

Township of Millburn
Minutes of the Zoning Board of Adjustment
April 15, 2019

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, April 15, 2019** at 7:00 PM in Millburn Town Hall.

Chairman Joseph Steinberg opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Mary McNett
Craig Ploetner
Joy Siegel
Wolfgang Tsoutsouris
Jessica Glatt, Vice Chairwoman
Joseph Steinberg, Chairman

Also present:

Gail Fraser, Board Attorney
Eric Fishman, Court Reporter
Eileen Davitt, Zoning Officer/Board Secretary

APPROVAL OF MINUTES

A motion to approve the minutes of March 18, 2019, as corrected, was made by Wolfgang Tsoutsouris, seconded by Mary McNett, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3669-19, Eric & Perrine Geller, 79 Cedar Street, Millburn

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

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Joseph Steinberg – yes

the following memorializing resolution was approved:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Eric and Perrine Geller, in Calendar No. 3669-19 for permission to construct a two-car detached garage on property located at 79 Cedar Street, Millburn, New Jersey, known and designated as Lot 9, Block 205 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 March 18, 2019 in Calendar No. 3669-19 filed by Eric and Perrine Geller (hereinafter the “Applicants”) for permission to construct a two-car detached garage on property located at 79 Cedar Street, Millburn, New Jersey, known and designated as Lot 9, Block 205 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. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The Applicants are the owners of the subject property, which is located in the R-5 zone. The R-5 zone district permits a maximum 30% floor area ratio, maximum 35% lot coverage and maximum 18% building coverage. The proposed garage will result in a 32.24% floor area ratio, 44.89% lot coverage, and 20% building coverage. Therefore, variance relief is required pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an Applicant must demonstrate that the proposed site will accommodate the 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).

3. The Board received and considered the following documents in connection with the application:

a. Plans prepared by James Weill & Associates, consisting of two sheets, dated December 14, 2018 and revised through January 15, 2019;

b. A survey of the property prepared by Casey & Keller, Inc. dated August 17, 2018;

c. A survey of the property prepared by Benjamin and Wizorek, Inc. dated August 21, 2012;

d. An exhibit with four photographs and a simulated rendering of the proposed garage, which was admitted into evidence as A-1.

4. Applicant Eric Geller, and James Weill, Licensed Architect and Professional Planner, testified in support of the Application.

5. The Applicants purchased the property in 2003. At the time of their purchase, the existing detached garage was already in poor condition. In addition, although the garage was designated as a two-car garage, it was not large enough to park two vehicles and since their purchase the Applicants have only been able to use the garage for storage. However, the condition of the garage has continued to deteriorate and the Applicants wish to replace the existing garage with a new and larger detached two-car garage, which would accommodate two motor vehicles and provide a modest amount of storage space. The subject property has a nonconforming 10,000 square foot lot area in the R-5 zone, which requires a minimum 14,500 square foot lot area.

6. The property is a Non-Contributing Resource in the Wyoming Historic District and the Millburn Historic Preservation Commission has reviewed the plans for the proposed new detached garage and authorized the issuance of a Certificate of Appropriateness.

7. The existing garage is 18 feet wide by 20 feet deep. The proposed replacement garage would be 24 feet wide, by 27.6 feet in depth, except for the northeast corner of the garage, which would only be 20 feet deep in order to preserve an existing tree at the rear of the property.

8. The property is located in a neighborhood where many of the properties are narrow lots with detached garages. The Applicants' neighbors also have detached garages. The proposed garage will be an aesthetic improvement to the property and neighborhood. It would replace a deteriorating garage with a new garage which recalls the design character of the existing garage to minimize any impact on the neighborhood.

9. The Board finds that the property with the proposed detached garage can accommodate the problems associated with the increased floor area ratio, which is 224 square feet greater than the floor area ratio permitted in the R-5 zone district. However, the Board is satisfied that the property can accommodate this increased floor area ratio without any negative impact on the neighborhood or the adjacent neighbors due to the design and placement of the proposed detached garage in the far rear corner of the property where it will not have any negative impact on the views from the street and the adjoining properties and it will be in keeping with the architectural style of the dwelling on the property.

10 The Board also finds that the need for lot coverage and building coverage variance relief is the result of the undersized lot area, the placement of the dwelling, detached garage and other improvements on the property, as well as the pre-existing nonconforming conditions affecting the property and the structures. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The existing lot coverage is already 272 square feet larger than permitted in the R-5

zone district, which is the result of the undersized lot area and the rear yard location of the detached garage and the paved driveway necessary for access to the garage. The construction of any improvement would require variance relief from this condition. The proposed new garage would result in a 217 square foot increase over the existing lot coverage. The proposed new garage would also result in building coverage 204 square feet greater than the 18% building coverage permitted in the R-5 zone. The Board finds these increases in lot coverage and building coverage to be relatively modest. The new garage will be replacing a deteriorating structure, which will actually result in an aesthetic improvement to the property and the neighborhood. The Board also notes that if this property had a conforming lot area, no variance relief would be required to permit the proposed replacement garage. The Board finds that the proposed garage will not result in any negative impact on the streetscape or the neighbors. Therefore, the Board concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 15th day of April, 2019 that variance relief to permit the construction of a detached two-car detached garage resulting in a 32.24% floor area ratio, 44.89% lot coverage, and 20% building coverage, granted by this Board on March 18, 2019, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and plans prepared by James Weill & Associates, consisting of two sheets, dated December 14, 2018 and revised through January 15, 2019 and the survey of the property prepared by Benjamin and Wizorek, Inc. dated August 21, 2012.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.
3. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals, 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. Prior to the issuance of a Certificate of Occupancy, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 15th day of April, 2019.

Cal#3677-19, Corey & Lisa Biller, 13 Rahway Road, Millburn

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

- Mary McNett – yes
- Craig Ploetner – ye
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Joseph Steinberg – yes

the following memorializing resolution was approved:

**COREY AND LISA BILLER
BLOCK 501, LOT 20**

**CALENDAR NO. 3677-19
APRIL 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Corey and Lisa Biller, in Calendar No. 3677-19 for permission to construct a deck and an addition to the dwelling on property located at 13 Rahway Road, Millburn, known and designated as Lot 20, Block 501 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on March 18, 2019 in Calendar No. 3677-19 filed by Corey and Lisa Biller (hereinafter referred to as the “Applicants”) for permission to construct a two-story addition and deck to the existing single family home located at 13 Rahway Road, Millburn, New Jersey known and designated as Lot 20, Block 501 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The Applicants are the owners of the subject property which is located in the R-6 zone district. The R-6 zone requirements include the following: maximum 36% floor area ratio, maximum 45% lot coverage, minimum 8 foot side yard setback, minimum 10.7 foot side yard setback for building segments over 18 feet in height, minimum 35% combined side yard setback, minimum 25% rear yard unoccupied and minimum 12 foot accessory structure setback. The proposed deck and addition to the dwelling would result in a 40.0% floor area ratio, 54.7% lot coverage, 6.8 foot side yard setback, 6.8 foot side yard setback for building segments over 18 feet in height, 33.2% combined side yard setback, 21.8% rear yard unoccupied and 8.1 foot accessory side yard setback. Therefore, the Applicants require variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an Applicant must demonstrate that the proposed site will accommodate the 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).

3. The Board received and considered the following in support of the application:

A. Plans prepared by Dubinett Architects LLC, consisting of two sheets, V-1 and V-2, dated December 6, 2018;

B. A survey of the property prepared by KOESTNER Associates, dated April 28, 2009, marked up to depict the proposed addition and deck to the dwelling;

C. A marked up copy of the survey, was admitted into evidence as A-1;

D. An exhibit with five photographs and two diagrams of the rear yard unoccupied was admitted into evidence as A-2.

4. The Applicants, Corey and Lisa Biller, and Danial Dubinett, Licensed Architect, testified in support of the application.

5. The Applicants have resided at the property for ten years. When they purchased the property, they had one two-year old child. They now have two children ages 10 and 8 years and the home no longer accommodates their growing family. The home is currently a three bedroom, two and one-half bathroom dwelling and it would remain a three bedroom, two and one-half bathroom home after the proposed addition. The existing kitchen is too small to permit the Applicants to eat together as a family and the home does not have a family room. The proposed addition would allow the Applicants to reconfigure the existing floor plan of the home to provide a larger eat-in kitchen and family room on the first floor. The proposed addition would also permit the Applicants to expand the second floor hall bathroom to provide two sinks and expand the smallest bedroom so both their daughters would have bedrooms of equal size. In addition, the basement level two-car garage is rear facing. As a result, a large paved driveway occupies a substantial portion of the rear yard of the property. The Applicants also wish to construct a rear deck behind the new addition to the dwelling, which would serve as an outdoor living space. Originally, the Applicants proposed to construct a 156 square foot patio in the rear

yard to replace an existing patio. However, in response to comments and concerns expressed by the Board during the hearing, the Applicants withdrew their request for the proposed patio and they also proposed to reduce the portion of the driveway in the rear yard by 42 square feet.

6. Although the proposed two-story addition and deck would require seven variances, six of the variances relate to pre-existing nonconforming conditions which affect the property and existing structures. Specifically, lot coverage is already 54.9%. The existing dwelling has a 6.8 foot side yard westerly setback, 6.8 foot side yard westerly setback for building segments over 18 feet in height, and a 33.2% combined side yard setback. The rear yard unoccupied is presently 20.9% and the existing patio has a 4 foot accessory structure side yard setback. While the existing home has a conforming 1,977 square foot floor area ratio, the maximum allowable 36% floor area ratio would only allow a three square foot addition before a variance for floor area ratio would be necessary.

7. The proposed two-story addition would be located at the rear of the existing dwelling so it would be concealed from view from the street by the existing dwelling. The proposed addition would align with the existing westerly side façade of the dwelling, extending the 6.8 foot side yard setback and 6.8 foot side yard setback for building segments over 18 feet in height farther to the rear of the property. Thus, the proposed two-story addition would be no closer to the westerly side property line than the existing dwelling. The neighbors to the west also have a rear addition to their dwelling, which is not as deep as the Applicants' proposed addition, but the neighbor's garage extends farther into their rear yard than the Applicants' proposed deck. While the Applicants' proposed addition and deck would reduce some of the grassy area in the rear yard, the elimination of the existing patio with its current four foot accessory side yard setback would allow for more grassy area in closer proximity to the neighbors to the west because the proposed deck stairway would provide an 8.1 foot accessory side yard setback. Although lot coverage and rear yard unoccupied variances are still required, the elimination of the proposed patio and 42 square feet of the driveway in the rear yard improves the pre-existing nonconforming lot coverage and rear yard unoccupied conditions.

8. With respect to the side yard setback, side yard setback for building segments over 18 feet in height and combined side yard setback, all three pre-existing nonconforming conditions are the result of the undersized 50 foot lot width of the property. If this lot had a conforming 60 foot lot width, in all likelihood, these three variances would not be required.

9. The Board concludes that the variance relief requested by the Applicants may be granted. The Board finds that the property can readily accommodate the proposed increase in floor area ratio. The proposed addition will be located in the rear yard where it will not be visible from the street. Moreover, the proposed addition is modest in size. While the dwelling will remain a three bedroom and two and one-half bathroom home, the addition will provide the Applicants with a functional eat-in kitchen and a family room, which are both reasonable residential amenities. The Board is also satisfied that the remaining variances are the result of the undersized lot width, as well as the placement of the existing dwelling and other improvements on the property, which includes a large paved driveway in the rear yard to provide access to the rear-facing two-car garage. If this property had a conforming lot width, four of the

required variances for side yard setback, side yard setback for building segments over 18 feet in height, combined side yard setback and accessory side yard setback would be eliminated. Moreover, the rear-facing garage and large paved driveway in the rear yard account for the pre-existing nonconforming lot coverage and rear yard unoccupied. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The proposed deck will be farther from the westerly side property line than the existing patio. The home with the proposed improvements will not result in any substantial negative impact on the light, air or open space of the adjoining neighbors. The Board is satisfied that the home with the deck and two-story addition will be in keeping with the other homes in the neighborhood. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 15th day of April, 2019 that variance relief to permit the construction of a deck and two-story addition to the Applicants' dwelling, which results in a 40.0% floor area ratio, 54.7% lot coverage, 6.8 foot side yard setback, 6.8 foot side yard setback for building segments over 18 feet in height, 33.2% combined side yard setback, 21.8% rear yard unoccupied and 8.1 foot accessory side yard setback, granted by this Board on March 18, 2019 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicants shall submit revised plans depicting the elimination of the proposed patio and 42 square feet of the driveway in the rear yard. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Dubinett Architects LLC, consisting of two sheets, V-1 and V-2, dated December 6, 2018 and revised in accordance with this condition.

2. The Applicants shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

Prior to the issuance of a Certificate of Occupancy/Approval, 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.

The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses 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.

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 15th day of April, 2019.

Cal#3679-19, Jacob & Robin Feldman, 153 Highland Avenue, Short Hills

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

- Mary McNett – yes
- Craig Ploetner – yes
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Joseph Steinberg – yes

the following memorializing resolution was approved:

**JACOB AND ROBIN FELDMAN
BLOCK 3104, LOT 2**

**CAL. NO. 3679-19
APRIL 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Jacob and Robin Feldman, in Calendar No. 3679-19 to permit the conversion of an existing dwelling into an accessory pool cabana on property located at 153 Highland Avenue, Short Hills, New Jersey, known and designated as Lot 2, Block 3104 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 March 18, 2019 in Calendar No. 3679-19 filed by Jacob and Robin Feldman (hereinafter the “Applicants”) to permit the conversion of an existing dwelling into a pool cabana on property located at 153 Highland Avenue, Short Hills, New Jersey, known and designated as Lot 2, Block 3104 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. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The Applicants are the owners of the subject property, which is a Non-Contributing Historic District Resource in the Short Hills Park Historic District in the R-3 zone district. The Applicants propose to convert a portion of an existing dwelling on the property into an accessory pool cabana. Township Zoning Ordinance requirements for the R-3 zone permit

accessory structures with a maximum 18 foot building height. The Applicants' pool house proposal would result in an accessory structure with a 27.16 foot building height. Therefore, variance relief is still required.

3. Initially, the Applicants also proposed to construct a tennis court on the property, which would have required variance relief to permit a 27.81% accessory coverage instead of the maximum 20% accessory coverage permitted in the R-3 zone district. Prior to the conclusion of the hearing, the Applicants withdrew their request for accessory coverage variance relief to permit the construction of the tennis court.

4. The Board received and considered the following documents submitted with the application:

A. Plans prepared by Klesse Architects, consisting of three sheets, A-12, A-13 and A-14, dated November 19, 2018;

B. Plans prepared by Casey & Keller, Inc., consisting of two sheets, dated December 15, 2018;

C. Sheet HPC-21 of the plans prepared by Klesse Architects, dated August 24, 2018, which was admitted into evidence as A-1;

D. A highlighted survey of the property prepared by Casey & Keller, dated August 11, 2015, which was admitted into evidence as A-2;

E. A highlighted and colorized version of Klesse Architects Sheet A-12, which was admitted into evidence as A-3;

F. A two page Casey & Keller exhibit consisting of Photo Board #1 and an aerial photo, which was admitted into evidence as A-4.

5. Applicant Jacob Feldman and Richard Keller, P.E. & P.P., appeared and testified in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Officer.

6. The Applicants propose to retain the original masonry stone house portion of the existing dwelling on the property which was built in 1914, and demolish the two later additions to the original dwelling. The original masonry stone house would be converted into a pool cabana for the Applicants' use in connection with a new in-ground swimming pool, patios and covered terrace which would be constructed between the existing stone house and the new dwelling to be constructed on the property. However, conversion of the existing dwelling on the property into an accessory pool cabana creates the need for variance relief. The maximum permitted building height for an accessory structure is only 18 feet, rather than the 32 foot building height allowed for a principal structure, such as a dwelling. In order to preserve the "carriage house" historical appearance of the original masonry stone structure, variance relief

would be necessary to maintain the existing 27.16 foot accessory structure building height due to the steeply pitched roof of the structure. Although the pool cabana would continue to maintain a 14 foot by 5 foot loft and storage area accessible via an existing staircase, the loft area of the pool cabana does not contain any windows, nor does it provide a full height ceiling needed for use as a bedroom. In addition, an existing closet in the loft area is being removed and there is no full bathroom in the pool cabana. Moreover, the two additions to the dwelling, which are being demolished account for a significant portion of the existing dwelling with its 27.16 foot building height. Therefore, the massing of the pool cabana will be greatly reduced after the proposed demolition of the two additions. The Applicant testified that despite the building height, the stone masonry structure will solely function as an accessory pool cabana and play area.

7. The Applicants' professional planner, Richard Keller, testified that the Applicants' proposal satisfies the positive and negative criteria for the granting of variance relief. The building height is a pre-existing condition. Reducing the building height to conform to the maximum accessory structure building height would compromise the preservation of the 1914 masonry stone house. The proposed pool cabana building will not be visible from the street and it will be located a substantial distance from the neighboring properties. The height of the pool cabana will not have any negative impact on the neighbors because the building height is an existing condition, which is already part of the fabric of the neighborhood.

8. The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(c) and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed pool cabana with a 27.16 foot accessory building height. The proposed pool cabana is an adaptive reuse of the original 1914 masonry stone house portion of the existing dwelling on the property, which has an existing 27.16 foot building height. The Board finds these conditions to be exceptional circumstances affecting the property and the existing structure thereon, which result in practical difficulties and undue hardship to the Applicants. The original stone house portion of the existing dwelling was built in 1914 with a steeply pitched roof that results in the pre-existing nonconforming 27.16 foot building height. In order to preserve the historical aspect of this structure, the Applicants require variance relief to permit them to maintain the existing 27.16 foot building height despite the conversion of the existing dwelling into an accessory structure which is limited to an 18 foot building height. The Board is satisfied that the building height of the proposed pool cabana is an existing condition and the structure has been part of the fabric of this neighborhood since the construction of the original stone house in 1914. Moreover, the pool cabana will be concealed from view from the street by the construction of the new single-family dwelling on the property. The placement of the pool cabana is 90 feet from the rear property line, more than 97 feet from the southerly property line adjoining the property at 17 Minnisink Road and more than 68 feet to the northerly property line adjoining 163 Highland Avenue. The Applicants also propose a landscaped privacy buffer between the subject property and the neighboring properties. As a result, the Board concludes that the proposed accessory pool cabana building height will not result in any negative impact on the adjoining residential properties. The subject property with the proposed conversion of the existing dwelling into a pool cabana combined with the construction of a new single-family home on the property with a deep front yard setback will be in keeping with the existing structures and surrounding area of the Short Hills Park Historic

District in which it is located. Therefore, the Board concludes that the granting of the variance relief requested herein can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 15th day of April, 2019 that the variance relief requested by the Applicants to convert a portion of an existing dwelling into a pool cabana with an accessory structure building height of 27.16 feet on property located at 153 Highland Avenue, Short Hills, granted by this Board at its meeting of March 18, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicants shall submit revised plans eliminating the proposed tennis court. Construction shall be in accordance with the testimony of the witnesses at the hearing and the plans prepared by Klesse Architects, consisting of three sheets, A-12, A-13 and A-14, dated November 19, 2018 and the plans prepared by Casey & Keller, Inc., consisting of two sheets, dated December 15, 2018, as revised in accordance with this condition.

2. The Applicants shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

3. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses at the public hearings, 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. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 15th day of April, 2019.

BUSINESS

The Board discussed the 2018 Annual Report. There were several additions suggested including a recommendation to the Township Committee that specifically prohibits plastic mesh fences in a front yard unless there is active construction taking place. A suggestion was also added recommending that the Township Committee look at the South Mountain zoning, similar to the action taken in the Washington School area, in order to maintain the character of that neighborhood. Finally, the Zoning Board added a recommendation that the Township Committee review the current steep slope ordinance in order allow disturbance as a percentage of the lot area rather than the 1000 sf that applies to all lots, regardless of the lot size.

APPLICATIONS

CAL#3672-19, ANABELLA MESSUTI/MARCOS MENEGUZZO, 368 OLD SHORT HILLS ROAD, SHORT HILLS

Timothy Klesse, Architect, Anabella Messuti and Marcos Meneguzzo, appeared and were sworn. Mr. Klesse's credentials were presented and accepted by the Board. The applicants would like to construct a 2-car garage to their dwelling. Proposal is in violation of:

- 606.2e1e2b – Side yard setback
- 606.2e1f – Combined side yard setback
- 606.2e2a – Building coverage
- 606.2e2d – FAR
- 606.2e3d – Front facing garage

Mr. Meneguzzo gave a brief description of their proposal. He indicated that the current garage is a side-facing garage in the basement area. Unfortunately, the garage area has flooded numerous times and they would like to reconstruct the garages to be ground level.

- Entered as A-1/A-6: photos of subject dwelling
- Entered as A-7: video of flooding

Tim Klesse gave a brief description of the proposal. The proposal is to fill the area of the current 2-car side-facing garage and construct a 2-car front facing garage in its place.

- Entered as A-8: property setbacks
- Entered as A-9: photoboard of 6 photos

Mr. Klesse explained that the garage addition is not flush with the front face of the existing dwelling. It is set back so as to minimize the visual effect of the front facing garage.

Chairman Steinberg stated that he is sensitive to FAR and side yard setback variance requests. However, he believes that the nature of the problem being addressed as well as the

distance between the proposed garage and the neighboring dwelling are strong arguments in support of the variance relief being requested.

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

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3672-19, Anabella Messuti/Marcos Meneguzzo, 368 Old Short Hills Road, “d” variance relief for FAR was **APPROVED**.

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

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3672-19, Anabella Messuti/Marcos Meneguzzo, 368 Old Short Hills Road, “c” variance relief was **APPROVED**.

CAL#3673-19, TYLER & KATE FOSTER, 9 CAPE COURT, MILLBURN

Tyler & Kate Foster, and Tim Klesse, Architect, appeared and were sworn. Mr. Klesse’s credentials were presented and accepted by the Board. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

606.2e1d – Front yard setback
606.2e1g – Rear yard unoccupied
606.2e1h – Rear yard setback
606.2e2a – Building coverage
606.2e2b – Lot coverage
606.2e2d – FAR
606.2e3b – Accessory structure rear yard setback
609.1b – Accessory structures shall be in rear yard only
607.3e – Front yard coverage

Tim Klesse gave a description of the applicants' proposal.

Entered as A-1: marked up sheet BOA-1

Entered as A-2: photoboard of 4 photos of subject site

Mr. Klesse stated that the existing property contains a 2-story dwelling with a detached garage in the rear of the property behind the dwelling. The property borders the South Mountain Reservation to the rear and has a walking easement bordering the right side of the property. The applicants propose to construct a 2-car attached garage on the front of the house, convert the enclosed porch to a family room and construct an addition above it to accommodate 2 bedrooms. A 2-story addition is proposed to be constructed in place of the currently existing garage in order to accommodate an expanded kitchen area on the first floor and a master suite on the second floor. A 165 SF patio is proposed on the right rear side of the addition.

Mr. Klesse spoke to the variances being requested. Front yard setback variance relief is required to allow a setback of 13.61 feet where 40 feet is required. Rear yard setback variance relief is required to permit a setback of 5.77 feet (6%) where 17 feet (20%) is required. Rear yard unoccupied variance relief is required to permit 336 SF (7%) where 1,190 SF (25%) is required. Front yard coverage variance relief is required to allow 581 SF (41.5%) where 420 SF (30%) is permitted. Building coverage variance relief is required to permit 1,404 SF (29.5%) where 1,095 SF (23%) is permitted. Lot coverage variance relief is required to permit 2,373 SF (49.8%) where 2,142 SF (45%) is permitted. FAR variance relief is required to allow 2,288 SF (48%) where 1,714 SF (36%) is permitted. Accessory structure rear yard setback variance relief is required to allow a setback of 7 feet where 12 feet is required. Relief is also required to allow an accessory structure in the side yard, where the ordinance allows them only in the rear yard.

Mr. Klesse stated that the improvements proposed are in scale to the existing structures in the neighborhood. He added that the architectural massing and detail of the building match and enhance the existing structure.

Frank Meyer, 7 Cape Court, asked if the proposal was a 1-car or 2-car garage. Mr. Klesse indicated it is a proposed 2-car garage. Mr. Meyer asked if the proposal would allow for both of the applicants' cars to be parked in the driveway rather than on Cape Court. Mr. Klesse said that all of the applicants' cars would be off the street.

Frank Meyer, 7 Cape Court, appeared and was sworn. He stated that he likes the plan but is concerned about the construction activity and the time that the equipment would be brought to the site.

Many Board members were concerned that the proposal was excessive. They indicated that because of the number and extent of the variances being requested they are concerned that this proposal will overshadow the established character of the neighborhood.

Tim Klesse asked for an adjournment to a future meeting in order to discuss the proposal with the applicants.

The matter was carried to June 3, 2019 with no further notice required.

CAL#3676-19, JOE & LISA ROMANO, 20 PARK ROAD, SHORT HILLS – matter carried to June 3, 2019 with no further notice required

CAL#3682-19, YAIR BENDORY, 68 MYRTLE AVENUE, MILLBURN

Daniel Dubinett, Architect for the applicant, appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Dubinett has been given power of attorney to speak on behalf of the applicant. The power of attorney was reviewed by Board Attorney, Gail Fraser, who found it to be acceptable.

The applicant would like to construct an addition to the dwelling. Proposal is in violation of:

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

Mr. Dubinett spoke to the variance relief being requested. He indicated that he made a small change to the plans after discussing the plan with a neighbor. He stated that he removed the 2nd floor dormer and thus eliminated the need for additional height to side yard setback variance relief.

Entered as A-1: photo of subject property

Variance relief is needed to allow a front yard setback of 24.65 feet where 40 feet is the minimum required. The current front yard setback is 24.65 feet and the applicant proposes a 2nd floor addition above the existing dwelling. Side yard setback variance relief is required to permit a setback of 7.4 feet where 8 feet is required. The current side yard setback is 7.4 feet and the proposal is to build above the existing non-conforming setback.

Upon a motion made by Mary McNett, a second by Joy Siegel, and with a roll-call vote as follows:

- Mary McNett – yes
- Craig Ploetner – yes
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

Cal#3682-19, Yair Bendory, 68 Myrtle Avenue, was **APPROVED** with the condition that revised plans be submitted to the Board Secretary reflecting the elimination of the dormer.

CAL#3684-19, ALL-PRO HEALTH, LLC, 20 MAIN STREET, MILLBURN

Anthony Cerciello, attorney for the applicant, stated his appearance. The applicant would like to operate a wellness center, consisting of chiropractic, physical therapy and yoga studio. The proposal is in violation of:

- 606.7b – Not a permitted use
- 607.1 – Minimum loading requirement
- 607.2 – Minimum parking requirement

The applicant also requires site plan approval and a waiver of the requirement to submit an EIS.

John Buchholz, Architect for the applicant, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the applicant's proposal. He spoke to sheet A-1, the proposed floor plan.

Dr. Todd Schragen, sole member/manager of All-Pro Health, appeared and was sworn. He gave a brief description of his proposed operation. He currently operates his business in Livingston and proposes to relocate to this Millburn location. He proposes to have 3 employees in addition to himself with proposed hours on Monday, Wednesday, and Friday from 7 AM – 7 PM and Tuesday, Thursday and Saturday mornings. Patients are by appointment only and all medical services provided are 1 on 1.

Richard Keller, P. E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the proposal and spoke to the variances being requested.

The property is located in the B-4 zone district and was formerly used as the Millburn Bike Shop. The applicant is seeking site plan approval for a change of use from retail sales to medical. The applicant also requires "d" use variance relief to operate a medical office, which is not a permitted use in the B-4 zone. The applicant also requires a parking and loading variance.

Entered as A-1: photoboard aerial photo

Mr. Keller stated that the property in question is a 5,000 SF lot with a 1,600 SF building which the applicant intends to utilize. The property is surrounded on 2 sides by public lot #1. The applicant is seeking relief from the requirement to provide a loading space. There is no loading space on site and there is no space proposed. The applicant is also seeking a parking variance for a total of 10 parking spaces. There is no parking on site and the applicant would agree to purchase business parking permits for his employees if the Board so required.

Upon a motion made by Mary McNett, seconded by Craig Ploetner, and with a roll-call vote as follows:

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3684-19, All-Pro Health, LLC, 20 Main Street, “d” use variance was **APPROVED** with the condition that the applicant shall purchase 3 business parking permits.

Upon a motion made by Mary McNett, seconded by Wolfgang Tsoutsouris, and with a roll-call vote as follows:

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – ye

Cal#3684-19, All-Pro Health, LLC, 20 Main Street, site plan approval/parking and loading space variance 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 Craig Ploetner, seconded by Mary McNett, and carried with a unanimous voice vote. (10:15 PM)

Eileen Davitt
Board Secretary

Motion: MM
Second: CP
Date Adopted: 5/6/19