

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
March 7, 2022

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

The following members were present for the meeting:

Joseph Steinberg  
Steve Togher  
Chandru Harjani  
Ashley Avigdor  
Jessica Glatt, Vice Chairwoman  
Craig Ploetner, Chairman

Also present:

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

**APPROVAL OF MINUTES**

A motion to approve the minutes of December 20, 2021 was made by Joseph Steinberg, seconded by Steve Togher, and carried with a unanimous voice vote.

A motion to approve the minutes of January 10, 2022 was made by Steve Togher, seconded by Chandru Harjani, and carried with a unanimous voice vote.

A motion to approve the minutes of January 24, 2022 was made by Jessica Glatt, seconded by Steve Togher, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3846-21, Alexy & Milena Gashkevich, 86 Locust Avenue, Millburn**

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

Steve Togher – yes  
Jessica Glatt – yes  
Craig Ploetner – yes  
Chandru Harjani – yes

the following memorializing resolution was adopted:

**ALEXY GASHKEVICH  
BLOCK 611, LOT 15**

**CAL. NO. 3846-21  
MARCH 7, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Alexy Gashkevich (hereinafter the “Applicant”), in Calendar No. 3846-21 to permit the construction of a portico and the expansion of an existing second floor bedroom, on property located at 86 Locust Avenue, Millburn, New Jersey, known and designated as Lot 15, Block 611, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on January 10, 2022, as to Calendar No. 3846-21 to permit the construction of a portico and the expansion of an existing second floor bedroom, on property located at 86 Locust Avenue, Millburn, New Jersey, known and designated as Lot 15, Block 611, on the tax map of the Township of Millburn; and

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

1. At the January 10, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel and provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicant is the owner of the subject property, which contains a single-family residence, located in the Township’s R-6 Zone District (the “R-6 Zone”). The Applicant proposes to construct a portico over the existing front steps of the house, reduce the overall size of the existing front porch, and expand the existing second floor bedroom.

3. The subject property has one (1) existing non-conforming condition for the R-6 Zone: a minimum front yard setback of 40 feet is required, and the subject property has an existing front yard setback of 30.4 feet. The proposed development would result in a front yard setback of 34.58 feet, where 40 feet is the minimum required front yard setback. Therefore, variance relief is required.

4. The Applicant testified that the proposed construction is needed to provide shelter for persons and deliveries left on the existing front porch when it rains. The Applicant stated that the existing front porch would be reduced in size, and therefore brings the subject property closer in compliance with the Zoning Ordinance. The Applicant also stated that other residences in the subject neighborhood contain foyers with an appearance similar to the application’s proposed construction, both visually and in terms of size and scope. The Applicant concluded by informing the Board that the existing front yard setback on the subject property is still farther back than many front yard setbacks in the subject neighborhood, and that the proposed

construction cannot be located elsewhere on the property due to the existing location of the subject residence.

5. 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[.]

6. 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.”).

7. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested front yard setback variance relief, and that it is appropriate to grant this variance relief to permit the proposed construction. The need for the requested variance relief is related to a pre-existing conditions affecting the property. Specifically, the existing location of the subject residence prevents the Applicant from complying with the subject Ordinance requirement. The proposed construction’s inability to be located in a conforming location elsewhere on the subject property creates practical difficulties and an undue hardship on the Applicant. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures lawfully thereon.

8. Although the proposed construction requires variance relief to permit a 34.58 foot front yard setback where 40 feet is the minimum required front yard setback for the R-6 Zone, the requested deviation from the requirement of the Township Zoning Ordinance is not excessive in light of the inability to relocate the proposed construction elsewhere on the subject property and without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. The application reduces the subject property’s existing nonconforming condition by 4.18 feet, and the Board finds that the 5.42 foot deviation from the Zoning Ordinance is modest and can be accommodated by the subject property. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed construction is negligible and not a substantial detriment, especially given the presence of similar structures in similar locations throughout both the subject neighborhood and the R-6 Zone.

9. The Board concludes that the proposed construction is tasteful and modest, preserves the

character of the subject neighborhood, and is visually similar with the subject neighborhood. The positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1). Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and the Township Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 7<sup>th</sup> day of March, 2022, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70c(1), to Calendar No. 3846-21 to permit the construction of a portico and the expansion of an existing second floor bedroom, resulting in a front yard setback of 34.58 feet where 40 feet is the minimum required front yard setback, on property located at 86 Locust 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 the representations made before this Board by the Applicant and at the public hearing, including as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. The Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicant shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 7<sup>th</sup> day of March, 2022.

-----

**Cal#3843-21, Allyson & Steven Bitterman, 20 Hawthorne Road, Short Hills**

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

Jessica Glatt – yes

Craig Ploetner – yes  
Chandru Harjani – yes

the following memorializing resolution was adopted:

**ALLYSON & STEVEN BITTERMAN  
BLOCK 1206, LOT 5**

**CAL. NO. 3843-21  
MARCH 7, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Allyson and Steven Bitterman (hereinafter the “Applicants”), in Calendar No. 3843-21 to permit the construction of a second floor addition, on property located at 20 Hawthorne Road, Short Hills, New Jersey, and designated as Lot 5, Block 1206, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on January 10, 2022 as to Calendar No. 3843-21 to permit the construction of a second floor addition, on property located at 20 Hawthorne Road, Short Hills, New Jersey, and designated as Lot 5, Block 1206, on the tax map of the Township of Millburn; and

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

1. At the January 10, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Daniel Dubinett, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which contains a single family residence located in the Township’s R-6 Zone District (the “R-6 Zone”), and is a corner lot pursuant to the Township Zoning Ordinances, located at the intersection of Hawthorne Road and Whitney Road. The Applicants propose to construct a 13 foot by 13 foot, approximately 280 square foot addition over the existing first floor area in the rear of the subject residence, which will create a master bathroom and walk-in closet.

3. The subject property contains one (1) non-conforming condition pursuant to the Township Zoning Ordinance: a maximum Floor Area Ratio (“FAR”) of 36% is allowed, and the subject property has an existing FAR of 37.6%. The proposed construction would result in a FAR of 40% where 36% is the maximum allowable FAR. Therefore, variance relief is required.

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

A. Photographs of the subject residence, consisting of 4 slides taken by the Applicants

and a photo board prepared by the Applicants, introduced into evidence as Exhibit A-1, on January 10, 2022.

5. The Applicants and Mr. Dubinett each testified that the application proposes to add a master bathroom and walk-in closet above the existing first floor of the subject residence. Mr. Dubinett stated that the proposed construction would be sufficiently screened by existing mature evergreen trees and would be located approximately 27 feet away from the residence of the Applicants' closest neighbor. Mr. Dubinett also stated that the proposed construction will update and modernize the second floor of the subject residence, and will utilize the same exterior stucco material as the existing residence and slate roof. Mr. Dubinett concluded by stating that the subject property can handle the proposed increase in FAR, and that the proposed construction is modest and consistent with the subject neighborhood.

6. In a Floor Area Ratio ("FAR") variance application pursuant to N.J.S.A. 40:55D-70(d)(4), an applicant must demonstrate that the proposed site will accommodate any problems associated with the proposed floor area larger than that permitted by the Zoning Ordinance to establish special reasons. Randolph Town Center v. Tp. Of Randolph, 324 N.J. Super. 412 (App. Div. 1999).

7. The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(d)(4) for FAR variance relief, and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed construction. The Board is satisfied that the proposed construction is modest in size, similar to other additions in the subject neighborhood, and will bring the existing residence more into conformity with residences in the subject neighborhood. Although the proposed construction requires FAR variance relief as set forth above, the deviation from the applicable requirement is modest in light of the inability to perform any modifications to the home on the property without triggering the need for FAR variance relief, and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance.

8. The Board also finds that the subject property will accommodate any perceived problems associated with the proposed FAR larger than that permitted by the Township Zoning Ordinance, so to establish special reasons. The proposed construction is attractive and will result in the residence on the subject property remaining more functional and similar in size to other residences in the subject neighborhood. The scale and design of the proposed addition is also in keeping with that of neighboring homes and properties. The Board further concludes, for all the reasons set forth above, that the granting of FAR variance relief to permit the proposed addition can be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 7<sup>th</sup> day of March, 2022 that the variance relief requested by the Applicants pursuant to N.J.S.A. 40:55D-70d4 to permit construction of a second floor addition, resulting in a FAR of 40% where 36% is the maximum allowable FAR, on property located at 20 Hawthorne Road, Short Hills, New Jersey, granted by this Board at its

meeting of January 10, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and at the public hearing, 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 7<sup>th</sup> day of March, 2022.

-----

**Cal#3842-21, David & Barrie Leibowitz, 38 Quaker Road, Short Hills**

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

Jessica Glatt – yes  
Craig Ploetner – yes

the following memorializing resolution was adopted:

**BARRIE & DAVID LIEBOWITZ  
BLOCK 3205, LOT 12**

**CAL. NO. 3842-21  
MARCH 7, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Barrie and David Liebowitz (hereinafter

the “Applicants”), in Calendar No. 3842-21 to permit the construction of a two-story rear addition and patio to the existing residence, on property located at 38 Quaker Road, Short Hills, New Jersey, and designated as Lot 12, Block 3205, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on January 10, 2022 as to Calendar No. 3842-21 to permit the construction of a 2 story rear addition to the existing residence, on property located at 38 Quaker Road, Short Hills, New Jersey, and designated as Lot 12, Block 3205, on the tax map of the Township of Millburn; and

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

1. At the January 10, 2022 hearing, the application and service of notice were found to be in order.

2. The Applicants appeared without counsel and, together with their licensed Architect, Daniel Angel Roma, provided sworn testimony in support of the application. There was no public opposition to the application.

3. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township’s R-5 Zone District (the “R-5 Zone”). The Applicants propose to construct a two-story rear addition to the existing residence, to be used as a dining area on the first floor and a walk-in closet and residential office space on the second floor. The application’s proposed construction intends to make the existing kitchen area more functional while creating an office space on the second floor allowing the Applicants to work from home.

4. The subject property is irregularly-shaped - not square nor rectangular. The proposed construction would result in a combined side yard setback of 28.1% of the lot width (33.16 feet), where a minimum of 35% of the lot width (41.25 feet) is required. Therefore, variance relief is warranted.

5. At the January 10, 2022 hearing, the Board received and considered the following additional documents submitted in support of the application:

A. Photographs of the subject residence, taken by the Applicants on January 10, 2022, introduced into evidence as Exhibit A-1, on January 10, 2022;

B. Photo board, prepared by the Applicants on March 24, 2021, introduced into evidence as Exhibit A-2, on January 10, 2022;

C. Google Maps Photograph, taken in October of 2013, introduced into evidence as Exhibit A-3, on January 10, 2022.

6. Daniel Angel Roma, the Applicants' Architect, testified that the proposed construction is intended to make the kitchen area more functional and to create a great room space on the first floor. Mr. Roma stated that the proposed construction further intends to expand the existing second floor master bedroom to add a walk-in closet and home office. Mr. Roma also clarified that the proposed construction would add an area of 18 feet by 18 feet, inclusive of the proposed patio, to the rear of the existing residence. Mr. Roma further stated that the proposed construction would slightly raise the existing roofline from 22.5 feet to 26 feet, with a first floor proposed ceiling height of 11 feet. Mr. Roma confirmed that the proposed construction is still well under the allowable height for a residence in the R-5 Zone, and is similar to other existing residences in the subject neighborhood. Mr. Roma also stated that the existing mature landscaping in the front of the residence, combined with the existing topography of the subject property, sufficiently limits the proposed construction from street view. Mr. Roma also stated that the existing mature trees along the side and rear property lines, combined with the existing stockade fence, sufficiently limits the proposed construction's visibility from the Applicants' neighbors.

7. Mr. Roma concluded by stating that the property's irregular shape, especially when compared to other properties in the subject neighborhood, creates a hardship for the Applicants requiring variance relief from the R-5 Zone's minimum combined side yard setback requirement.

8. Katherine Roberts, 34 Quaker Road, Short Hills, testified that she is the Applicants' neighbor and that she supports the application's proposed construction.

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's irregular

shape and the location of the home on the lot are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

12. Although the proposed construction requires variance relief to permit a combined side yard setback of 28.1% of the lot width (33.16 feet), where a minimum of 35% of the lot width (41.25 feet) is required, the deviations from the aforementioned requirements are relatively modest. The Board finds that the proposed deviation of 8.09 feet from the R-5 Zone's combined side yard setback requirement 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 especially given the existing landscaping. 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 7<sup>th</sup> day of March, 2022 that the variance relief requested by the Applicants to construct a two-story rear addition to the existing residence, resulting in a combined side yard setback of 28.1% of the lot width (33.16 feet), where a minimum of 35% of the lot width (41.25 feet) is required, on property located at 38 Quaker Road, Short Hills, New Jersey, granted by this Board at its meeting of January 10, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and at the public hearing, including as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 7<sup>th</sup> day of March, 2022.

-----

**Cal#3837-21, Praveen & Swetha Kandula, 44 Canoe Brook Road, Short Hills**

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

- Craig Ploetner – yes
- Steve Togher – yes
- Jessica Glatt – yes
- Chandru Harjani – yes

the following memorializing resolution was adopted:

**PRAVEEN & SWETHA KANDULA  
BLOCK 5109, LOT 8**

**CAL. NO. 3837-21  
MARCH 7, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Praveen Kandula and Swetha Kandula, (hereinafter the “Applicants”), in Calendar No. 3837-21 to permit the construction of a new residence, on property located at 44 Canoe Brook Road, Short Hills, New Jersey, and designated as Lot 8, Block 5109, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on December 20, 2021 and January 10, 2022, as to Calendar No. 3837-21 to permit the construction of a new residence, on property located at 44 Canoe Brook Road, Short Hills, New Jersey, and designated as Lot 8, Block 5109, on the tax map of the Township of Millburn; and

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

1. At the December 20, 2021 and January 10, 2022 hearings, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Douglas E. Miller, provided sworn testimony in support of the application.
2. The Applicants are the owners of the subject property, which contains a single family,

split-level residence, located in the Township's R-5 Zone District (the "R-5 Zone"). The Applicants propose to demolish the existing residence and construct a new residence. The subject property is a pie-shaped lot with an excessive lot width pursuant to the Township Zoning Ordinance.

3. The subject property contains two (2) non-conforming conditions pursuant to the Township Zoning Ordinance: (a) a minimum front yard setback of 66.28 feet is required (established setback for the subject property), and the subject property has an existing front yard setback of 62.43 feet; and (b) a minimum combined side yard setback of 35% of the lot width (48.1 feet) is required, and the subject property has an existing combined side yard setback of 25.78% (35.43 feet).

4. As originally proposed, the application and related construction would result in a front yard setback of 57.97 feet where 66.28 feet (established setback for the subject property) is the minimum required front yard setback; a combined side yard setback of 28.48% (39.15 feet) where 35% of the lot width (48.1 feet) is the minimum required combination side yard setback; and parking located in maneuvering areas where parking is not permitted in maneuvering areas.

5. Due to comments and concerns expressed by the Board at the December 20, 2021 hearing, the Applicants submitted revised plans consisting of five (5) sheets, dated December 27, 2021. The revised, proposed construction eliminates the need for the aforementioned parking variance relief; however, the revised proposed construction would result in a front yard setback of 60.97 feet where 66.28 feet (established setback for the subject property) is the minimum required front yard setback; and a combined side yard setback of 28.48% of the lot width (39.15 feet) where 35% of the lot width (48.1 feet) is the minimum required combination side yard setback. Therefore, variance relief is required.

6. At the December 20, 2021 and January 10, 2022 hearings, the Board received and considered the following additional documents submitted in support of the application:

A. Colored rendering, 4 photographs, and an aerial photograph of the subject property, consisting of six (6) sheets, taken by the Applicants, introduced into evidence as Exhibit A-1, on December 20, 2021;

B. Photo board, consisting of one (1) sheet, prepared by the Applicants, introduced into evidence as Exhibit A-2, on January 10, 2022;

7. The Applicants testified that Mr. Kandula's parents have moved in with them and the application was designed to meet the Applicants' family's needs now that Mr. Kandula's parents are living with them. The Applicants also stated that they chose to demolish the existing residence and construct a new residence instead of renovating the existing residence, as the split-level design created too many functionality challenges.

8. Douglas E. Miller, the Applicants' Architect, testified that the subject property's pie

shape, with excessive lot width narrowing significantly from the street to the rear of the property, created a hardship for the Applicants. This narrowing condition specifically creates an issue with combined side yard setback minimum requirements. Mr. Miller informed the Board that the existing residence has a greater degree of nonconformity in terms of front yard setback requirements and combination side yard setback requirements than the residence proposed in the application.

9. Mr. Miller testified that the revised application plans dated December 27, 2021 eliminates the proposed roof deck; pushes the proposed residence further away from the abutting street but still consistent with the streetscape; and eliminates the proposed backup area for cars (which resulted in the application no longer requiring parking variance relief). Mr. Miller reiterated how the subject property's unusual shape causes a hardship, and how the revised application brings the proposed residence further into conformity with the Township Zoning Ordinance than both the existing residence and the residence proposed with the original application.

10. Mr. Miller provided an overview of the front yard setbacks for existing residences along Canoe Brook Road, and informed the Board that if the subject property conformed to the Township Zoning Ordinance setback requirements, the proposed residence would be much smaller than other residences in the subject neighborhood given the property's pie-shape. Mr. Miller further opined that the proposed residence presented an opportunity to provide new, attractive housing and was reasonably scaled for the neighborhood. Mr. Miller stated that the roof deck and optional balcony originally proposed had been eliminated from the application, and the proposed deck is lowered by one foot and one inch beyond what was originally proposed. Mr. Miller concluded by stating that the subject property's pie shaped lot creates a hardship, and the revised application was based on the Board's comments and the Applicants' best efforts to bring the proposed residence into conformity.

11. Various Township property owners were sworn at the public hearings and testified concerning the application.

12. While Jeffrey Waters, 35 Canoe Brook Road, testified that he believed everyone should conform to the Millburn Zoning Ordinance, the other neighbors who testified were in support of the application as revised. They include Varun and Nidhi Rastogi, 57 Tackam Drive; Rohit Mithal, 21 Feeldin Road; Mohan Akula, 131 Silver Spring Road; Jacqueline Jones, 50 Canoe Brook Road; Kiran Batula, 87 Short Hills Road; Deepa Penubarthi, 487 Long Hill Drive; Karthik Paladugu, 7 Lawrence Drive; Manish Bhandari, 21 Wood Hill Road; Brian Nielson, 45 Wordsworth Road; and Kanika & Verma Sumit Chandra, 56 Browning Road.

13. N.J.S.A. 40:55D-70c(1) states:  
Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing

thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

14. N.J.S.A. 40:55D-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”).

15. 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 as set forth above and contained in the application materials. Specifically, the subject property’s irregular shape for the R-5 Zone, as well as the associated, nonconforming conditions existing at the subject property, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property, which result in practical difficulties and undue hardship to the Applicants.

16. Although the proposed construction requires variance relief to permit a front yard setback of 60.97 feet where 66.28 feet (established setback for the subject property) is the minimum required front yard setback; and a combined side yard setback of 28.48% (39.15 feet) where 35% of the lot width (48.1 feet) is the minimum required combination side yard setback, the deviations from the aforementioned requirements are relatively modest. In fact, the revised application eliminates the need for parking variance relief and brings the proposed front yard setback into closer conformity with the Township Zoning Ordinance.

17. The Board concludes that the application will replace an older, split-level residence with a new home more in keeping with the functionality and amenities provided by other homes in the subject neighborhood, all while preserving the neighborhood’s character. Any negative impact associated with 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 7<sup>th</sup> day of March, 2022 that the variance relief requested by the Applicants to construct a new residence, permit a front yard setback of 60.97 feet where 66.28 feet (established setback for the subject property) is the minimum required front yard setback; and a combined side yard setback of 28.48% (39.15 feet) where 35% of the lot width (48.1 feet) is the minimum required combination side yard setback, on property located at 44 Canoe Brook Road, Short Hills, New Jersey, granted by this Board at

its meeting of January 10, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and at the public hearing, including as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 7<sup>th</sup> day of March, 2022.

-----

**APPLICATIONS**

**CAL#3847-21, AMAR TRUST, 346 HARTSHORN DRIVE, SHORT HILLS**

Ken Leiby, attorney for the applicant, stated his appearance. The applicant would like to install 2 AC units and a circular driveway. Proposal is in violation of:

- 609.1d – AC unit setback
- 606.2e2b – lot coverage
- 607.3e – front yard coverage

Jim Madsen, P.E., appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Madsen referred to the submitted site plan.

The applicant is seeking 3 “c” variances. They propose to re-locate the AC condensers from the rear yard to the side yard. This requires a distance of 30’ from the unit to the neighbor’s dwelling. The units will be 25’ from the neighbor’s dwelling and will be adequately screened to minimize their visibility.

The application also requires variance relief to allow for the installation of a circular driveway. The driveway requires variance relief to allow lot coverage of 39.66% where the ordinance allows 35%. In addition, variance relief is required to permit front yard coverage of 42.11% where 30% is permitted.

Al Kim, 354 Hartshorn Drive, appeared and was sworn. Mr. Leiby questioned Mr. Kim as to the applicant's site plan. Though questioning by Mr. Leiby, Mr. Kim indicated that he understood that the AC units will be 5 feet closer to his dwelling than is allowable by ordinance.

Paul Ricci, P.P., appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as Exhibit A-1: aerial photos (2020) and site photos

Mr. Ricci indicated that the proposed circular driveway is not uncommon in this neighborhood and is consistent with the existing character of the area. He opined that it advances purposes (g), (i), (m) of the MLUL and variance relief can be granted without substantial detriment to the public good.

Entered as Exhibit A-2: revised zoning table

Mr. Ricci continued and stated that a hardship is created by the lawfully existing structure on the lot.

Jessica Glatt questioned whether the pool that is currently under construction could have been scaled back, thereby eliminating the need for a lot coverage variance for the circular driveway. Mr. Ricci indicated that the pool area contributes to a large amount of the allowable lot coverage. It is likely that a smaller pool would have allowed for a circular driveway to be accommodated on the site without the need for a variance.

Board members had mixed feelings about the application. Jessica felt troubled with the excessive lot coverage and front yard coverage. She thought there was self-imposed hardship due to the ongoing pool and patio construction. Steve Togher agreed with Ms. Glatt. Craig Ploetner also agreed.

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

Steve Togher – no  
Chandru Harjani – yes  
Ashley Avigdor – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#3847-21, AMAR Trust, 346 Hartshorn Drive, “c” variance relief for AC installation was **APPROVED.**

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

Steve Togher – yes  
Chandru Harjani – yes  
Ashley Avigdor – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#3847-21, AMAR Trust, 346 Hartshorn Drive, “c” variance relief for a circular driveway was **DENIED.**

**CAL#3850-21, SIMON LI, 17 THACKERAY DRIVE, SHORT HILLS**

Simon Li appeared and was sworn. He would like to construct an addition on his dwelling. Proposal is in violation of:

606.2e1d – Front yard setback  
606.2g – Maximum number of garage spaces

Entered as Exhibit A-1: PowerPoint of 8 slides

The applicant received building permits for the current construction project. He would like to convert the existing storage space to garage space which would result in a 3<sup>rd</sup> garage bay, where the ordinance permits only 2 in the R-5 zone They are also proposing a front porch on the Thackeray Road side of the property.

The applicant’s property is a corner lot at the intersection of Thackeray and Wordsworth. There would be a 32 foot-10 inch front yard setback where 40 feet is required. The porch would 6 feet deep.

Board members had mixed opinions on this application. Steve Togher struggled to defend any hardships.

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

Joseph Steinberg – yes  
Steve Togher – yes  
Chandru Harjani – yes  
Ashley Avigdor – yes  
Jessica Glatt – yes

Craig Ploetner – yes

Cal#3850-21, Simon Li, 17 Thackeray Drive, was **APPROVED**.

**CAL#3851-21, ROSEMARIE DAWES, 25 MOUNTAINVIEW ROAD, MILLBURN**

\*Joseph Steinberg recused from the meeting.

Rosemarie Dawes and John James, Architect, appeared and were sworn. The applicant is proposing a second floor addition over the garage. Proposal is in violation of:

606.2e1d – Front yard setback

Entered as Exhibit A-1: 3 photos of the existing site

John James' credentials were presented and accepted by the Board. He gave a brief description of the applicant's proposal. The site currently has a non-conforming front yard setback of 27 feet. The applicant proposes to widen the garage by 4 feet and build above the garage area.

Steve Togher felt this was a very modest proposal and that it would have no negative impacts on the neighborhood. Jessica Glatt and Chandru Harjani agreed. Craig Ploetner thought this was a thoughtful application.

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

Steve Togher – yes  
Chandru Harjani – yes  
Ashley Avigdor – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#3851-21, Rosemarie Dawes, 25 Mountainview Road, was **APPROVED**.

\*Joseph Steinberg returned to the meeting.

**CAL#3852-21, A. VATS AND N. KRISHAN, 10 STEWART ROAD, SHORT HILLS**

The matter was carried to April 4, 2022.

**CAL#3853-21, ASSOCIATES 29 LLC, 291 MILLBURN AVENUE, MILLBURN**

The matter was carried to April 4, 2022.

**CAL#3857-22, NICHOLAS/EMILIE WHITLEY, 88 BIRCH LANE, SHORT HILLS**

Nicholas and Emilie Whitley appeared and were sworn. They would like to expand their patio area. Proposal is in violation of:

606.1b – Accessory structures shall be in rear yard only

The applicants’ front door faces the side property line so the placement of their dwelling on the lot causes the need for a variance for this patio. They have an existing patio in the side yard and they would like to expand it.

Overall, Board members voiced support of the application.

Upon a motion made by Ashley Avigdor, seconded by Chandru Harjani, and with a roll-call vote as follows:

Joseph Steinberg – yes  
Steve Togher – yes  
Chandru Harjani – yes  
Ashley Avigdor – yes  
Craig Ploetner – yes

Cal#3857-22, Nicholas/Emilie Whitley, 88 Birch Lane, Short Hills, was **APPROVED**.

**BUSINESS**

There were no members of the public who wished to speak on non-agenda items.

**ADJOURNMENT**

A motion to adjourn was made by Steve Togher, seconded by Jessica Glatt, and carried with a unanimous voice vote. (9:20 PM)

Eileen Davitt  
Board Secretary

Motion: JG  
Second: AA  
Date Adopted: 4/18/22