

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
April 4, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, April 4, 2022** at 7:00 PM via Zoom webinar.

Board Secretary, Eileen Davitt opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Amy Lawrence  
Jyoti Sharma  
Joseph Steinberg – arrived at 7:12  
Steve Togher  
Wolfgang Tsoutsouris  
Chandru Harjani, Alternate #1  
Ashley Avigdor, Alternate #2  
Jessica Glatt, Vice Chairwoman  
Craig Ploetner, Chairman

Also present:

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

**APPROVAL OF MINUTES**

A motion to approve the minutes of February 7, 2022, was made by Jessica Glatt, seconded by Steve Togher, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3847-21, AMAR Trust Investments, 346 Hartshorn Drive, Short Hills**

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

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

the following memorializing resolution was adopted:

**AMAR TRUST INVESTMENTS, LLC  
BLOCK 3201, LOT 11**

**CAL. NO. 3847-21  
APRIL 4, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Amar Khubani on behalf of Amar Trust Investments, LLC (hereinafter the “Applicant”), in Calendar No. 3847-21 to permit the relocation of air conditioning units, and to deny variance relief requested to construct a circular driveway, on property located at 346 Hartshorn Drive, Short Hills, New Jersey, and designated as Lot 11, Block 3201, 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 March 7, 2022 as to Calendar No. 3847-21 to permit the relocation of air conditioning units, and to permit the construction of a circular driveway, on property located at 346 Hartshorn Drive, Short Hills, New Jersey, and designated as Lot 11, Block 3201, 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 March 7, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared with Kenneth L. Leiby, Jr., Esq., and, together with James O. Madsen, the Applicant’s Engineer, and Paul Ricci, the Applicant’s Planner, provided sworn testimony in support of the application.

2. The Applicant is the owner of the subject property, which contains a single family residence, located in the Township’s R-4 Zone District (the “R-4 Zone”). The Applicant proposes to relocate four (4) existing air conditioning units from the rear of the property to the southwest side yard of the property and to construct a circular driveway in the front yard of the subject property with a proposed stormwater management system.

3. The subject property contains three (3) non-conforming conditions pursuant to the Township Zoning Ordinances: (a) a minimum side yard setback of 12 feet is required, and the subject property has an existing side yard setback of 10.7 feet; (b) a minimum side yard setback of 22 feet for a two-story building is required, and the subject property has an existing side yard setback of 16.7 feet for a two-story building; and (c) a combined side yard setback of 35% of the lot width (51.56 feet) is required, and the subject property has an existing combined side yard setback of 33.33% of the lot width (49.1 feet).

4. The proposed construction will result in a side yard setback of 25 feet for the air conditioning units from the nearest off-site principal building, where 30 feet from the nearest off-site principal building is the required minimum side yard setback for air conditioning units; a lot coverage of 39.26% (11,562.51 square feet), where 35% of the lot area (10,205.21 square feet) is

the maximum allowable lot coverage; and an impervious front yard coverage of 42.11% (3,117.74 square feet), where 30% of the front yard area (2,221.39 square feet) is the maximum allowable front yard impervious coverage. Therefore, variance relief is required.

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

- A. Aerial map & photographs of the subject residence, prepared by the Applicant on March 4, 2022, introduced into evidence as Exhibit A-1, on March 7, 2022;
- B. Letter from Kenneth L. Leiby, Jr., Esq., dated February 24, 2022, with revised and corrected zoning table, introduced into evidence as Exhibit A-2, on March 7, 2022.

6. James O. Madsen, the Applicant's Engineer, testified that the proposed relocation of the four (4) existing air conditioning units will be accompanied by screening via boxwoods 24-30 inches above the root ball, as well as existing landscaping and trees. Mr. Madsen stated that the existing air conditioning units will be relocated to an area where there is already an existing generator. Mr. Madsen also stated that it is not possible to comply with the Township Zoning Ordinance requirements for the proposed relocation of the air conditioning units because the Ordinance requires air conditioning units in a side yard to be located 30 feet from the nearest off-site principal building. Since the nearest off-site principal building encroaches approximately 10 feet into its respective side yard setback, it is impossible to accomplish the required 30 foot setback requirement. Mr. Madsen informed the Board that the property closest to where the air conditioning units are proposed to be relocated also has air conditioning units located in the adjacent side yard, and this, combined with the proposed and existing screening, makes the side yard an appropriate area for the proposed air conditioning units to be relocated.

7. Mr. Madsen stated that the proposed circular driveway will include two (2) drywells for stormwater collection, and that overflows of the drywells will go to a catch basin on Hartshorn Drive.

8. Al Kim, 354 Hartshorn Drive, testified that he is the Applicant's neighbor, and did not have any objection to the Application.

9. Paul Ricci, the Applicant's Planner, testified that the Applicant was seeking variance relief pursuant to N.J.S.A. 40:55D-70c(1) for the proposed relocation of the air conditioning units, and variance relief pursuant to N.J.S.A. 40:55D-70c(2) for the proposed front yard circular driveway. Mr. Ricci confirmed to the Board that both the Applicant's property and Mr. Kim's property have existing nonconforming side yard setbacks. Although Mr. Ricci stated that many residences in the subject neighborhood have circular driveways, Mr. Ricci could not confirm whether the aforementioned residences had secured the necessary front yard impervious coverage variance relief for the circular driveways.

10. Mr. Ricci stated that the circular driveway will provide additional off-street parking for social gatherings. He also noted that the Applicant intended to landscape the front of the circular

driveway with a hedgerow to mitigate visual impacts from the roadway, and to add drywells in the front and rear of the subject property to assist with stormwater management. Mr. Ricci stated that the intent and purpose of the Township's impervious coverage requirements were to provide adequate stormwater controls and to provide adequate green space or open space. Mr. Ricci opined that the application would promote purposes "g" (to provide sufficient space in appropriate locations for residential uses) and "i" (to provide a desirable visual environment) of the Municipal Land Use Law ("MLUL") and that potential detriments would be mitigated through the proposed drywells and landscaping. Mr. Ricci stated that the Applicant suffers an undue hardship in attempting to relocate the air conditioning units due to the aforementioned existing nonconforming conditions of the subject property and of the neighbor's property, and that it would be impractical to relocate the air conditioning units elsewhere due to the existing location of the generator.

11. 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[.]

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. 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 MLUL, and the benefits of the deviation would substantially outweigh any detriment.

14. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) to permit the proposed relocation of the air conditioning units. 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, including the non-compliant location of the nearest off-site principal building. Specifically, the subject property's existing nonconforming side yard setback and the existing nonconforming side yard setback of the Applicant's neighbor's property 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 Applicant.

15. Although the proposed construction requires variance relief to permit a 25 foot side yard

setback from the nearest off-site principal building for an air conditioning unit, the deviation from the aforementioned requirements are relatively modest and can be achieved without undermining the intent or purpose of the Township Zoning Ordinance or the Master Plan, especially given that it is impracticable to relocate the air conditioning units to a conforming location on the Applicant's property. The proposed location for the air conditioning units is appropriate given that there is already existing mechanical equipment installed in that area of the property. The Board finds that the deviation of 5 feet from the R-4 Zone's requirement is relatively de minimis and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance.

16. The Board concludes that the proposed relocation of the air conditioning units 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. Both the subject property and the nearest off-site principal building have non-conforming side yard setbacks. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed relocation of the air conditioning units 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.

17. However, the Board also finds that the Applicant has not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(2) for the requested variance relief to permit a circular driveway in the front yard. The subject property has already undergone extensive development with patio and pool additions that contribute to the lot coverage deviation for which variance relief is required. Further, the deviation from the front yard impervious coverage requirement is excessive at approximately 12% (30% maximum front yard coverage permitted and 42.11% proposed). The Board finds that the variances triggered by the proposed circular driveway would not advance the purposes of the MLUL, do not provide a better zoning opportunity for the property, nor would any potential benefits of the circular driveway substantially outweigh its detriments. Although there are circular driveways present in the subject neighborhood, the Applicant's Planner was unable to confirm whether the aforementioned driveways had obtained variance relief from this Board. The increase in overall lot coverage and front yard impervious surface coverage is excessive given the subject property's oversized lot area; does not further the purposes of providing sufficient space for residential use or a desirable visual environment; and any benefits of the proposed landscaping and stormwater management system fail to substantially outweigh the application's detriments imposed by vastly exceeding the Township Zoning Ordinance. The Board finds these goals and objectives are not furthered by the application's proposed construction, and denies the Applicant's request for variance relief relating to the circular driveway.

**NOW, THEREFORE, BE IT RESOLVED** on this 4<sup>th</sup> day of April, 2022, that the variance relief requested by the Applicant to permit the relocation of air conditioning units, resulting in a side yard setback of 25 feet from the nearest off-site principal building where 30 feet is the required minimum side yard setback for air conditioning units, and to deny permission to construct a circular driveway in the front yard, resulting in a lot coverage of 39.26% (11,562.51 square feet) where 35% of the lot area (10,205.21 square feet) is the maximum

allowable lot coverage, and an impervious front yard coverage of 42.11% (3,117.74 square feet) where 30% of the front yard area (2,221.39 square feet) is the maximum allowable front yard impervious coverage, on property located at 346 Hartshorn Drive, Short Hills, granted in part and denied in part by this Board at its meeting of March 7, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall install boxwoods landscaping 24-30 inches from the root ball, surrounding the proposed relocated air conditioning units, installed in a manner sufficient to screen the proposed construction from view from the Applicant's neighbor's property and from street view.

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

3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals, 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 Applicant 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 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 4<sup>th</sup> day of April, 2022.

-----

**Cal#3850-21, Simon Li, 17 Thackeray Drive, Short Hills**

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

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

the following memorializing resolution was adopted:

**SIMON LI  
BLOCK 5103, LOT 10**

**CAL. NO. 3850-21  
APRIL 4, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the Applicant, Simon Li (hereinafter the “Applicant”), in Calendar No. 3850-21 to permit the construction of a front porch and expansion of an existing garage, on property located at 17 Thackeray Drive, Short Hills, New Jersey, and designated as Lot 10, Block 5103, 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 March 7, 2022, as to Calendar No. 3850-21 to permit the construction of a front porch and expansion of an existing garage, on property located at 17 Thackeray Drive, Short Hills, New Jersey, and designated as Lot 10, Block 5103, 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 March 7, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared and provided testimony under oath in support of the application. There was no public opposition to the application.

2. The Applicant is the owner of the subject property, which contains a single family residence with an attached garage located in the Township’s R-5 Zone District (the “R-5 Zone”). The subject property is a corner lot pursuant to the Township Zoning Ordinance, located at the intersection of Thackeray Drive and Wordsworth Road. The Applicant proposes to construct a front porch and to convert an area in the existing garage currently used for storage to be used for the parking of a vehicle.

3. The subject property contains one (1) existing non-conforming condition: a minimum front yard setback of 40 feet for a corner lot is required, and the subject property has an existing front yard setback of 39.8 feet for a corner lot. The proposed construction would result in a front yard setback of 32.82 feet for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, and a three (3) car garage where a two (2) car garage is the maximum permitted. Therefore, variance relief is required.

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

- A. Power point presentation, consisting of eight (8) slides, prepared by the Applicant on March 7, 2022, introduced into evidence as Exhibit A-1, on March 7, 2022.

5. The Applicant testified that the subject property is irregularly shaped and is a corner lot pursuant to the Township Zoning Ordinance. The Applicant stated that he is a pediatric intensive care doctor and the application would allow him efficient and safe access to his vehicles in the event he has to leave the property for an emergency. The Applicant stated that the family owns three cars, and when the third car is parked in the driveway it blocks the garaged vehicles. The proposed construction would alleviate this condition and allow all three cars to be garaged. The Applicant also stated that the proposed porch will be an aesthetic improvement over the existing conditions, will be similar in size and style to other front porches in the subject neighborhood, and will provide a covered area for packages delivered to the home. The Applicant stated that the existing garage already has the space to add a parking spot due to the existing “bump out”, but the existing area is being used for storage. The Applicant also stated that other residences in the subject neighborhood have front porches and three (3) car garages, and that the proposed construction will look visually similar to, and match the character of, other residences in the subject neighborhood. The Applicant concluded by stating that the existing nonconforming front yard setback and the property’s status as a corner lot causes an undue hardship.

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 Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed construction. The need for 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 existing nonconforming location of the subject residence creates an undue hardship to the Applicant. 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 Applicant.

9. Although the proposed construction requires variance relief to permit a front yard

setback of 32.82 feet for a corner lot where 40 feet is the required minimum front yard setback for a corner lot, and a three (3) car garage where a two (2) car garage is the maximum permitted, the deviations from the requirements are appropriate in light of the existing conditions at the property and the character of the surrounding neighborhood. The application also only proposes a modest increase of 6.98 feet from the existing front yard setback on the subject property and an increase of one (1) car stall to the existing garage on the subject property. The Board finds that it is not unreasonable to have a three (3) car garage on a corner lot.

10. The Board concludes that the proposed construction preserves the character of the subject neighborhood, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. 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 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 Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 4<sup>th</sup> day of April, 2022 that the variance relief requested by the Applicant to permit the construction of a front porch and expansion of an existing garage, resulting in a front yard setback of 32.82 feet for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, and a three (3) car garage where a two (2) car garage is the maximum permitted, on property located at 17 Thackeray Drive, Short Hills, granted by this Board at its meeting of March 7, 2022, 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, 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 4<sup>th</sup> day of April, 2022.

-----

**Cal#3851-21, Rosemarie Dawes, 25 Mountainview Road, Millburn**

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

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

the following memorializing resolution was adopted:

**ROSEMARIE DAWES  
BLOCK 604, LOT 16**

**CAL. NO. 3851-21  
APRIL 4, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Rosemarie Dawes (hereinafter the “Applicant”), in Calendar No. 3851-21 to permit the construction of a second floor addition and first floor and basement renovations, on property located at 25 Mountain View Road, Millburn, New Jersey, and designated as Lot 16, Block 604, 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 March 7, 2022 as to Calendar No. 3851-21 to permit the construction of a second floor addition and first floor and basement renovations, on property located at 25 Mountain View Road, Millburn, New Jersey, and designated as Lot 16, Block 604, 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 March 7, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel and, together with her licensed Architect, John James, 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 subject

property is a pie-shaped lot and also a corner lot due to its extreme curvature pursuant to the Township Zoning Ordinance. The Applicant proposes to construct a second floor addition over an existing garage; renovate the existing kitchen and existing basement office; relocate an existing powder room; and add a sink to the existing laundry room and an escape well to the existing basement study.

3. The subject property contains two (2) non-conforming conditions pursuant to the Township Zoning Ordinance: (a) a minimum front yard setback of 40 feet for a corner lot is required, and the subject property has an existing front yard setback of 27.3 feet for a corner lot; and (b) a minimum side yard setback of 12 feet for a building over 18 feet in height is required, and the subject property has an existing side yard setback of 10.95 feet for a building over 18 feet in height.
4. The proposed construction would result in a front yard setback of 33.67 feet for a corner lot, where 40 feet is the minimum required front yard setback for a corner lot. Therefore, variance relief is required.
5. The Board received and considered the following additional documents submitted in support of the application:
  - A. Three (3) photographs of the existing front yard of the subject residence, taken by the Applicant in February of 2021, introduced into evidence as Exhibit A-1, on March 7, 2022.

6. John James, the Applicant's Architect, testified that the subject property is both a pie-shaped lot and a corner lot, and that the property's unique configuration, combined with the existing nonconforming location of the subject residence, creates an undue hardship upon the Applicant. Mr. James stated that the subject property has one continuous front yard due to its severe angle and curvature. Mr. James stated that the proposed construction consists of mostly interior renovations, and that the proposed construction will connect to the subject residence above the existing garage. Mr. James clarified that the proposed construction will not increase any existing nonconforming condition of the subject property. Mr. James also stated that due to the existing location of the subject residence, any exterior construction was mostly limited to the garage side of the property. Mr. James concluded by stating that the proposed construction is similar in style and scale to other residences in the subject neighborhood.

7. N.J.S.A. 40:55D-70c(1) states:

Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

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

9. The Board finds that the Applicant has 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 Applicant 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 pie-shape and status as a corner lot pursuant to the Township Zoning Ordinance, as well as the aforementioned existing nonconforming conditions on the subject property, including the location of the subject residence, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant. Although the proposed construction requires variance relief to permit a front yard setback of 33.67 feet for a corner lot, where 40 feet is the minimum required front yard setback for a corner lot, the deviation from the aforementioned requirement is relatively modest and can be achieved without undermining the intent or purpose of the Township Zoning Ordinance or the Master Plan.

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, especially given the proposed construction’s similarity to other residences in the subject neighborhood. 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 4<sup>th</sup> day of April, 2022, that the variance relief requested by the Applicant to permit the construction of a second floor addition

and first floor and basement renovations, resulting in a front yard setback of 33.67 feet for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, on property located at 25 Mountain View Road, Millburn, granted by this Board at its meeting of March 7, 2022, 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 the Applicant's Professional 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 4<sup>th</sup> day of April, 2022.

-----

**Cal#3857-22, Emilie & Nicholas Whitley, 88 Birch Lane, Short Hills**

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

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

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the Applicants, Emilie and Nicholas Whitley (hereinafter the “Applicants”), in Calendar No. 3857-21 to permit the expansion of an existing patio, on property located at 88 Birch Lane, Short Hills, New Jersey, and designated as Lot 17, Block 2306, 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 March 7, 2022, as to Calendar No. 3857-22 to permit the expansion of an existing patio, on property located at 88 Birch Lane, Short Hills, New Jersey, and designated as Lot 17, Block 2306, 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 March 7, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared and provided testimony under oath in support of the application. There was no public opposition to the application. Board member Jessica Glatt recused herself from the application as she resides within 200 feet of the subject property.

2. The Applicants are the owners of the subject property, which contains a single family residence with an attached garage located in the Township’s R-3 Zone District (the “R-3 Zone”). The Applicants propose to extend an existing side yard patio, adding 1,400 square feet, with proposed screening.

3. The subject property contains one (1) existing non-conforming condition: an existing patio is located in the side yard of the subject property, where patios are only permitted in the rear yard for the R-3 Zone. The proposed construction would result in the expansion of the existing patio in the side yard of the subject property, where patios are only permitted in the rear yard. Therefore, variance relief is required.

4. The Applicants testified that the proposed construction will extend the existing patio within the side yard of the subject property. The Applicants stated that the proposed construction will add 1,400 square feet of patio space, with 1,100 square feet consisting of permeable pavers, and 300 square feet consisting of slate slabs. The Applicants stated that the proposed construction will be located directly outside the existing kitchen and dining area of the subject residence to create additional outdoor living space, and will extend the existing patio to the garage, back door, and existing pool area. The Applicants informed the Board that the proposed construction will be located more than 100 feet from the closest residence to the subject property, and that the proposed patio will be sufficiently screened so that only the

Applicants will be able to see the proposed construction. The Applicants stated that an existing wooden fence as well as existing mature oak trees, green giants, and bamboo also provide screening for the proposed construction. The Applicants concluded by stating that the proposed construction is modest in size, similar in style and scale to other patios in the subject neighborhood, and that the proposed construction could not be located elsewhere due to the existing nonconforming location of the existing patio.

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

7. 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 variance relief requested by the Applicants to permit the proposed construction. The need for variance relief is appropriate and related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the existing nonconforming location of the existing patio and residence creates an undue hardship to the Applicants. 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.

8. The application also only proposes a modest increase of 1,400 feet from the existing patio on the subject property, with 1,100 square feet of the proposed construction consisting of permeable pavers. The additional increase in nonconformity proposed by the application cannot practicably be located elsewhere on the subject property due to the aforementioned lawfully existing structures, and the proposed construction will be sufficiently screened so that it is not visible from surrounding properties.

9. The Board concludes that the proposed construction preserves the character of the subject neighborhood, and that any negative impact from the proposed improvement is negligible and not a substantial detriment. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1). Therefore, 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 Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 4<sup>th</sup> day of April, 2022 that the variance relief requested by the Applicants to permit the expansion of an existing patio, resulting in a side yard patio where patios are only permitted in the rear yard, on property located at 88 Birch Lane, Short Hills, granted by this Board at its meeting of March 7, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants 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 4<sup>th</sup> day of April, 2022.

-----

**APPLICATIONS**

**CAL#3860-22, XINGBO XU/YINA LU, 20 GREAT HILLS TERRACE, SHORT HILLS**

Yina Lu appeared and was sworn. She briefly explained the application before the Board. Ms. Lu indicated that she would like to have a condition of a previous variance approval modified. The original owner of the property received variance relief in 2017. One of the conditions of approval, which needed to be satisfied prior to the issuance of a CO, was to plant 20 foot trees for a length of approximately 45 feet along the right side property line.

In trying to satisfy that requirement, they were informed by several landscape professionals that the area in question was not adequate to accommodate such large trees. Ms.

Lu stated that she is planning to extend the existing wall by 5 feet and plant four or five 12-foot trees on the wall and four or five 14-foot trees on the ground. She has also spoken to the Township Forester, Tom Doty, who was in agreement with the applicant's proposal.

John Cleary, 16 Great Hills Terrace, appeared and was sworn. He stated that he is satisfied with the applicant's proposed tree plan.

Overall, Board members felt this was a reasonable request and a sensible proposal.

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

Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Chandru Harjani – yes  
Ashley Avigdor – yes  
Jessica Glatt – yes  
Craig Ploetner – yes

Cal#3860-22, Xingbo Xu/Yina Lu, 20 Great Hills Terrace, amendment to a previously approved condition of approval was **APPROVED** with the following conditions: 1) the trees planted shall be in accordance with the plan submitted; 2) all conditions of previous approval will remain in effect.

**CAL#3834-21, JACQUELINE STEIN, 37 KEAN ROAD, SHORT HILLS**

Vincent Verdiramo, Attorney for the applicant, stated his appearance. He indicated that at the conclusion of the last hearing on the matter, he indicated that they would present a landscape plan as well as testimony from a landscape architect.

Barry Greenberg, Landscape Architect, appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as A-3: survey marked up to show the tree plan (existing & proposed)

Mr. Greenberg gave a brief description of the proposed plan, which consists of Green Giant arborvitae. He indicated that they are fast growing, at about 3 feet per year, and a shade tolerant evergreen. They are also tolerant of moisture. Mr. Greenberg stated that within a few years, this landscaping would completely screen the accessory structure.

Frank Lipari, Attorney for objectors Pantoni, SanFilipo and Saffer, stated his appearance. He asked Mr. Greenberg how many years it would take for this landscaping to provide complete coverage. Mr. Greenberg indicated it would take approximately 3 years.

Steve Togher asked Mr. Greenberg if he could provide any testimony to the fact that the rear neighbors are below the proposed plantings. Mr. Greenberg stated that the applicant's property is higher than the rear neighbors which makes the structure seem taller. He added that within 2-3 years, the trees will be taller than the accessory structure.

Board Attorney, Rob Simon, asked if the green giants will compromise any of the existing trees along the common property line. Mr. Greenberg stated that they will not interfere.

Ashley Avigdor asked if there was any consideration to planting additional screening in front of the green giants. Mr. Greenberg stated that it would not help at all. The green giants grow quickly and it is not beneficial to over plant. He stated that they could plant the green giants 5 feet apart instead of 6 feet if the Board requested.

Ilene Klein, 36 Kean Road, appeared and was sworn. She stated that she is familiar with Mr. Greenberg's work and is confident that his proposal will provide a nice buffer.

Michael & Marion Saffer, 48 Winthrop Road, appeared and was sworn. They stated that they have planted arborvitae in their rear yard.

Entered as O-2: photo of green giant plantings in Saffer rear yard

Dr. Saffer explained that the deer eat the bottom 4-5 feet of the trees. As the picture shows, the proposed buffer will provide no substantial screening. All of the trees and bushes that they planted dies when this structure was built.

Entered as O-3: photo of rear yard showing common property line

Entered as O-4: photo of water flow onto driveway

Vincent Verdiramo referred to O-4 and asked Dr. Saffer if the water flow condition has been going on since 2018 when this picture was taken. Dr. Saffer responded in the affirmative but stated that it has gotten worse and more significant since this structure was built. Mr. Verdiramo asked Dr. Saffer if he has had an expert provide a reason for the trees dying. Dr. Saffer indicated that he has not.

Mr. Verdiramo called Jeffrey Slaff, licensed realtor, who appeared and was sworn. Vincent Verdiramo objected to the testimony of Mr. Slaff and indicated that he had no previous notice that a professional would be presenting on behalf of the objectors. Board Attorney, Rob Simon, indicated that his objection was noted for the record. Mr. Simon indicated that only a certified appraiser can testify as to impact on a property and allowed Mr. Slaff to continue.

Mr. Slaff stated that has been a realtor in Millburn/Short Hills for 12 years. He viewed the property and prepared a market analysis.

Mr. Simon felt the testimony of Mr. Slaff was not relevant in this matter.

Mr. Lipari called Vincent Salese, Landscaper, who appeared and was sworn. Mr. Salese stated that he visited the Pantoni and Saffer properties and has seen the structure on the applicant's property. He has viewed the proposed planting. He stated that there is only 6 feet between the wall and the structure. The structure on the applicant's property is 13 feet tall and the pear shaped green giant arborvitae will not provide adequate buffer. There is not enough room to plant the number of green giants that would be needed to screen this structure.

Jennifer SanFilipo and Marc Pantoni, appeared and were sworn. Ms. SanFilipo stated that she regrets having to take an adverse position to a neighbor's proposal. She wishes they would have proceeded in the proper fashion and sought relief before they built this structure. This is a horribly imposing structure and she is sad that she has to be here and take an adverse position.

Frank Lippari, Objectors' attorney, stated that this application requires relief from building coverage, lot coverage and accessory structure setback. There is no hardship here and there is a benefit to the applicant yet a detriment to the neighbors.

Vincent Verdiramo, Applicant's attorney, summarized and stated that the applicant is reducing the overall lot coverage to 39%. The style of the house presents a hardship in this matter. The question is the impact on the neighbors and he feels the green giants will provide a substantial shield within 2-3 years. The "c" variance is meant to be flexible. This application poses no negative impact to the zone plan. If the structure were 3 feet over, there would be no setback violation. The modern reality warrants approval of this request.

Overall, Board members voiced their disapproval of the structure. They felt that this was an egregious example of a violation and was detrimental to the neighbors.

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

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

Cal#3834-21, Jacqueline Stein, 37 Kean Road, was DENIED.

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

Samantha Alfonso, Attorney for the applicant, stated her appearance. The applicants would like to install an in-ground pool on their property. Proposal is in violation of:

- 609.1b – Accessory structures shall be in rear yard only
- 609.1c – Total accessory coverage
- 609.1e – Pool equipment location

Ms. Alfonso stated that the applicants’ property is an oversized “L” shaped property which creates a hardship and results in the need for variance relief. The home is a “U” shaped dwelling and the front door faces the left side property line. The pool is proposed to be placed in the technical side yard, which functions as the rear yard due to the placement of the dwelling on the lot.

Richard Nusser, P. E., P. P, Marcus Sunyak, Landscape Professional; Jay Katz, Anthony Sylvan Pool representative; Neha Krishan/Ashish Vats, appeared and were sworn.

Mr. Nusser’s credentials were presented and accepted by the Board. He gave a brief description of the applicants’ proposal.

There were several discrepancies between the Zoning Officer’s denial letter and the professional’s testimony. As a result, Ms. Alfonso requested an adjournment to a later date.

The matter was carried to May 2, 2022.

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

The matter was carried to May 16, 2022.

**CAL#3859-22, ILIR MUJALOVIC, 23 DORSET LANE, SHORT HILLS**

Iilir Mujalovic and Lawrence Butysnki, Landscape Architect, appeared and were sworn. The applicant would like to install an in-ground pool on his corner property. Proposal is in violation of:

- 609.5 – Accessory structure setback on a corner lot
- 609.1c – Maximum accessory coverage on a corner lot
- 609.6 – Front yard fences are prohibited

- Entered as A-1: 2 sheets of photos
- Entered as A-2: aerial photo
- Entered as A-3: photo of conceptual plan
- Entered as A-4: aerial photos of corner lot pools

Mr. Mujalovic stated that he would like to install an in-ground pool on his property for his family’s enjoyment. It is situated in such a way so as not to negatively impact the adjacent properties.

Mr. Butynski referred to the submitted plans and gave a brief description. He stated that the pool is proposed to be 13 feet off the Ardent Place front lot line where the ordinance requires a setback of 80 feet. In addition, the pool will extend forward of the house, thereby constituting front yard placement. Total accessory coverage is proposed to be 9.8% where the ordinance allows 7% on a corner lot. Finally, a pool-compliant fence is proposed in the front yard area. The fence will be screened with an extensive, attractive combination of Emerald Green arborvitae, dogwoods, shrubs and groundcovers.

The matter was opened for public questions.

Eugene Xu asked if the trees will be planted on the inside or the outside of the fence. Mr. Butynski indicated that they are proposed to be planted on the interior of the fence. Linda Linsley questioned the proposed stormwater/drainage. Board Chairman, Craig Ploetner, indicated that all drainage issues will be addressed by the Township Engineer if this proposal is approved by the Board.

The matter was opened for public comments.

Ross Mondshine, 9 Arden Place, appeared and was sworn. He indicated that he has discussed the proposal with Mr. Mujalovic. He stated that he likes the applicant and their family but must object to this application. The pool is much too close to the street and will ruin the streetscape.

Eugene Xu, 15 Arden Place, appeared and was sworn. He voiced his objection to the proposal stating that the property cannot support this request.

Robert Exelbert, 29 Dorset Lane, appeared and was sworn. He regrets having to object to this application but feels the pool is much too close to the street and does not belong in the front yard. He also feels the landscaping will not shield it from view.

The Board was not in support of the applicant's proposal. They felt it will severely impact the neighborhood in a negative way. They recalled a similar application that came before this Board several months earlier. That application was eventually withdrawn by the applicant due to the Board comments. The Board felt this proposal would be detrimental to the zone plan and did not support the proposal.

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

Jyoti Sharma – yes  
Joseph Steinberg – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Chandru Harjani – yes  
Jessica Glatt – yes

Craig Ploetner – yes

Cal#3859-22, Ilir Mujalovic, 23 Dorset Lane, was DENIED.

**CAL#3862-22, T-MOBILE NORTHEAST, 150 JFK PARKWAY, SHORT HILLS**

\*Jyoti Sharma recused and left the meeting.

Frank Ferraro, Attorney for the applicant, stated his appearance.

Due to the lateness of the hour, the applicant was agreeable to carry the matter to a future agenda.

The matter was carried to April 18, 2022.

**ADJOURNMENT**

A motion to adjourn was made by Wolfgang Tsoutsouris, seconded by Steve Togher, and carried with a unanimous voice vote. (11:00 PM)

Eileen Davitt  
Board Secretary

Motion: WT  
Second: JG  
Date Adopted: 5/2/22