

Township of Millburn
Minutes of the Zoning Board of Adjustment
May 6, 2019

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, May 6, 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
Steve Togher
Wolfgang Tsoutsouris
Kevin Wenzel
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 April 15, 2019, was made by Mary McNett, seconded by Craig Ploetner, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3667-19, 306 White Oak Ridge, LLC, 306 White Oak Ridge Road, Short Hills

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

Mary McNett – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Joseph Steinberg – yes

the following memorializing resolution was approved:

Mr. Chairman, I move the adoption of the following Resolution memorializing the granting of variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70(d)(1) to permit two principal structures on the property and bulk variance relief to permit an addition to the dwelling on the property located at 306 White Oak Ridge Road, Short Hills, New Jersey, known and designated as Block 5005, Lot 25 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 4, 2019 on the application filed by 306 White Oak Ridge Road, LLC to permit two principal structures on the property and an addition to the dwelling on the property located at 306 White Oak Ridge Road, Short Hills, New Jersey, known and designated as Block 5005, Lot 25 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. Matthew P. Posada, Esq. represented the Applicant. No objectors or interested parties appeared or testified at the hearing.

2. The Applicant, 306 White Oak Ridge Road, LLC, is the owner of the subject Property, which is located in the R-4 zone district. Under the Township Ordinances, no more than one principal use or building is permitted on any lot. The Applicant proposes to maintain two principal uses on the lot consisting of two principal residential dwellings, which requires variance relief pursuant to N.J.S.A. 40:55D-70d(1). In addition, the following zoning requirements apply in the R-4 zone district: minimum 5 foot driveway setback, minimum 22 foot second story setback, minimum 25% rear yard unoccupied. The Applicant proposes additions to one of the two dwellings, which would result in a 4 foot driveway setback, 8.3 foot second story setback and a 22.9% rear yard unoccupied. Therefore, the Applicant requires variance relief.

3. Initially, the Applicant sought variance relief to permit an increased building height of 39.24 feet, which would have required variance relief pursuant to N.J.S.A. 40:55D-70d(6). That variance was withdrawn by the Applicant in the course of the hearing on the application.

4. The Board received and considered the following documents:

A. Plans prepared by Miseo Assoc., P.A., consisting of four sheets, Sheets SP-1 dated November 2, 2019 and revised through March, 4, 2019; A-1 dated

November 2, 2018; A-2 dated May 30, 2018 and revised through March 3, 2019; and A-4 dated November 2, 2018 and revised through March 3, 2019.

- B. Sheets SP-1 March 4, 2019 and A-2 and A-4 revised through March 3, 2019 were admitted into evidence as A-1.
- C. Casey & Keller Photo Board #1, which was admitted into evidence as A-2.
- D. Casey & Keller Title and Topographic Survey dated April 19, 2017 and revised through May 1, 2018 with highlighting, which was admitted into evidence as A-3.
- E. Sheet SP-1 of the Miseo plans revised to depict the existing second floor and the proposed addition, which was admitted into evidence as A-4.

5. Christine L. Miseo, Licensed Architect, and Richard Keller, P.E./P.P., testified in support of the application.

6. The Applicant is the owner of the subject property, an oversized lot with a lot area of 54,954 square feet, lot width of 175 feet and lot depth of 335 feet. The property contains two existing single family residential dwellings and each bears its own separate street address. The Applicant proposes no change to the smaller residential dwelling which has an existing 36.43 foot front yard setback from White Oak Ridge Road and a street address of 302 White Oak Ridge Road. The larger dwelling on the property with a street address of 306 White Oak Ridge Road contains a wood framed barn at the southwest rear corner of the property which serves as a detached three-car garage. In addition to the two pre-existing principal dwellings on the lot, the dwelling at 306 White Oak Ridge Road and the property are constrained by the following pre-existing nonconforming conditions: 8.3 foot second floor setback, driveway setback of less than 3.75 feet and 22.9% rear yard unoccupied. The Applicant proposes to remodel the existing dwelling and driveway at 306 White Oak Ridge Road. The proposed improvements include the construction of a new porte cochere and front porch additions to the front of the dwelling, the complete renovation of the interior of the existing dwelling, and the expansion of the existing second floor to extend the full width and length of the first floor footprint of the existing dwelling. In addition, the Applicant proposes to reconfigure the driveway access to the detached wooden barn that serves as a three-car garage.

7. Initially, the Applicant proposed a new pitched gable roof for the dwelling, which would have required variance relief pursuant to N.J.S.A. 40:55D-70d(6) to permit a principal structure building height of 39.24 feet. At the outset of the hearing, the Applicant advised the Board of its intention to replace the proposed gable roof with a lower hip roof, which would eliminate the need for the height variance request.

8. As for the remaining additions to the dwelling, the proposed front porch addition would extend along the front of the dwelling and align with the existing westerly 8.3 foot side yard setback of the home. The proposed second floor expansion to the dwelling would extend

the second story farther to the rear of the lot, aligning with the westerly side façade and rear façade of the existing dwelling. In conjunction with the proposed additions to the dwelling, the Applicant proposes to remove an existing side porch on the west side of the dwelling. The home with the proposed addition will not have any negative impact on the nearest neighbor to the west, as the home with the addition will not be any closer to the property line than the existing dwelling. In addition, the dwelling on the property to the west is more than 100 feet away and existing trees buffer the view between the two dwellings.

9. Presently, access to the Applicant's existing three-car garage is via a gravel driveway which has a pre-existing nonconforming driveway setback ranging from 2 to 3.75 feet for the first 117 feet of the property, measured from White Oak Ridge Road, before the gravel driveway shifts to the right around the existing dwelling and encroaches onto the neighboring property, Lot 26, to provide access to the three-car garage on the Applicant's property behind the existing dwelling. As depicted on Exhibit A-3, the Applicant proposes to eliminate that portion of the gravel driveway which encroaches onto the neighboring lot to the west and to eliminate the portion of the driveway between the existing dwelling and the westerly side property line. The Applicant proposes to construct a new gravel driveway on the east side of the dwelling that will serve to provide access between the three-car garage, the new porte cochere/porch addition and the existing driveway entrance at the front of the property. The Applicant proposes to maintain without change the pre-existing existing nonconforming driveway setback along the 117 feet of driveway which extends from White Oak Ridge Road. The revised plans, Exhibit A-1 in evidence, depict an approximate 2 foot driveway setback at the point where the new gravel driveway would be constructed along the westerly side yard and then turn to the left, or east, running beneath the proposed porte cochere before turning to the right and extending to the wooden barn serving as a three-car detached garage at the rear of the lot. During the hearing the Applicant agreed to increase the driveway setback of the new gravel driveway in the area of the porte cochere addition to provide a four foot driveway setback consistent with the variance as requested.

10. Because the existing dwelling at 306 White Oak Ridge Road has a very deep 160 foot front yard setback and an existing rear patio, detached barn and gravel driveway, proposed improvements will be located behind the dwelling. Due to existing conditions, it is not possible to provide a new gravel driveway to access the wooden barn used as a detached three-car garage with a conforming 25% rear yard unoccupied. The proposed driveway configuration would maintain a 22.9% rear yard unoccupied while the new driveway configuration serves to eliminate the existing driveway encroachment on the adjoining lot. The new driveway reconfiguration would also allow for the restoration of a grassy area between the dwelling and the westerly side property line.

11. The Applicant's planner, Richard Keller, testified that the subject property is located in an area of the Township which was once used as farmland where a number of the properties were developed in the 1920's with two principal dwellings on a single lot to accommodate the farmland use of the property. Those properties with more than one principal structure pre-date the existing zoning ordinance. In this case, the property has a lot area of 54,954 square feet, which is substantially larger than the minimum 20,000 square foot lot area required in the R-4

zone. The dwelling at 306 White Oak Ridge Road would continue to maintain a deep front yard setback from White Oak Ridge Road after the construction of the proposed improvements.

12. The Board concludes that the granting of use variance relief is appropriate to permit the Applicant to maintain two principal structures on the property consisting of the two existing single family dwellings located at 302 and 306 White Oak Ridge Road. The Board finds that there are sufficient special reasons to support the variance relief and that the subject property is particularly suitable for the proposed use. The subject property is zoned for residential use, thus the proposed residential use is a permitted use in the zone, although two principal permitted residential dwellings on one lot are not permitted without use variance relief. However, the property is located in an area of the Township previously used for farmland and where numerous lots were developed in the 1920's with two principal residential dwellings on the property to serve the farmland use. In this case, the subject property has two pre-existing residential dwellings on the lot. The lot is a substantially oversized lot in the R-4 zone so the maintenance of two principal structures, separate detached garages and separate driveways will not result in an over intensification of use on the property. The two dwellings on the lot are separated by a substantial distance with 306 White Oak Ridge Road maintaining a much deeper front yard setback from the street than the dwelling located at 302 White Oak Ridge Road. The Board is satisfied that the granting of variance relief to permit the maintenance of two principal dwellings on the property will serve to satisfy the purposes of the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 et seq., including purpose 2(c) - the promotion of adequate light air and open space, and purpose 2(e) - the preservation of the environment. The subject property is particularly suitable for the proposed two principal structures because two principal structures already exist on the property and the granting of variance relief preserves the character of the existing neighborhood to a greater degree than the demolition of the two existing structures and the construction of a much larger home inconsistent with the environment in which it would be located. Thus, the granting of use variance relief will not have any negative impact on the neighborhood or the surrounding neighbors.

13. The Board is also satisfied that the remaining variances for driveway setback, second floor setback and rear yard unoccupied are appropriate and satisfy the criteria for the granting of variance relief pursuant to N.J.S.A. 40:55D-70.c(1). The Board finds that the placement of the existing dwelling, the existing wooden barn that serves as a detached three-car garage and the existing driveway result in pre-existing nonconforming conditions which include driveway setback, second floor setback and rear yard unoccupied. The Board is satisfied these are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant to construct an addition on the dwelling and a new driveway configuration to serve the existing detached three-car garage in the rear yard. The Board is also satisfied that despite the need for variance relief to permit the reconfiguration of the driveway, the new driveway configuration will result in the elimination of an existing driveway encroachment on the neighboring lot and the restoration of a grassy area along the westerly boundary line between the two lots, which benefits the neighborhood. 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, by the Board of Adjustment of the Township of Millburn, New Jersey on this 6th day of May, 2019 that the within application for variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) and N.J.S.A. 40:55D-70.c(1) to permit the Applicant to maintain two principal residential dwellings on the lot, with the dwelling located at 306 White Oak Ridge Road providing a 4 foot driveway setback in the new gravel driveway area adjacent to the proposed porte cochere, an 8.3 foot second story setback and 22.9% rear yard unoccupied granted by the Board at its March 4, 2019 meeting 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. Prior to the issuance of a building permit, the Applicant shall submit revised plans which address the following: (a) Zoning Table to be corrected to reflect R-4 zone designation and accurate square footage for existing and proposed first and second floors; (b) gable roof to be replaced by lower hip roof with a conforming principal building height; and (c) expansion of the new gravel driveway in the area of the porte cochere to provide a minimum four foot driveway setback from the side property line. Construction shall be in accordance with the testimony of the witnesses at the hearing and the plans prepared by Miseo Assoc., P.A., consisting of four sheets, Sheets SP-1 dated November 2, 2019 and revised through March, 4, 2019; A-1 dated November 2, 2018; A-2 dated May 30, 2018 and revised through March 3, 2019; and A-4 dated November 2, 2018 and revised through March 3, 2019 and further revised in accordance with this condition.

2. The Applicant 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. Prior to the issuance of a Certificate of Occupancy, 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 be bound to comply with the representations made before this Board by the Applicant's 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.

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, Clerk of the Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and exact copy of a resolution adopted at the meeting of the Board of Adjustment of the Township of Millburn held on the 6th day of May, 2019.

Cal#3672-19, Anabella Messuti/Marcos Meneguzzo, 368 Old Short Hills Road, Short Hills

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
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Joseph Steinberg – yes

the following memorializing resolution was approved:

**ANABELLA MESSUTI/MARCOS MENEGUZZO
BLOCK 2601, LOT 11**

**CALENDAR NO. 3672-19
MAY 6, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Anabella Messuti and Marcos Meneguzzo, in Calendar No. 3672-19 for permission to construct an addition to the dwelling located at 368 Old Short Hills Road, Short Hills, known and designated as Lot 11, Block 2601 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 April 15, 2019 in Calendar No. 3672-19 filed by Anabella Messuti and Marcos Meneguzzo (hereinafter referred to as the “Applicants”) for permission to construct an addition to the existing single-family home located at 368 Old Short Hills Road, Short Hills, New Jersey known and designated as Lot 11, Block 2601 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-4 zone district. The R-4 zone requirements include the following: maximum 26% floor area ratio, maximum 14% building coverage, minimum 15 foot side yard setback, minimum 35% combined side yard setback, and garages facing and opening onto a public street are prohibited. The Applicants propose the construction of a one-story addition to the dwelling that would result in 26.9% floor area ratio, 16.0% building coverage, 7.4 foot side yard setback, 28.2% combined

side yard setback and a garage facing on Old Short Hills Road. 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 Klesse Architects, consisting of five sheets, BOA-1 through BOA-5 dated December 21, 2018;

B. Six photographs of the interior of the existing basement garage and dwelling space, which were admitted into evidence as A-1 through A-6;

C. A video of the Applicants' flooded driveway, which was admitted into evidence as A-7;

D. An exhibit depicting the distance to the nearest neighbor's fence, which was admitted into evidence as A-8;

E. A photo board with six photographs of the subject and neighboring properties, which was admitted into evidence as A-9.

4. The Applicants, Annabella Messuti and Marcos Meneguzzo, and Timothy Klesse, Licensed Architect, testified in support of the application.

5. The Applicants reside at the property, which they purchased in 2016. The existing home has a side facing basement level garage. In September 2018, during a brief but heavy rainstorm which resulted in two inches of rain in one hour, the basement garage, finished basement playroom and laundry room flooded with three to four feet of water. As a result, the Applicants lost everything in the basement, including the two motor vehicles parked in the garage. Township officials, including the Township Engineer, visited the Applicants' neighborhood after the flooding event and the Applicants were advised to eliminate the sloping driveway and basement garage to avoid the possibility of flooding in the future. The Applicants now propose to fill in the side facing basement garage, raise the grade of the property to eliminate the sloping driveway and construct a new one-story two-car garage addition on the north side of the dwelling with garage doors that would be front facing on Old Short Hills Road. The proposed one-story addition would include a mudroom at the rear of the proposed addition to provide a connection between the new garage addition and the living space of the existing dwelling.

6. The subject property has a 15,490 square foot lot area, which is less than the 20,000 square foot lot area required in the R-4 zone district. If the property had a conforming lot area, the Applicants would not require floor area ratio or building coverage variance relief to

construct the proposed addition. However, a conforming lot area would not eliminate the need for variance relief to permit the proposed side yard setback, combined side yard setback and front facing garage doors. The existing dwelling has a deep front yard setback of more than 59 feet from Old Short Hills Road. The proposed addition has been designed so that it is set back an additional 17 feet 2 inches from the front façade of the dwelling to limit the view of the proposed garage facing Old Short Hills Road. In addition, the proposed front setback of the new addition would align with the ridgeline of the roof on the nearest neighbor's dwelling.

7. Although the plans submitted with the application depict an addition with a side yard setback ranging from 6.4 feet at the front corner to 7.4 feet at the rear corner, the Applicants' legal notice identified the request as a variance to permit a 7.4 foot side yard setback. During the hearing, the Applicants' architect confirmed that if the application is approved, the proposed addition would maintain the 7.4 foot side yard setback for the full length of the proposed addition. In addition, even though the proposed addition would result in a 7.4 foot side yard setback, the placement of the proposed addition would give the appearance of a conforming side yard setback as the nearest neighbor's fence is two and one-half feet north of the shared property line so the Applicants' lot appears wider than its actual width. Moreover, the nearest neighbor's home would be 30 feet from the proposed addition.

8. The Applicants architect, Timothy Klesse, testified that the requested variances are all driven by the topography of the lot, the placement of the dwelling and the need to eliminate the potential flooding of the basement during periods of heavy rain. He also testified that the front facing garage would not be out of character in the neighborhood as there are fourteen other homes with garages facing Old Short Hills Road between Great Hills Road and South Orange Avenue.

9. The Board is satisfied that variance relief may be granted to permit the proposed addition to the dwelling. The proposed addition would result in a floor area ratio of 26.9%, which is 0.9%, or 133 square feet, greater than the permitted floor area ratio. Notwithstanding this deviation, the Board finds that the property can accommodate the excess floor area ratio.

10. The Board is also satisfied that the remaining variances for 16.0% building coverage, 28.2% combined side yard setback, 7.4 foot side yard setback and the garage facing and opening onto Old Short Hills Road may be granted. The subject property has a slightly undersized lot area. If this property had a conforming 20,000 square foot lot area, variances for floor area ratio and building coverage would not be necessary. In addition, the placement of the proposed addition is a function of the placement of the dwelling and driveway on the property, as well as the topography of the lot, which results in a driveway that slopes towards the existing basement garage and basement living spaces. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The proposed addition will serve to fill in the sloping driveway and basement garage in order to eliminate the potential for future flooding of the dwelling, which serves to promote the general welfare and safety of the residents of the dwelling. In addition, despite the proposed garage facing on Old Short Hills Road, the proposed addition will not have a substantial impact on the streetscape as the front yard setback of the addition will be more than 76 feet from Old

Short Hills Road and there are numerous other front facing garages in the neighborhood. The home with the addition will remain in keeping with the existing character of the property and the neighborhood. Consequently, the Board concludes that variance relief can be granted 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 6th day of May, 2019 that variance relief to permit the construction of a one-story addition to the dwelling that would result in 26.9% floor area ratio, 16.0% building coverage, 7.4 foot side yard setback, 28.2% combined side yard setback and a garage facing and opening onto Old Short Hills Road, granted by this Board on April 15, 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 for the review and approval of the Township Zoning Officer which depict a side yard setback of no less than 7.4 feet. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Klesse Architects, consisting of five sheets, BOA-1 through BOA-5 dated December 21, 2018 and further 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. 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.

4. 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 6th day of May, 2019.

Cal#3682-19, Yair Bendory, 68 Myrtle Avenue, Millburn

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
Wolfgang Tsoutsouris – yes
Joseph Steinberg – yes

the following memorializing resolution was approved:

**YAIR BENDORY
BLOCK 309, LOT 17**

**CALENDAR NO. 3682-19
MAY 6, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Yair Bendory, in Calendar No. 3682-19 for permission to construct a second story addition to the dwelling on property at 68 Myrtle Avenue, Millburn, New Jersey, known and designated as Lot 17, Block 309 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 April 15, 2019 in Calendar No. 3682-19 filed by Yair Bendory (hereinafter the “Applicant”) for permission to construct a second story addition to the dwelling on property located at 68 Myrtle Avenue, Millburn, New Jersey, known and designated as Lot 17, Block 309 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. Danial Dubinett, Licensed Architect, appeared on behalf of the Applicant under Limited Power of Attorney. Renrong Pan of 72 Myrtle Avenue appeared and testified at the hearing as an interested party.

2. The Applicant is the owner of the subject property, which is located in the R-6 zone. The R-6 zone district requires a minimum 40 foot front yard setback and minimum 8 foot side yard setback. The proposed second story addition would result in a 24.65 foot front yard setback and a 7.4 foot side yard setback. Therefore, variance relief is required. Initially, the Applicant also sought variance relief to permit a 7.4 foot side yard setback for building segments over eighteen feet in height, instead of the required 8.64 foot side yard setback for building segments over eighteen feet in height. However, during the course of the hearing, the Applicant’s Architect testified the second story dormer on the side of the dwelling would be

eliminated from the plans, avoiding the need for a side yard setback variance for building segments over eighteen feet in height.

3. The Board received and considered plans prepared by Dubinett Architects, LLC, consisting of two sheets, dated November 1, 2018, both incorrectly designated as V-1.

4. Danial Dubinett, Licensed Architect, testified in support of the application. The existing dwelling is a Cape Cod style home, with a one-car garage facing Myrtle Avenue and an existing wood deck leading to a side entry door on the west side of the dwelling. The existing dwelling has a pre-existing nonconforming 25.2 foot front yard setback, pre-existing nonconforming 7.2 foot and 7.4 foot side yard setbacks, 7.4 foot additional side yard setback for building segments over 18 feet in height and 24.3% combined side yard setback. The Applicant proposes to convert the Cape Cod style home into a two-story dwelling. The proposed conversion includes the construction of a two-story addition at the rear of the dwelling with a side-facing two car garage and a second story addition over the front of the dwelling, as well as the removal of the existing one-car front facing garage, the wood deck and side entry door, the existing block patio and a one-story portion of the dwelling at the rear of the home.

5. The two-story addition at the rear of the home is a conforming addition which does not require variance relief. The requested variances relate to the proposed second story addition at the front of the dwelling. With the exception of the proposed bay window at the front of the home, the second story addition would extend the side and front façades of the existing dwelling to the proposed second story. The proposed 7.4 foot side yard setback is a deviation of only five and one-half inches short of the required 8 foot side yard setback. In addition, while the bay window reduces the front yard setback of the dwelling by an additional seven inches to 24.65 feet, the proposed bay window would add architectural interest to the front façade of the home. Moreover, after the construction of the proposed addition, the Applicant's dwelling would continue to align with the front yard setbacks of the other homes on the block.

6. In order to address the neighbor's desire that the Applicant limit the massing of the front façade of the dwelling after the proposed addition, the Applicant's Architect testified that the Applicant proposes to revise the plans to lower the pitch of the roof to 12 on 12, reduce the height of the roof gable and eliminate the front roof peak. The proposed plan revisions will minimize the impact of the addition on the streetscape.

7. Renrong Pan, of 72 Myrtle Avenue, is the adjacent neighbor. He advised the Board that a very large home was recently constructed at 77 Myrtle Avenue. He expressed his appreciation that the Applicant agreed to minimize the impact of the proposed addition on the streetscape by revising the plans to reflect the front façade alterations described by the Applicant's Architect.

8. The Board finds that the need for variance relief is the result of the placement of the existing dwelling on the property, which results in several pre-existing nonconforming conditions, including front yard setback, side yard setback, additional side yard setback for building segments over 18 feet in height and combined side yard setback. The Board finds these

conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. Although the proposed second story addition over the existing dwelling reduces the pre-existing nonconforming 25.2 foot front yard setback to 24.65 feet, the proposed seven inch reduction in front yard setback relates solely to the bay window, which will add architectural interest to the front façade of the home. The home after the construction of the addition will continue to align with the front façades of the other homes on the same Myrtle Avenue block as the Applicant's home. The Board also finds that the proposed 7.4 foot side yard is a minimal deviation of five and one-half inches from the required 8 foot side yard setback. Moreover, the Board notes that in conjunction with the proposed addition, the Applicant's architectural plans include the elimination of a wood deck and side entry to the dwelling with a nonconforming accessory side yard setback and the front facing one-car garage will be replaced by a side facing two-car garage at the rear of the dwelling, which will be an aesthetic improvement to the streetscape and the neighborhood. 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 6th day of May, 2019 that variance relief to permit the construction of a second story addition to the dwelling that would result in a 24.65 foot front yard setback from Myrtle Avenue and 7.4 foot side yard setback, granted by this Board on April 15, 2019 be and 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 Applicant shall submit revised plans to the Zoning Officer for review and approval which eliminate the variance for additional side yard setback for building segments over 18 feet and the roof modifications described during the hearing. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Dubinett Architects, LLC, consisting of two sheets, dated November 1, 2018, both incorrectly designated as V-1 and revised in accordance with this condition.
2. The Applicant 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 Applicant shall be bound to comply with the representations made before this Board by the Applicant's professional and other witnesses 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 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 6th day of May, 2019.

Cal#3684-19, All-Pro Health, LLC, 20 Main Street, 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 – yes
- Wolfgang Tsoutsouris – yes
- Joseph Steinberg – yes

the following memorializing resolution was approved:

**ALL-PRO HEALTH, LLC
BLOCK 701, LOT 5**

**CAL. NO. 3684-19
MAY 6, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of waivers from the Environmental Impact Statement (“EIS”) and stormwater runoff requirements, variance relief pursuant to N.J.S.A. 40:55D-70c(1) and N.J.S.A. 40:55D-70d(1), and granting preliminary and final site plan approval to the Applicant, All-Pro Health, LLC in connection with an application for integrated chiropractic sports care, physical therapy and yoga therapy uses with incidental retail sales on property located at 20 Main Street, Millburn, New Jersey, known and designated as Lot 5, Block 701 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 April 15, 2019 in Calendar No. 3684-19 filed by All-Pro Health, LLC (hereinafter the “Applicant”) in connection with an application for integrated chiropractic sports care, physical therapy and yoga therapy uses with incidental retail sales on property located at 20 Main Street, Millburn, New Jersey, known and designated as Lot 5, Block 701 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. Anthony Cerciello, Esq. represented the Applicant. Joanna Parker-Lentz of 16 Ridge Terrace, Short Hills appeared and testified at the hearing as an interested party in favor of the application.

2. The Applicant is the prospective tenant of 1,600 square feet of space on the ground floor and basement storage space in the existing building on the subject property, which is located in the B-4 Central Business zone district. The owner of the property, Driscoll Properties, L.P., consented to the application. The Applicant proposes to lease the property for use as integrated chiropractic sports care, physical therapy and yoga therapy uses with incidental retail sales and basement storage. The use of the property for a yoga studio and retail sales is permitted, but the proposed chiropractic medical and physical therapy uses are not expressly permitted uses in the B-4 zone. Therefore, the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed integrated chiropractic sports care with physical therapy and yoga therapy uses with incidental retail sales.

3. Pursuant to Section 607.2 of the Township Zoning Ordinance, the proposed integrated uses of the property for fitness studio, medical, and storage uses require 10 on-site parking spaces. In addition, Sections 607.1 of the Township Zoning Ordinance requires one on-site loading space. The Applicant proposes no on-site parking or on-site loading, which requires variance relief pursuant to N.J.S.A. 40:55D-70c.

4. The Applicant also requires preliminary and final major site plan approval.

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

A. A plan prepared by Buchholz Architects, consisting of one sheet, A-1, dated March 4, 2019 and revised through March 5, 2019.

B. A Use Variance and Major Site Plan prepared by Casey & Keller, Inc., consisting of one sheet dated March 14, 2019.

C. A photo board prepared by Casey & Keller, was admitted into evidence as A-1.

D. The following reports from Millburn Township Officials and Departments: Township Police Department Traffic Bureau dated March 22, 2019; Township Engineer dated April 4, 2019; Township Fire Marshal dated April 5, 2019; Township Forester dated April 10, 2019 and Township Zoning Officer dated April 10, 2019.

6. The Board heard testimony from Dr. Todd Schragen, a chiropractic sports practitioner and the sole member of All-Pro Health, LLC, John Buchholz, Licensed Architect

and Richard Keller, Professional Engineer and Professional Planner in support of the application.

7. The property is not constrained by steep slopes or wetlands, it is not located in a flood hazard area and it is already served by sewer and water utilities. Because the property is a fully developed site, the Board determined the Applicant's request for a waiver of the checklist requirement for the submission of an EIS and request for a design waiver from the stormwater runoff requirement is reasonable and appropriate and granted the EIS checklist waiver and stormwater runoff design waiver.

8. Dr. Schragen testified he has been operating a wellness studio in Livingston, New Jersey for seventeen years. He offers an integrated rehabilitative wellness program in which chiropractic, physical therapy and yoga therapy are provided by a professional team in order to return their patients to a state of well-being as quickly as possible. He testified that his patients come from all walks of life and include athletes, marathoners, trail runners, and others who require rehabilitation of the spine or extremities or have soft tissue injuries. Since he has many patients from Millburn Township, he wishes to relocate the wellness studio to the subject property, which is within walking distance of the high school and middle school and in close proximity to Taylor Park and South Mountain Reservation.

9. Dr. Schragen would be the sports chiropractor at the wellness studio. In addition to Dr. Schragen, there would be no more than three employees on site at any one time, consisting of a physical therapist, a yoga instructor and an employee for the reception area. The proposed wellness studio would operate six days per week, from 7:00 a.m. to 7:00 p.m. Monday, Wednesday and Friday; Tuesday and Thursday hours would be limited to six, and Saturday hours would be during the morning. All appointments are scheduled online. Patient visits, which range from one and one-half to two hours, which consists of an initial 45 minute session with Dr. Schragen, then the patient moves on to a session with the physical therapist. As the patient becomes more mobile, the patient would advance from a physical therapy session to a yoga therapy session. After intensive workouts, patients often will wear compression boots and spend a period of time in a recovery zone, which would double as the reception area. Dr. Schragen testified that generally there would be no more than six patients on-site at any one time, two patients in treatment rooms, two patients in the physical therapy or yoga studios and two patients in the recovery area. The retail sales use would consist of exercise bands, other small therapeutic items and supplements such as fish oils, which would be delivered to the property approximately twice per week via small delivery trucks such as USPS, UPS or Federal Express. The proposed use would generate very little trash, primarily used paper towels, which would be placed in the dumpster at the rear of the building.

10. The Applicant proposes to lease the 1,614 square foot portion on the north side of the building for the proposed uses. Although the storefront windows facing Main Street would be retained to allow passersby a view of the yoga studio, the front staircase entry from Main Street is not suitable to serve as the main entry to the proposed use because it is not handicapped accessible due to a three foot difference in elevation between the Applicant's proposed space and the street. This difference in elevation makes the front staircase entry unsuitable for the Applicant's patients, whose mobility is often limited. Since the rear entry to the building

includes a handicapped accessible ramp, the Applicant proposes to utilize the rear access door as the main entry to the proposed use. Although the leased space does include use of the basement, any use of that space would be for storage purposes only.

11. The subject property is a 5,000 square foot lot, which is fully developed with an existing two-story 4,300 square foot structure which is divided into two separate tenant spaces, with each space having its own front and rear entrances. The entire building, which was previously occupied at various times by the Millburn Press and the High Gear Cycle bike shop, is currently vacant. The existing structure covers nearly the entire lot area of the property with the exception of an area less than thirteen feet deep at the rear of the structure, which includes a handicapped accessible ramp that serves both tenant spaces, and a paved area that contains the dumpster serving the structure. There is no additional room on the property for on-site parking, but the property abuts Municipal Parking Lot 1, which has residential and business permit parking spaces, as well as 86 metered spaces available for 3 hour parking from 9:00 a.m. to 6:00 p.m., Monday through Saturday. Farther east on Essex Street is the parking deck in Municipal Parking Lot 2, which has 39 metered spaces on the ground level and 200 parking spaces on the upper levels. As a result, adequate permit and public parking is available within close proximity to the subject property. The Applicant is amenable to purchasing business parking permits for his use and that of his employees. With respect to an on-site loading space, there are sufficient parking spaces in the adjacent Municipal Parking Lot 1 directly behind the building which would adequately serve the delivery trucks making deliveries to the Applicant. Since the Applicant does not receive any deliveries via tractor trailer, there is no need for an on-site loading space and no room on-site to provide one.

12. The Applicant's planner, Richard Keller, testified that although the fitness and retail sales uses of the property are permitted uses, the Applicant requires variance relief because the medical office aspect of the proposed use is not permitted in the B-4 zone. He testified that the building is not optimal for many permitted uses in the B-4 zone because it is three feet higher in elevation than the street, making it impractical for retail sales and services, or financial institutions because the higher elevation limits the visibility of the commercial space from street level. Mr. Keller testified that the proposed use is particularly suitable for the subject property for several reasons. The subject property is adjacent to ample metered and permit parking in the adjacent Municipal Parking Lot 1 and a 200 space municipal parking deck is located two blocks away at the intersection of Essex Street and Lackawanna Place, which would accommodate additional parking needs. Importantly, the property is within walking distance of the Millburn Township High School and Middle School, which would benefit his student-athlete patients. The proposed first floor commercial space in this building provides a smaller commercial space, but with the high ceilings characteristic of older buildings. With respect to the Township Ordinance loading space requirement, Mr. Keller testified that there is insufficient room on site to create a loading space. The Applicant does not contemplate any tractor-trailer deliveries to the property which would require a designated loading space and the parking available in the adjacent Municipal Parking Lot 1 would be suitable for the small delivery vehicles making deliveries to the property.

13. Mr. Keller also testified that the proposed use satisfied some of the enumerated purposes of zoning as set forth in the Municipal Land Use Law (“MLUL”), specifically the purposes set forth in N.J.S.A. 40:55D-2(a), the promotion of public health, safety and general welfare, as the proposed use of integrated chiropractic, physical therapy and yoga therapy would promote the health, safety and welfare of the Applicant’s patients, many of whom are residents of Millburn Township, and purpose (i), the promotion of a desirable visual environment as it would restore a portion of this vacant building to an active commercial use. Mr. Keller further observed that the proposed site is particularly suitable for the proposed use because of its proximity to ample public metered parking and business permit parking in the adjacent and nearby municipal parking lots.

14. Mr. Keller testified that the proposed integrated chiropractic sports care, physical therapy and yoga therapy uses with incidental retail sales also satisfies the negative criteria under the MLUL. He testified that the proposed use will not result in any detriment to the public good because it is located in the B-4 zone, which is designed for commercial uses. The Applicant’s proposed use is a hybrid use, which includes fitness and retail uses which are permitted in the zone district, combined with chiropractic sports care.

15. Mr. Keller testified that the proposed use would not substantially impair the intent and purpose of the zone plan and zoning ordinance. He also advised the Board of his opinion that the proposed use is not inconsistent with the Township’s Master Plan. The proposed first floor commercial space in this building is not well-suited for retail sales or services or financial institutions due to the difference in elevation between the first floor and the street level and adjacent portion of the building. In fact, the proposed use would be consistent with the goals of the Master Plan, which include the encouragement of indoor recreational activities and experiential uses. He opined that the Applicant’s integrated chiropractic sports care, physical therapy and yoga therapy uses with incidental retail sales is a unique use beyond the uses contemplated by the current Township Zoning Ordinance.

16. Mr. Keller also testified that the proposed loading space variance satisfied the statutory criteria to support variance relief pursuant to N.J.S.A. 40:55D-70c (1) and (2). He advised the Board that the lot cannot physically accommodate a loading space because the existing building covers the majority of the lot. Moreover, even if an on-site loading space were possible, it is unlikely to benefit the zone plan because delivery services such as UPS, USPS and Federal Express would continue to deliver curbside as they do to other businesses. The delivery services would be unlikely to use an on-site loading space even if it were possible to safely construct one without impacting on the handicapped accessible ramp to the structure. He also opined that the absence of on-site parking is offset by the ample metered and business permit parking available in the adjacent Municipal Parking Lot 1, and nearby parking deck in Municipal Parking Lot 2 which would serve to provide the 10 parking spaces required under the Township Zoning Ordinance.

17. Joanna Parker-Lentz, of 16 Ridge Terrace, Short Hills testified in support of the application. She advised the Board that she is a nine time marathon runner and she has a son who is an athlete at Millburn High School. Both have been patients of Dr. Todd Schragen. She testified that Dr. Schragen’s goal is to rehabilitate his patients and teach them skills to avoid

future injuries. She expressed her opinion that the proposed use would be a welcome addition to the community.

18. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d(1) and concludes that it is appropriate to grant the use variance requested by the Applicant to permit the use of the property for integrated chiropractic sports care, physical therapy and yoga therapy uses with incidental retail sales. The Board finds and concludes that the Applicant has met its burden of proving the proposed use on this property satisfies the positive and negative criteria under N.J.S.A. 40:55D-70d(1). The Board accepts and adopts the testimony of the Applicant's planner that the proposed use advances the purposes of zoning set forth in the MLUL at N.J.S.A. 40:55D-2(a) and (i). The Board is satisfied that the proposed use advances the public health, safety and general welfare and promotes a unique rehabilitative chiropractic sports care use with physical therapy and yoga to meet the needs of residents of Millburn Township and the surrounding communities.

19. The Board is also satisfied that the subject property is particularly suitable for the proposed use. The subject property is located in the B-4 zone district, the Township's Central Business Zone District, in which the principal permitted uses include first floor commercial uses, including retail sales and services, financial institutions and physical fitness studios. The Board finds that the proposed use includes fitness studio and retail sales uses, which are permitted, combined with the chiropractic sports care component to provide a unique hybrid use that will serve to benefit the residents of Millburn Township and the surrounding areas. The proposed use in this location is particularly suitable as it is within walking distance for the athletes attending Millburn Township High School and Middle School and in close proximity to ample public parking. As a result, while the heart of Millburn's downtown area still contains retail sales, Millburn Township business uses are also undergoing a shift towards services and experiential uses. The Board is satisfied that the proposed use will benefit the residents of the Township and surrounding areas.

20. With respect to the negative criteria required under the MLUL, the Board notes that the subject property is zoned for commercial use. The Board is satisfied that the proposed use will not have any substantial impact on the zone plan or zoning ordinance. The Township Master Plan and Reexamination Reports continue to emphasize the commercial development of the B-4 zone. The Applicant proposes a hybrid use in an existing building with vacant commercial space, which is not conducive to retail sales and services due to the three foot difference in elevation from the street level. The proposed use will eliminate a portion of the vacant space in this building. The Board is satisfied the proposed use will benefit the public good. In addition, the Board finds that the proposed use will not result in any detriment to the zone plan or zoning ordinance. In balancing the benefits of the proposed use against the detriments, the Board concludes that the benefits of the proposed use at this site substantially outweigh any detriment. The Board is satisfied that the proposed use will be a low traffic generator with adequate parking in close proximity to the property which meets the requirements of the Township Zoning Ordinance. Therefore, the Board finds and concludes that the grant of use variance relief to permit the proposed use would not result in a substantial detriment to the public good, nor would it result in a substantial impairment of the intent and purpose of the

established zone plan and zoning ordinance of the Township under the enhanced burden required by Medici v. BPR Co., 107 N.J. 1 (1987).

21. The Board also finds and concludes that variance relief may be granted to permit no on-site loading space and no on-site parking spaces. The use is such that it will not generate deliveries requiring a dedicated loading space. Ample metered parking and business permit parking exists in Municipal Parking Lot 1 directly behind the subject property and in the parking deck in nearby Municipal Parking Lot 2. Therefore, the Board finds and concludes that the granting of variance relief to permit no on-site loading space and no on-site parking will not result in a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance given the adequacy of the public parking in the neighborhood.

22. The Board also finds that the Applicant has satisfied the requirements for preliminary and final major site plan approval.

NOW, THEREFORE, BE IT RESOLVED on this 6th day of May, 2019 that the checklist waiver from the Environmental Impact Statement requirement, waiver from the stormwater runoff requirements, use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed integrated chiropractic sports care, physical therapy and yoga studio uses with incidental retail sales, bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2) to permit no on-site loading space and no on-site parking spaces, and preliminary and major site plan approval requested by the Applicant for 1,614 square feet of space in the existing building on property located at 20 Main Street, Millburn, granted by this Board at its meeting of April 15, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. The use approved is that of integrated chiropractic sports care, physical therapy and yoga studio uses with incidental retail sales as described in the testimony at the hearing and depicted on the plans submitted with the application plan consisting of the following: a Use Variance and Major Site Plan prepared by Casey & Keller, Inc., consisting of one sheet dated March 14, 2019 and a one-sheet architectural plan prepared by Buchholz Architects, Sheet A-1, dated March 4, 2019 and revised through March 5, 2019.

2. The Applicant 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 Township Land Development Ordinance shall provide otherwise.

3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall purchase three (3) business parking permits and annually purchase such permits for Dr. Schragen and the Applicant's employees for so long as the proposed use occupies the subject property.

4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall comply with conditions (1) through (4) of the Township Fire Marshal's report dated April 5, 2019.

5. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals and other witnesses at the public hearings, if any, 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.

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 6th day of May, 2019.

APPLICATIONS

CAL#3681-19, EMILY CHANG/PAOLO CAPOFERRI, 353 WYOMING AVENUE, MILLBURN – matter was not heard due to deficient notice

CAL#3665-19, STEPHANIE & HOWARD VOGEL, 38 SINCLAIR TERRACE, SHORT HILLS

Rob Simon, Attorney for the applicant, stated his appearance. The applicants would like to construct a new dwelling on the property. Proposal is in violation of:

- 606.2e1d – Front yard setback
- 606.2e1f – Combined side yard setback
- 606.2e2a – Building coverage
- 606.2e1e2a – 2nd story side yard setback
- 606.2e1e2c – Side facing garage side yard setback

Rob Gasiorowski, Attorney for adjoining property owners Mr. & Mrs. Freund, stated his appearance. He stated that the applicants have been very accommodating to his clients and he

has spoken with Mr. Simon regarding the application. At this time, his clients have no objection to the application and he requests that if the application is approved by this Board, the approved architectural plans be incorporated into the memorializing resolution.

Board Attorney Gail Fraser indicated that any approval granted by this Board is specific to the plans presented here tonight.

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 proposed plan and variances requested.

Entered as A-1: Tax & zoning map
Entered as A-2: photoboard #1 of surrounding properties
Entered as A-3: photoboard #2 aerial photo

Richard Keller stated that the subject property is located in the R-3 zone district which has a minimum lot size of 29,000 SF. This lot, at 24,343 SF, is undersized by approximately 16%. The property also has an unusual shape whereby a large portion of the property is located in the front yard. The lot also gets narrower as you go deeper into the lot. The lot has a much wider front yard due to the extreme curve of the road.

The revised plans have eliminated side yard setback variance relief on the left side of the house. 46.14 feet is required for combined side yard setback. The proposal results in a combined side yard setback of 40.93 feet. The 2nd story addition on the right side of the dwelling results in a small triangular portion that has a 15.93 foot setback proposed where 25 feet is required. This portion of the encroachment faces the South Mountain Reservation. The proposed side facing garage will have 20.22 foot side yard setback where the ordinance requires 28 feet. Front yard setback variance relief is required for 45 square feet that encroaches into the 41.4' average front yard setback. The proposed front yard setback is 35.36 feet. Finally, building coverage variance relief is required to allow 14% where 13% is permitted.

Joseph Cestaro, Architect for the applicant, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the applicants' proposal. The existing dwelling was built in 1948. It is a ranch style dwelling that is poorly sited on the property. It has low ceiling heights and based on the analysis of the dwelling, it was determined that there was limited potential for any type of addition without variance relief. The applicants decided, at that point, to demolish the existing dwelling and build a new dwelling.

Entered as A-4: marked up ZB-3

Joseph Cestaro marked up ZB-3 (floor plan) to show the Board the portion of the dwelling that encroaches into the front and side yard setback.

Entered as A-5: marked up ZB-1

Richard Keller marked up ZB-1 (elevations) to show the Board the small triangular portions of the dwelling that encroach into the front and side yard setback.

Overall, most Board members were pleased with the applicants' revisions.

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
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Joseph Steinberg – yes

Cal#3665-19, Stephanie & Howard Vogel, 38 Sinclair Terrace, “c” variance setback relief was **APPROVED**.

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

Mary McNett – yes
Craig Ploetner – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Joseph Steinberg – no

Cal#3665-19, Stephanie & Howard Vogel, 38 Sinclair Terrace, “c” variance building coverage relief was **APPROVED**.

CAL#3687-19, JACOB & ROBIN FELDMAN, 153 HIGHLAND AVENUE, SHORT HILLS

*It is noted that Jessica Glatt arrived at this time (8:40 PM).

Timothy Klesse, Architect, Jacob Feldman, Richard Keller, P. E., P. P., Alison Canfield, Historical Preservation Commission Chair, and Lynne Ranieri, Millburn/Short Hills Historical Society, appeared and were sworn. The applicants would like to install a tennis court in their rear yard. Proposal is in violation of:

609.1c – Maximum accessory use coverage

Allison Canfield, HPC Chair, gave testimony with regard to the applicants' appearance before the HPC. The HPC encouraged the applicant to retain the accessory structure on the

property because they felt it contributed greatly to the historic nature of the property. In addition, the HPC felt it was important to keep the principal dwelling set back further from the front lot line in order to keep it harmonious with the neighborhood.

Lynne Ranieri provided testimony with regard to the historic nature of this property, the Short Hills Park Historic District and Stewart Hartshorn's vision.

Richard Keller spoke to the variance relief being requested. In response to a Board member's question, he indicated that the new dwelling would have to be moved up approximately 60 feet in order to provide a rear yard area large enough to accommodate the tennis courts without need for variance relief.

Entered as A-1: aerial photo of subject area

Richard Keller stated that the HPC encouraged the applicant to push the new dwelling further back so as not to be forward of the original Hartshorn house. By moving the house back to 128 feet, the applicant loses over 15,000 SF of rear yard area.

Overall, Board members were sensitive to the HPC's recommendation of a larger front yard setback on this property.

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

Mary McNett – yes
Craig Ploetner – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3687-19, Jacob & Robin Feldman, 153 Highland Avenue, was **APPROVED**.

CAL#3683-19, ALEXANDER & IRINA PECKEL, 19 REEVE CIRCLE, MILLBURN

Hayk Ekshian, Architect for the applicant, appeared and was sworn. His credentials were presented and accepted by the Board. The applicant would like to construct an addition. Proposal is in violation of:

606.2e1d – Front yard setback
606.2e1e1b – Side yard setback

The property is located in the R-6 zone district. The proposal is to add a ½ story over the existing structure in order to accommodate a master suite. The existing dwelling has a non-

conforming front yard setback and the new construction will encroach 1 foot into the front yard setback for a small portion. In addition, the 2nd floor addition requires variance relief for the portion of the structure over 18 feet in height. The existing side yard setback is 9.71 feet and the applicant proposes to maintain that setback. The encroachment is only for a small triangular portion of the 2nd floor due to the tapering out of the side property line. Both conditions are pre-existing non-conforming.

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

Mary McNett – yes
Craig Ploetner – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3683-19, Alexander & Irina Peckel, 19 Reeve Circle, was **APPROVED**.

CAL#3685-19, JUDSON & ZOE LA LONDE, 84 MYRTLE AVENUE, MILLBURN

Judson La Londe and Danial Dubinett, Architect, appeared and were sworn. Danial Dubinett's credentials were presented and accepted by the Board. The applicant would like to construct an addition. Proposal is in violation of:

606.2e1d – Front yard setback

The proposal is to construct an addition over the existing 1st floor den. The front yard setback is currently non-conforming at 9.25 feet. The addition will have a setback of 11.92 feet. Mr. Dubinett indicated that the proposed construction will have no negative impact on the adjoining property owners or the streetscape.

The Board felt the proposal was modest and would have no negative impact on the surrounding properties.

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

Mary McNett – yes
Craig Ploetner – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Kevin Wenzel – yes
Jessica Glatt – yes

Joseph Steinberg – yes

Cal#3685-19, Judson & Zoe LaLonde, 84 Myrtle Avenue, was **APPROVED**.

BUSINESS

Board Attorney, Gail Fraser, gave an update on the Vinegrad v. Miller litigation. She stated that the attorney for plaintiff, Alan Vinegrad has filed a Petition for Certification to the New Jersey Supreme Court and the attorney for the defendants, Douglas and Beth Miller, has filed an opposition to the Petition for Certification. She indicated that she will keep the Board informed as the matter goes forward.

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. (10:10 PM)

Eileen Davitt
Board Secretary

Motion: CP
Second: MM
Date Adopted: 5/20/19