

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
April 18, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, April 18, 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  
Joseph Steinberg  
Steve Togher  
Wolfgang Tsoutsouris  
Chandru Harjani, Alternate #1  
Ashley Avidgor, 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 March 7, 2022, was made by Jessica Glatt, seconded by Ashley Avidgor, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3854-21, Mukta Ghatia, 45 Pine Terrace East, Short Hills**

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

Amy Lawrence – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Craig Ploetner – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Mukta Bhatia (hereinafter the “Applicant”), in Calendar No. 3854-21 to permit the construction of a two-story rear addition, on property located at 45 Pine Terrace East, Short Hills, New Jersey, and designated as Lot 15, Block 1710, 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 21, 2022 as to Calendar No. 3854-21 to permit the construction of a two-story rear addition, on property located at 45 Pine Terrace East, Short Hills, New Jersey, and designated as Lot 15, Block 1710, 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 21, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel. Thomas Singer, the Applicant’s professional Architect and Planner, 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, one and one-half story Cape Cod style residence with an attached garage, located in the Township’s R-6 Zone District (the “R-6 Zone”). The Applicant proposes to expand the existing residence with a two-story rear addition, to create a two-story, Colonial-style single family detached residence, and proposes to replace the existing fenestration to make the residence more consistent with residences in the subject neighborhood.
3. The subject property contains three (3) existing nonconforming conditions pursuant to the R-6 Zone: (a) a minimum side yard setback of 8 feet for a building up to 18 feet in height is required, and the subject property has an existing side yard setback of 7.5 feet for a building up to 18 feet in height; (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 9.3 feet for a building over 18 feet in height; and (c) a minimum combined side yard setback of 35% of the lot width (21 feet) is required, and the subject property has an existing combined side yard setback of 28% of the lot width (16.8 feet).
4. The proposed construction will result in a side yard setback of 7.5 feet for a building up to 18 feet in height, where 8 feet is the required minimum; a side yard setback of 11.7 feet for a building over 18 feet in height, where 12 feet is the required minimum; and a

combined side yard setback of 28% (16.8 feet) where 35% (21 feet) is the required minimum combined side yard setback. Therefore, variance relief is required.

5. Thomas Singer, the Applicant's Architect and Planner, testified that the proposed construction will result in a two-story addition to the rear of the subject residence. Mr. Singer stated that the proposed construction simply sought to add additional volume to existing non-conforming areas, and that only a small portion of the front of the subject residence and the existing garage will exacerbate any non-conforming condition. Mr. Singer also stated that the proposed closet construction for the third bedroom on the second floor was the only area to fall outside of the existing building envelope. Mr. Singer stated that the proposed construction will now allow for a car to utilize the existing garage.

6. Mr. Singer stated that the subject property's shape and the location of the existing buildings on the subject property imposed a hardship upon the Applicant. Mr. Singer stated that the subject property is narrow, and that the attached garage makes the right side of the subject residence non-conforming. Mr. Singer clarified that the useable area of the lot is only 58% of the lot width due to the attached garage and narrow lot. Mr. Singer also stated that the proposed construction cannot not be located elsewhere due to the existing location of the subject residence and garage.

7. Mr. Singer stated that Municipal Land Use Law ("MLUL") purpose (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement, will be advanced by the application, as the application does not propose to move the mass of the subject residence in the direction of the neighbor most impacted by the proposed construction. Mr. Singer also stated that the proposed construction will result in a more attractive residence, is modest in scale, and not too bulky. Mr. Singer stated that the proposed construction will bring the subject residence into closer conformity with other residences in the subject neighborhood in both size and style, and will look more appealing from the street. Mr. Singer concluded by stating that the proposed construction is modest and reasonable.

8. 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[.]

9. 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”).

10. 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 narrow width, as well as the aforementioned location of the subject residence and garage, 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.

11. The deviations from the applicable requirements are relatively modest, especially given the hardships imposed by the subject property and lawfully existing structures thereon. The application proposes a modest deviation of .5 feet from the side yard setback requirement for a building up to 18 feet in height; a .3 foot deviation from the side yard setback requirement for a building over 18 feet in height; and a 4.2 foot deviation from the combined side yard setback requirement. In fact, the application will bring the side yard setback for a building over 18 feet in height into closer conformity with the Township Zoning Ordinance requirement than the existing conditions. The Board also finds the proposed construction can be accomplished without substantially undermining the intent or purpose of the Zone Plan or the Township Zoning Ordinance for all the reasons set forth above.

12. The Board also finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(2) for the requested variance relief, and that it is appropriate to permit the proposed construction. The application advances multiple goals of the MLUL, specifically, goal (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The application’s proposed construction is modest and consistent with the character of the subject neighborhood, and keeps the application’s proposed construction mostly within the building footprint while improving overall functionality of the Applicant’s home. The Board finds these goals and objectives are furthered by the application’s proposed construction.

13. The Board concludes that the proposed construction is tasteful and modest, can be accommodated by the subject property, preserves the character of the existing residence, 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) and (2). For all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 18<sup>th</sup> day of April, 2022 that the variance relief requested by the Applicant to construct a two-story rear addition, resulting in a

side yard setback of 7.5 feet for a building up to 18 feet in height where 8 feet is the required minimum; a side yard setback of 11.7 feet for a building over 18 feet in height where 12 feet is the required minimum; and a combined side yard setback of 28% (16.8 feet) where 35% (21 feet) is the required minimum side yard setback, on property located at 45 Pine Terrace East, Short Hills, New Jersey, granted by this Board at its meeting of March 21, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, 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 his professional expert witness 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 18<sup>th</sup> day of April, 2022.

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**Cal#3855-21, Jason Bauer, 165 Long Hill Drive, Short Hills**

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

- Amy Lawrence – yes
- Joseph Steinberg – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Mia and Jason Bauer (hereinafter the “Applicants”), in Calendar No. 3855-21 to permit the construction of a left side, one-story addition (facing the home) and a second floor rear addition, on property located at 165 Long Hill Drive, Short Hills, New Jersey, and designated as Lot 3, Block 3606, 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 21, 2022 as to Calendar No. 3855-21 to permit the construction of a left side, one-story addition (facing the home) and a second floor rear addition, on property located at 165 Long Hill Drive, Short Hills, New Jersey, and designated as Lot 3, Block 3606, 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 21, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Timothy P. Klesse, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township’s R-4 Zone District (the “R-4 Zone”). The subject property is a trapezoid-shaped lot on a curved street, and the side yard lot lines are not parallel. The Applicants propose to convert an existing second floor office into living space for a relative and create a separate office space, as the Applicants are working from home.

3. As originally designed, the proposed construction would have resulted in a side yard setback of 7.33 feet for a building up to 18 feet in height where 15 feet is the required minimum side yard setback for a building up to 18 feet in height; a 20.8 foot side yard setback for a building over 18 feet in height where 22 feet is the required minimum side yard setback for a building over 18 feet in height; a combined side yard setback of 29.4% (35.3 feet) where 35% of the lot width (42 feet) is the minimum required combined side yard setback; and a Floor Area Ratio (“FAR”) of 27.6%, where 26% is the maximum permitted FAR. The Applicants subsequently revised their application plans to eliminate the FAR variance relief and side yard setback variance relief for a building over 18 feet in height. The application will still result in a side yard setback of 9.33 feet for a building up to 18 feet in height where 22 feet is the required minimum side yard setback for a building over 18 feet in height; and a combined side yard setback of 31.1% (37.3 feet) where 35% of the lot width (42 feet) is the minimum required combined side yard setback. Therefore, variance relief is required.

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

A. Video of view of the property driving towards White Oak Ridge Road, taken by Timothy P. Klesse on March 13, 2022, introduced into evidence as Exhibit A-1, on March 21, 2022;

B. Video of view of the property driving away from White Oak Ridge Road, taken by Timothy P. Klesse on March 13, 2022, introduced into evidence as Exhibit A-2, on March 21, 2022;

C. Revised Attachment "E", submitted by the Applicants on March 21, 2022, introduced into evidence as Exhibit A-3, on March 21, 2022.

5. Timothy P. Klesse, the Applicants' Architect, testified that the subject property is trapezoid-shaped and located on Long Hill Drive, which is curved, therefore making the subject property an irregularly shaped lot. Mr. Klesse stated that if the subject property's side lot lines were parallel, the application would not require any variance relief, and the irregular lot shape imposes an undue burden upon the Applicants. Mr. Klesse stated that the Applicants already planted 15 green giant arborvitae trees, located on the left side of the proposed construction area (facing the home) and about 26 to 30 feet from the Applicants' closest neighbor's house, to provide adequate screening to benefit this neighbor. If any of these trees die, they will be replaced by the Applicants. According to Mr. Klesse, the proposed second floor addition will be concealed from public view.

6. Mr. Klesse stated that the proposed construction would enhance the architectural character of the house and would make the subject residence similar in style and scale to other residences in the subject neighborhood. The office construction will allow the left side of the home to be appropriately "squared off" in keeping with the design of other homes in the area. Mr. Klesse also stated that the Applicants revised the application to eliminate the variances for both FAR and side setback for a building over 18 feet in height, and the application reduced the extent of the nonconforming conditions for the side yard setback for a building up to 18 feet in height and the combined side yard setback.

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 Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the subject property’s trapezoid shape and the location of the subject residence are hardships specific to the subject property. If the subject property had parallel lot lines, no variance relief would have been required for the application. 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.

10. Although the proposed construction requires variance relief to permit a side yard setback of 9.33 feet for a building up to 18 feet in height and a combined side yard setback of 31.1% (37.3 feet), the deviations 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. The Board finds that these deviations from the R-4 Zone’s requirements are de minimis and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance.

11. The Board concludes that the proposed construction is tasteful, 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 18th day of April, 2022, that the variance relief requested by the Applicants to permit the construction of a left side one-story addition (facing the home) and a second floor rear addition, resulting in a side yard setback of 9.33 feet for a building up to 18 feet in height where 15 feet is the required minimum, and a combined side yard setback of 31.1% (37.3 feet) where 35% of the lot width (42 feet) is the required minimum, on property located at 165 Long Hill Drive, Short Hills, granted by this Board at its meeting of March 21, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The previously planted 15 green giant arborvitae trees, located on the left side of the proposed construction area (facing the home) and about 26 to 30 feet from the Applicants' closest neighbor's house, will remain and shall be replaced by the Applicants should any of them die.

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

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

4. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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 18th day of April, 2022.

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#### **APPLICATIONS**

#### **CAL#3858-22, WENDY PRASHKER, 26 PARK ROAD, SHORT HILLS**

\*It is noted that Jessica Glatt watched/listened to the tape of the 3/21/22 meeting on this matter and is eligible to vote.

Wendy Prashker appeared and remains sworn. She stated that she listened to the comments from Board members and neighbors from the 3/21/22 meeting and have made some revisions to their original plans.

Angelo Onello, P. E., appeared and remains sworn. He gave a description of the design revisions which he feels will speak to some of the concerns of the Board and surrounding property owners.

Mr. Onello referred to the revised plans dated April 6, 2022 and explained the proposed revisions. The pool location has been shifted to the rear of the residence and reduced in size to 15 feet by 29 feet, from the originally proposed 16 feet by 30 feet. In addition the pool has been

moved more to the center of the rear yard, thereby increasing the setback from the left side property line. The existing upper patio terrace is proposed to be re-built and the upper deck is proposed to be reduced in size to 300 SF from the original size of 399 SF. Total accessory coverage has been reduced from 26.41% to 22.76% where 20% is the maximum permitted. Total lot coverage has been reduced from 40.84% to 38.9% where the allowable coverage is 35%.

Entered as A-1: marked up version of revised sheet 4

Entered as A-2: drawing #3 updated 4/18/22 with landscaping

Mr. Onello stated that he reviewed the report prepared by the Township Engineer, Martha Callahan, and indicated that the applicant would comply with any and all recommendations made to her analysis of the proposed drywells.

Jessica Glatt asked if the application can be presented variance-free. Mr. Onello stated that the property is already at the maximum allowable lot coverage. The proposal would require the removal of just over 400 SF of new coverage, which is approximately the size of the pool, in order to comply with lot coverage.

Charles Baldanza, P. E., P. P.P, appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Baldanza indicated that he has been retained by Mr. Del Campo (28 Park Road), Mr. Margolis (14 Cross Gates) and Mr. Roth (18 Cross Gates) to provide engineering and planning analysis of the impact of this application.

He stated that he reviewed the site plan and zoning analysis prepared by the applicant's engineer, Angelo Onello, and feels the applicant has not provided any testimony that speak to a hardship. There is nothing unusual about this property such that relief from total lot coverage and accessory coverage should be granted by this Board. Mr. Baldanza stated that drainage issues are a concern and were discussed extensively at the 3/21/22 meeting. He does not feel that the application will benefit the public good since the proposed stormwater management speaks only to the additional impervious area on the lot.

Rob Simon questioned Mr. Onello as to Mr. Baldanza's c(1) and c(2) criteria analysis. He asked if he could speak to the assertion that there is no hardship in this case and/or the assertion that this proposal presents a better alternative for the property than does a conforming proposal.

Mr. Onello indicated that the undersized lot presents a hardship. In addition the significant elevation differential presents a hardship. A pool is a customary use and is very common in this neighborhood. In fact, three of the neighboring properties have in-ground pools. The application also proposes a robust stormwater system that is going to capture all the stormwater runoff.

Joseph Steinberg stated that this is a difficult case. The Board sought the opinion of the Township Engineer which is not what this Board typically does. The property is 12,000 SF

where 20,000 SF is the minimum lot area in this R-4 zone district. Mr. Steinberg felt the undersized lot area creates a hardship. He is leaning toward an approval on the matter.

Steve Togher felt the applicant was responsive to concerns expressed by the Board and responsive to the comments of the Township Engineer. He supports the application.

Jessica Glatt feels the applicant has made a good argument as to why the variances are needed and she expressed support of the application.

Wolfgang Tsoutsouris indicated that he does not support the application as presented. The lot is undersized but he does not believe that the lot size plays into the equation.

Craig Ploetner agreed with Wolfgang and feels there could be adjustments made to bring the application more into conformity.

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

Amy Lawrence – no  
Joseph Steinberg – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – no  
Jessica Glatt – yes  
Craig Ploetner – no

Cal#3858-22, Wendy & Bruce Prashker, 26 Park Road, was **DENIED**.

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

The matter was carried to May 16, 2022.

**CAL#3800-21, CHAI CENTER, 437-439 MILLBURN AVENUE/7 BODWELL TERRACE, MILLBURN**

Michael Lavigne, Attorney for the applicant, stated his appearance. He stated that the applicant is seeking preliminary and final site plan approval with d(3) conditional use variance relief as well as several bulk variances in order to construct a house of worship. Mr. Lavigne continued stated that a copy of the prior resolution was submitted with the original application material and the applicant had the opportunity to appear before this Board in early February to begin its presentation on this application. There is a threshold issue as to whether res judicata should apply to this application. There was preliminary testimony provided by the applicant's planner, John McDonough, with regard to this issue. In the interim, a copy of the 2001 site plan was submitted and distributed to the Board. Mr. Lavigne stated that the issue of res judicata still remains to be addressed and he indicated that he would be presenting two professionals; Michael

Lanzafama, P. E., and John McDonough, P. P., who will provided testimony of the changes in the current site plan before this Board as compared to the 2001 site plan.

Michael Lanzafama, P. E., appeared and was sworn. His credentials were presented and accepted by the Board. He provided a comparison of the 2000 application presented to the Planning Board and the application currently before the Board today.

He indicated that the single most important element was the fact that the original application was to create a house of worship within an existing residence; it was a combined use of residential and house of worship. This application is for a house of worship only. The original application called for the retention of the house on lot 2 and the modification of same to accommodate a house of worship in addition. The current application proposes the demolition of all the structures on the subject property and construction of a completely new building in a different location than the prior application proposed. The original application provided 18 parking spaces and the current application proposes 25.

Mr. Lanzafama spoke to the bulk standard differences. He indicated that the prior application had a front yard setback on Millburn Avenue of 43.72 feet and the current application proposes a setback of 69.87 feet. The front yard setback on Bodwell Terrace in the prior application was 39.16 feet and the current application proposes a setback of 40 feet. Side yard setbacks in the prior application were 39 feet on the Millburn Avenue side and 55 feet on the Bodwell Terrace side. The current application proposes 75 feet on the Millburn Avenue side and 40 feet on the Bodwell Terrace side. Sanctuary seating in the prior application was 45 seats and the current application proposes 135 seats.

John McDonough, P. P., appeared and remains sworn. He stated that there have been significant changes to the area since the applicant's 2001 application. A mausoleum has been constructed on the lot adjacent to this property. Millburn High School has been expanded at least twice and the enrollment is at least 60% higher than it was in 2001. A significant portion of the High School parking lot has been replaced with a school gym and the athletic fields are more intensely used. The former Wells Fargo site on Millburn Avenue was recently approved to be developed into approximately 50—60 residential units and 3,000 SF of retail space. The former Chanticleer property was also redeveloped with approximately 30 townhomes several years ago. About 1/3 of a mile down Millburn Avenue, the former Saks site is currently being redeveloped with approximately 200 housing units. Although the property actually falls in Springfield, the access points are through Millburn onto Millburn Avenue. Lastly, a "complete streets" project was constructed on Millburn Avenue a few years back, the goal of which was to calm traffic by removing one lane of traffic and adding bump-outs. Mr. McDonough concluded by stating all of these contribute to the changed characteristics in the area between 2001 and today. The prior denial was concerned about potential impact to the surrounding area. This area has seen dramatic transformation since that time.

Rob Simon asked for clarification as to "transformation of the nature and character of the neighborhood." and how it goes to the conditions of the property that would take us out of the issue of res judicata.

Mr. McDonough said that his testimony pointed to changes in the application. The area has intensified and is more accommodating to a development of this nature than it may have been in 2001. Previously there were concerns about impact on the residential character of the neighborhood, and now the density and uses in the area have changed over time. Mr. McDonough agreed, and stated that the area is less residential than it was at the time of the last application. He indicated that there has been an increase in pedestrian and vehicular activity.

Board Attorney, Rob Simon, stated that the Board can address the issue of res judicata in one of two ways. He suggested that the Board take a straw poll to decide, as a Board, whether they feel they have heard enough testimony and evidence and based on their review of the application materials, they can make an informed decision that res judicata applies to bar this application; or, alternatively, whether they feel, as a Board, that they want to hear some additional evidence from the application before voting conclusively on the issue.

Board members felt that they would like to hear additional testimony and would not be comfortable making a determination on res judicata until they have heard this additional testimony.

The matter was carried to June 20, 2022.

The applicant agreed to an extension of time until July 31, 2022.

## **BUSINESS**

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

## **ADJOURNMENT**

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

Eileen Davitt  
Board Secretary

Motion: JG  
Second: ST  
Date Adopted: 5/16/22