

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

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, March 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  
Gary Rosen  
Regina Truitt  
Jessica Glatt, Vice Chairperson  
Craig Ploetner, Chairperson

**APPROVAL OF MINUTES**

A motion to approve the minutes of February 6, 2023 was made by Ashley Avigdor, seconded by Jessica Glatt and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3906-22, Anika Abbasi & Nabil Mallick, 42 Jefferson Avenue, Short Hills**

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

Ashley Avigdor – yes  
Gary Rosen – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

the following memorializing resolution was adopted:

**ANIKA ABBASI & NABIL MALLICK  
BLOCK 2303, LOT 10**

**CAL. NO. 3906-22  
MARCH 6, 2023**

Mister Chairman, I move the adoption of the following resolution memorializing the approval of variance relief requested by the Applicants, Anika Abbasi & Nabil Mallick (hereinafter the “Applicants”), in Calendar No. 3906-22, to permit the construction of a cabana located in proximity to a proposed pool, on property located at 42 Jefferson Avenue, Short Hills,

New Jersey, and designated as Lot 10, Block 2303, 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 23, 2023, as to Calendar No. 3906-22, to permit the construction of a cabana located in proximity to a proposed pool, on property located at 42 Jefferson Avenue, Short Hills, New Jersey, and designated as Lot 10, Block 2303, 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 23, 2023 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel, and together with Richard Keller, P.E., P.P., the Applicant’s Civil Engineer and Professional Planner, provided sworn testimony in support of the application. There was no public opposition.

2. The Applicants are the owners of the subject property, which is in the process of removing the then existing single-family home, pool and associated site improvements, and will contain a newly constructed single-family residence, pool and other associated site improvements, located in the Township’s R-3 Zone District (the “R-3 Zone”). The subject property currently contains existing deviations from the Township Ordinance, none of which will be intensified with the Applicants’ proposal.

3. The proposed construction of the cabana, in conjunction with the single-family dwelling and pool under construction, would result in an impervious lot coverage of 13.35%, where the existing building coverage is 12.99% and the maximum permitted building coverage is 13% in the R-3 Zone. Therefore, variance relief is required.

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

a. A revised Site Plan, dated January 23, 2023, introduced into evidence as Exhibit A-1, on January 23, 2023;

b. A photo-board containing four photographs, introduced into evidence as Exhibit A 2, on January 23, 2023; and

c. An aerial photograph of the subject property, taken November 6, 2022, introduced into evidence as Exhibit A-3, on January 23, 2023.

5. Richard Keller, P.E., P.P., the Applicants’ Civil Engineer and Professional Planner, testified that the subject property is an undersized lot with approximately 28,414 square

feet of lot area, where the minimum lot area required on the subject property in the R-3 Zone is 29,000 square feet. Referencing Exhibit A-1, Mr. Keller testified as to the Applicants' proposal to build a new single-family dwelling with a pool (with existing and proposed landscaping), for which the Applicants have building permits commence construction of same, however, a variance is needed for the proposed cabana.

6. Referencing Exhibit A-2, Mr. Keller testified as to the existing conditions on the subject property, including the existing cabana, which is approximately 364 square feet, when the proposed cabana is proposed to be 102 square feet, with a small restroom facility inside. He testified further as to the existing landscaping that will remain, and the Applicants' intention to plant additional evergreen trees for additional screening where there are existing gaps between the existing Green Giant Arborvitae.

7. Referencing Exhibit A-3, Mr. Keller testified as to the existing cabana, which again, is 364 square feet, and 15 feet in height, and situated next to the existing pool, which is closer to the neighbor's property than the proposed pool, when the proposed cabana will be 102 square feet and 11.5 feet tall in height. He testified that the previous pool and patio were nonconforming (setbacks) site improvements on the existing property. Mr. Keller testified that, had the subject property contained the minimum lot area required in the R-3 Zone, the proposed cabana would be 22 square feet over the permitted building coverage, as opposed to the 98 square feet the application proposes.

8. With regard to the requested variance relief, Mr. Keller testified as follow:

- a. The subject property is slightly undersized and slopes down toward the rear of the property;
- b. The proposed bathroom in the cabana is modestly sized;
- c. The proposed cabana provides no detriment to the public good;
- d. The proposed cabana will be "depressed", as it will be topographically five (5) feet lower in elevation than the proposed dwelling, and will not be visible by neighbors (notwithstanding, the proposed cabana will be at the same elevation as the existing cabana);
- e. The proposed evergreen trees will be seven (7') to eight (8') feet at planting;
- f. The proposed development on the subject property is fully conforming, except for the proposed cabana;
- g. The proposed cabana will be 55 feet from the closest house on the adjacent property; and

h. The Applicants feel it is necessary to have a bathroom near the pool for the children.

9. Mr. Saraion, 35 Barnsdale Road, the owner of the lot directly to the rear of the subject property, requested the following:

a. He wants to make sure that the proposed retaining walls will not adversely impact struts on adjacent properties; and

b. All of the stormwater from the proposed cabana will be captured.

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

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

13. The Board 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 not the statutory criteria of N.J.S.A. 40:55D-70c(1). The Board finds that the application advances multiple goals of the Municipal Land Use Law (“MLUL”), specifically, goal (a) – to promote public health, safety, morals, and the general welfare; (c) – to provide adequate light, air and open space; and, (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The application’s proposed construction is modest and consistent with the character of the subject neighborhood, while improving overall functionality of the Applicants’ dwelling. 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(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 6th day of March, 2023, that the variance relief requested by the Applicants to permit the construction of a cabana in proximity to a proposed pool, all of which, including the existing and proposed conditions on the subject property, will have 13.35% building coverage, when a maximum of 13% is permitted, on property located at 42 Jefferson Avenue, Short Hills, New Jersey, approved by this Board at its meeting of January 23, 2023, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall comply with the testimony presented at the January 23, 2023 hearing and the application materials submitted to the Board, including, but not limited to, the landscaping as proposed with same.

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

3. The Applicants 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.

4. 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.

5. 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 March, 2023.

-----

**Cal#3908-22, Arthur & Maria Szabela, 271 Millburn Avenue, Millburn**

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

Ashley Avigdor – yes  
Gary Rosen – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

the following memorializing resolution was adopted:

**GARDEN STATE DENTAL DESIGN  
BLOCK 704, LOT 5**

**CAL. NO. 3908-22  
MARCH 6, 2023**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of use variance relief requested by the Applicant, Garden State Dental Design, by Maria Szabela, MD, and Arthur Szabela, DDS (hereinafter the “Applicant”), in Calendar No. 3908-22 to permit a first-floor physicians’ office, on property located at 271 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 5, Block 704, 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 23, 2023, as to Calendar No. 3908-22 to permit a first-floor physicians’ office, on property located at 271 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 5, Block 704, 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 23, 2023 hearing, the application and service of notice were found to be in order. The Applicant appeared together with counsel, Priscilla J. Triolo, Esq., and Lindsay Knight, P.P., the Applicant’s Professional Planner, and all provided sworn testimony in support of the application. There was no public opposition to the application.

2. The subject property is located in the Township’s B-4 Central Business Zone District (the “B-4 Zone”), which is within the Township’s Downtown Vision Plan, and contains a two-story mixed use building comprising of approximately 7,000 square feet of space. The Applicant proposes to purchase the building and occupy the 2,924 square foot first floor of the existing building for a physicians’ office, with the remaining area of the building to contain four (4) residential apartment units.

3. The subject property previously received preliminary and final major site plan approval, along with associated use and bulk variance and waiver relief in connection with the demolition of the then existing building and the construction of the new, two-story building with a 72 seat ground-floor restaurant, and a second-story consisting of four (4) residential apartment units (two one-bedroom units and two two-bedroom units), granted by the Board on April 18, 2018.

4. The application's proposal would result in a medical office use where medical office uses are not permitted, and will not provide a loading zone, where one (1) loading zone is the minimum number of loading zones required in the B-4 Zone. Therefore, use and bulk variance relief is required.

5. Priscilla J. Triolo, Esq., the Applicant's attorney, informed the Board that the Applicant is the contract purchaser of the subject property, which has four (4) (fully occupied) residential apartments on the second-floor, with an approval for a restaurant use on the first-floor. Ms. Triolo stated that the restaurant has been vacant since it was constructed, and the subject property contains twenty-five (25) parking spaces, four (4) of which are dedicated solely to the residential apartment units. Ms. Triolo stated that, should this application be approved, and the Applicant purchases the subject property, the Applicant intends to occupy the first-floor as a medical office with its members, Maria Szabela, an Infectious Disease Specialist, and Arthur Szabela, a Dentist.

6. The Applicant, through its representatives, Maria Szabela, MD and Arthur Szabela, DDS, testified as to the existing conditions of the subject property, and how the Applicant does not intend to make any renovations to the exterior of the existing building or the subject property. The Applicant testified that it intends to occupy the first-floor of the building as a boutique business that will conduct minimally invasive procedures, including, but not limited to, full mouth rehabilitations (which Mr. Szabela currently conducts at a practice in Clark, New Jersey), a procedure that is mainly conducted in Spain and other parts of Europe, and will include sedation, but will not be a traditional dental office. The Applicant testified first that the services it will provide will also include smile design; bone grafting; a dental ceramist on site; and the utilization of blood (a/k/a the patient's plasma) to enhance the healing process, a unique process and application.

7. The Applicant testified that the first-floor of the existing building has not been occupied since the building was constructed; it will be located across the street from an existing eye center; and will contain privacy coverings on the windows that will include "blinds." The Applicant testified further that its proposal will include eight (8) staff members on site, who will be able to see a maximum of five (5) patients at a time, with an additional four (4) patients in the waiting room. The Applicant stated that it expects to receive deliveries one (1) time per week; medical waste will have a standard pick-up every two (2) months; and that services will also include light sedation, including nitrous oxide. According to the Applicant, the equipment utilized in connection with the proposed use is quiet and will not be heard by any residential neighbors.

8. The Applicant testified that its proposed hours of operation will be from 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturday. Maris Szabela testified further that the office will see approximately 15 patients per day, with a maximum of six (6) hours per patient. The first parking space upon entering the Property shall be devoted to full-time employee parking.

9. Lindsay Knight, the Applicant's Professional Planner, testified that the subject property is located in the B-4 Zone, and the application requires d(1) use variance relief. Ms. Knight testified that the subject property abuts the R-O Zone, where there are currently two (2) medical facilities, Beautiful Smiles Dentist Group and Atlantic Health, with audio consultants and a shoe store surrounding same. Ms. Knight testified that the location of the subject property leads to the Township's downtown area, and the proposed use will occupy a currently vacant building. Ms. Knight further testified that the subject property was previously approved for a restaurant use, which is a more intense use with more traffic, more turnover, and more need for on-site parking spaces than the Applicant's proposal, and that the Downtown Plan contemplates the utilization of commercial space in non-traditional ways.

10. Ms. Knight testified further that the application is for a unique use of a medical office, a use that was not contemplated by the Township. She testified that the proposal will bring people into the downtown area, it will promote downtown development, and is compatible with nearby medical office use.

11. N.J.S.A. 40:55D-70d(1) allows for departures from zoning regulations to permit a use or principal structure in a district restricted against such use or principle structure in certain circumstances involving "non-inherently beneficial uses" wherein an applicant must demonstrate: 1) that the proposed use promotes the general welfare because the property is particularly suitable for the proposed use; and 2) that the applicant can satisfy their enhanced burden of proof to demonstrate that the granting of the variance relief requested is not inconsistent with the intent and purpose of the municipality's master plan and zoning ordinances, and must further reconcile the proposed use with the municipality's continued omission of the proposed use from those uses permitted in the zone, thereby providing a more substantive basis that the variance relief will not substantially impair the intent and purpose of the municipality's Master Plan and Zoning Ordinance. See *Medici v. B.P.R. Co.*, 107 N.J. 1 (1987).

12. 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[.]



13. 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.”).

14. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d(1) for the requested use variance relief, and that it is appropriate to grant this variance relief to permit the proposed first-floor physicians’ office use. The application’s proposed use promotes the general welfare because the Property is particularly suitable for the proposed use – doctors’ offices are located nearby; the existing building and parking lot, with ample parking, will not require any additional enlargement or exterior modification; and the proposed accessible, unique medical services within walking distance to stores and restaurants will benefit Township residents, all without negatively impacting nearby residential and/or commercial uses. Additionally, the granting of the use variance relief requested is not inconsistent with the intent and purpose of the Township’s Master Plan and Zoning Ordinance, as the application’s proposed use would further multiple aforementioned goals of the Township’s Master Plan and its stated intent for the B-4 Zone, including providing a variety of non-residential uses to compliment downtown development. The Board also finds that the Applicant has reconciled the application’s proposed use with the Township’s continued omission of the proposed use in the B-4 Zone by demonstrating that the proposed medical use is beneficial to its patients as it provides a very unique, “boutique” experience of a dentist office; the use provides a unique concept in dentistry providing, inter alia, unique implant technology, which is cutting edge and of high quality; the application’s proposed medical use is permitted in properties in the R-O Zone, which is in close proximity to the subject property; and that the proposed use should generate pedestrian activity in the B-4 Zone. The Board further finds that the Township’s Master Plan supports promoting the character and economic vitality of the Township’s downtown area, both of which would be furthered by the occupation of vacant space, or a portion of a building which has been vacant since the time of its construction. Therefore, for the reasons stated above, the use variance relief requested can be granted without any substantial impairment to the Township Zoning Ordinance or Master Plan.

15. The Board also finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested loading zone variance relief and that it is appropriate to grant same. The need for the requested variance relief is related to the already-existing conditions affecting the property, apartment dwellings and other site improvements. Specifically, the existing lack of a loading zone on the subject property creates a hardship, and that it is not possible to create a new loading zone without requiring a modification or an expansion of the existing building on the subject property, which would require the need for additional variance relief. The application does not propose any changes to these existing nonconforming conditions, which the Board finds to be exceptional circumstances affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant. Additionally, the Applicant has demonstrated that the subject property can handle

deliveries to the property without requiring a loading zone, and without causing a substantial detriment to the surrounding neighborhood.

16. The Board concludes that the proposed use preserves the character of the subject neighborhood, and that any negative impact from same is negligible and not a substantial detriment, especially given that the application's proposed use is permitted in the nearby R-O Zone and that the application will not change the size or external appearance of the existing building on the subject property. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed use can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and the Township Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6th day of March, 2023, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70d(1), to permit a first-floor physicians' office, resulting in a unique medical office use where medical office uses are not permitted, and no loading zone where one (1) loading zone is the minimum required, approved by this Board at its meeting of January 23, 2023, for the property located at 271 Millburn Avenue, Millburn, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

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

2. The Applicant shall be bound to comply with all of the representations made before this Board by the Applicant and its Professionals and at the public hearing, including as set forth in the Board's findings of fact contained in this Resolution. These representations include those relating to the particular, unique medical use intended by the application. 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 6th day of March, 2023.

**APPLICATIONS**

**CAL#3889-22, CORNELIUS/DONGMEI GUTH, 9 BAILEY ROAD, MILLBURN**

This matter was carried to March 20, 2023.

**CAL#3890-22, BEN & HELEN HALL, 83 MAPLE STREET, MILLBURN**

This matter was carried to March 20, 2023.

**CAL#3910-22, TRIPLE ONE HOLDINGS LLC, 44 ESSEX STREET, MILLBURN**

This matter will be re-noticed for a later date.

**ADJOURNMENT**

A motion to adjourn was made by Ashley Avigdor, seconded by Jessica Glatt, and carried with a unanimous voice vote. (7:06 PM)

Eileen Davitt  
Board Secretary

Motion: GR  
Second: RT  
Date Adopted: 4/17/23