stated that the applicant has shown that there are limited uses that can go on the site. She loves the idea of re-activating the site, but she agrees that the parking as it is a limitation on the business model. Gary Rosen agrees with Amy Lawrence comments. He believes the site has been an eye sore and is not a positive remaining as an unused site. Gary Rosen also indicated that there are very few things that can go on this site. He agrees that parking may be an issue for the business.

Regina Truitt is thrilled that someone wants to rehabilitate the space and thinks it would be a great addition to the area. She agrees that there could be alternative solutions for the site's parking such as valet parking. Wolfgang Tsoutsouris believes that this would be a nice addition to the area, but he shares concerns over the parking. Ashley Avigdor thinks this proposal is an opportunity that could rejuvenate the property. She believes the benefits outweigh the detriments. Wolfgang Tsoutsouris reiterated that the permitted uses on this site are very limited.

Roger Bediner, owner of the property, appeared and was sworn. Mr. Bediner indicated the presence of Millburn's train station and that this can reduce the need for driving and parking at the site. Mr. Bediner also stated that he proposed constructing multi-family housing at this site, which was denied by the town as well as the DEP. Mr. Bediner feels this applicant will renovate the property in a way that will benefit Millburn.

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

Ashley Avigdor – yes
Amy Lawrence – yes
Gary Rosen – yes
Wolfgang Tsoutsouris – yes
Regina Truitt – yes
Jessica Glatt – no
Craig Ploetner – no

Cal#3909-22, Trifecta Event Space LLC, 156 Main Street, Millburn "d" use-variance was **APPROVED**.

CAL#3903-22, GUOFENG ZI/YAMING PAN, 2 WITTKOP PLACE, MILLBURN

Tim Klesse, architect for the applicant, appeared and remains sworn. Mr. Klesse took the comments of the Board into consideration and spoke to a neighbor who was concerned with the proposal. The side yard setback was reduced from 7.8 feet to 5.7 feet. The applicants also eliminated the need for a FAR variance and lowered the proposed ridgeline.

Entered as Exhibit A-1: photoboard of subject property

Jieyu Zhu, 6 Wittkop Place, asked if these plans are what will be built. Tim Klesse clarified that what is proposed in the plans is in fact what will be built.

Board members were overall in favor of this application.

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

Ashley Avigdor – yes
Amy Lawrence – yes
Gary Rosen – yes
Wolfgang Tsoutsouris – yes
Regina Truitt – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3903-22, Guofeng Zi/Yaming Pan, 2 Wittkop Place, Millburn 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 Jessica Glatt, seconded by Wolfgang Tsoutsouris, and carried with a unanimous voice vote. (9:50 PM)

Eileen Davitt
Board Secretary

Motion: AA
Second: JG
Date Adopted: 3/6/23