

Township of Millburn
Minutes of the Zoning Board of Adjustment
May 16, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, May 16, 2022** at 7:00 PM via Zoom webinar.

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

The following members were present for the meeting:

Amy Lawrence
Jyoti Sharma
Steve Togher
Chandru Harjani
Ashley Avigdor
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 April 18, 2022, was made by Jessica Glatt, seconded by Steve Togher, and carried with a unanimous voice vote.

A motion to approve the minutes of May 2, 2022, was made by Steve Togher, seconded by Jessica Glatt, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3834-21, Jacqueline Stein, 37 Kean Road, Short Hills.

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

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

Jessica Glatt – yes
Craig Ploetner – yes

the following memorializing resolution was adopted:

**JACQUELINE STEIN
BLOCK 4305, LOT 6**

**CAL. NO. 3834-21
MAY 16, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of certain variance relief requested by the Applicant, Jacqueline Stein (hereinafter the “Applicant”), in Calendar No. 3834-21, to permit a prior conversion of an existing shed into home office space (the “Office”), on property located at 37 Kean Road, Short Hills, New Jersey, and designated as Lot 6, Block 4305, on the Official Tax Map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on February 7 and April 4, 2022, as to Calendar No. 3834-21, to permit a prior conversion of an existing shed into home office space, on property located at 37 Kean Road, Short Hills, New Jersey, and designated as Lot 6, Block 4305, on the official 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 February 7, 2022 hearing, the application was found to be in order. The Applicant was represented by Vincent Verdiramo, Esq., and appeared with Richard Keller, P.E., P.P., the Applicant’s Engineer and Planner, and Barry Greenberg, C.L.A., the Applicant’s Licensed Landscape Architect. Each provided sworn testimony in support of the application. Michael Lipari, Esq., appeared as an attorney representing residents Marc Pantoni and Jennifer Sanfillipo, 52 Winthrop Road, Short Hills, and Michael and Marion Saffer, 48 Winthrop Road, Short Hills, in opposition to the application. Said residents share a rear-yard lot line with the Applicant.

2. Mr. Lipari asserted on behalf of his clients that the Board did not have jurisdiction for the application and that the notice for the application was deficient. The hearing notice submitted by the Applicant in part disclosed that the application proposed a “free standing, one-story home office space in the rear yard on the property”. The Board attorney further advised the Board that the proposed use appeared to qualify as a permitted accessory use of a single family home, customarily incidental and subordinate to the principal use of the subject property as a single family home, and that a permitted “home occupation” may be carried on in a dwelling unit or in an accessory building subject to said use complying with the applicable bulk standards contained in the Ordinance. All Board members agreed that the Board had jurisdiction over the application and that notice was found to be in order.

3. The Applicant is the owner of the subject property, which contains a single-family residence and the Office in the rear yard, and is located in the Township's R-4 Zone District (the "R-4 Zone"). The Applicant apparently converted a shed located behind the rear portion of the residence into the existing Office (as home office space) without first securing required zoning approvals. According to the Applicant, the first and second floor footprint of her existing home does not allow for the creation of office space, and an external addition is not possible without exacerbating an existing building coverage deviation.

4. The proposed construction will result in an accessory structure rear-yard setback from a neighboring lot line of 8 feet to the proposed Office, where 12 feet from the rear lot line is the minimum required setback for an accessory structure; a building coverage of 16.57%, where a maximum building coverage of 14% is permitted; and a lot coverage of 39.62% (46.55% existing), where a maximum lot coverage of 35% is permitted. Therefore, variance relief is required.

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

a. A Plan of Survey with landscaping, consisting of 1 sheet, prepared by Barry Greenberg, C.L.A., dated December 20, 2021, introduced into evidence as Exhibit A-1, on February 7, 2022;

b. Photograph array exhibit, consisting of 4 photographs, taken by Richard Keller, introduced into evidence as Exhibit A-2, on February 7, 2022; and

c. A Landscaping Plan, entitled "Shed Screening Planting Plan", dated December 22, 2021 and revised on March 7, 2022, introduced into evidence as Exhibit A-3, on April 4, 2022.

6. Mr. Keller testified that the subject property has a lot size of 22,982 square feet, with a depth of 200 feet and width of 115 feet. He testified that the subject property is located in the R-4 zone, and clarified that the proposed home office will be located within the area formerly occupied by a shed. He testified that the Applicant previously attempted to convert the then-existing shed to office use, but needed to rebuild same so that it could be insulated and serviced by electric power. Mr. Keller testified that while the Office will be serviced by electric heat, it is only intended as home office space and is not going to operate as a commercial office nor as a pool house; will receive no deliveries or visitors; and that there will be no employees nor have anyone working in the Office other than the Applicant. He also testified that the Office will have no plumbing fixtures and will not house overnight guests. According to Mr. Keller, the new Office structure stands on the same concrete pad as the original shed, but the wall thickness increased from 3 inches to 6 inches.

7. Mr. Keller testified that the Applicant will not generate any outside noise from the Office, and proposes Green Giant Arborvitae along the rear property line of the Applicant's property to adequately screen the Office from neighboring properties. He testified further that

approximately 1,593 square feet of lot coverage will be eliminated as part of the application, thereby reducing storm water runoff from the subject property. After clarifying that the Applicant did not intend to install any storm water mitigation measures such as a drywell, Mr. Keller concluded his testimony by stating that the application will have no negative impact on the surrounding properties.

8. Marc Pantoni and Jennifer Sanfillipo were sworn in as witnesses and expressed their concerns over the construction of the Office. They felt it was built too close to their property line, and would substantially impact the enjoyment of their property.

9. Mr. Pantoni and Ms. Sanfillipo introduced and entered into evidence as Exhibit O-1 photographs of the Office and the “View Toward Rear Yard” to demonstrate why they believe the Office has and will substantially impact the enjoyment of their property. They also questioned the existence of the original shed as they never noticed it from their property.

10. Ilene Klein, 36 Kean Road, Short Hills, who lives diagonally across the street from the Applicant, provided sworn testimony that the Applicant is a good member of the community, and believes that the Office is necessary for her circumstances.

11. Dr. Marion Saffer and Mr. Michael Saffer, 48 Winthrop Road, Short Hills, each provided sworn testimony that the Office was too close to their property line and feel that it will negatively impact the enjoyment of their property. They also believed that the illegal construction of the Office caused their trees and flower plantings located along the shared property line to die.

12. Adam Shanker, 41 Kean Road, Short Hills, who shares a side lot line with the Applicant, provided sworn testimony in support of the application and the Office structure and use.

13. Murtaza Shikari, 33 Kean Road, who shares a side lot line with the Applicant, provided sworn testimony that, despite having an elevated deck, he cannot see much of the Office from his property, and claimed that the trees that he has planted have helped properly screen the Office structure.

13. The Applicant subsequently introduced Barry Greenberg, C.L.A., the Applicant’s landscape architect, to provide sworn testimony as to the Applicant’s proposal. He introduced into evidence as Exhibit A-3, a survey of the subject property with an overlay landscaping package. Referencing same, Mr. Greenberg testified that the Applicant intends to remove all of the existing trees along the retaining wall on the subject property, and replace same with Green Giant Arborvitae, a shade and moisture-tolerant tree, which will provide a fast growing screen for the Office, and will stay full to the ground all year around. Mr. Greenberg testified that this is the best suited tree for the area and that the intended row of Green Giant Arborvitae will become a solid barrier for the benefit of the impacted neighbors in a few years. Conversely, Mr. Greenberg stated that the plantings will not have any negative impact on neighboring properties, the neighborhood, or any of the existing plantings on or around the subject property.

Irene Klein, 36 Kean Road, Short Hills, further testified that she is confident that Mr. Greenberg will do the right thing to provide a nice visual “curtain” for the neighbors.

14. Dr. Marion Saffer, 48 Winthrop Road, Short Hills, further testified and introduced the following exhibits into evidence:

a. Exhibit O-2, a photograph of the existing Green Giant Arborvitae on her property, taken approximately March 1, 2022;

b. Exhibit O-3, a photograph of the Applicant’s retaining wall, taken from the Saffer property on or about approximately March 1, 2022; and

c. Exhibit O-4, a photograph of water flowing from the Pantoni property onto the Saffer property, taken on or about April 16, 2018.

15. Referencing Exhibit O-2, Dr. Saffer commented that while the existing landscaping was planted approximately 25 years ago, deer have eaten the bottom of each tree, and they no longer provide a proper screening. She further stated that the Applicant’s landscape proposal will not properly screen the Office. Dr. Saffer testified further that a fence near the common rear property line is within one foot of the Applicant’s rear retaining wall, and as such, there is not ample space for plantings between the two. She testified further that when the Office was built, the bushes and trees near the Office, and Koi and waterlilies in her Koi pond, died. Referencing Exhibit O-3, Dr. Saffer testified that subsequent to the installation of the Office, water runoff became pervasive, grass would not grow, and she cannot plant anything along the back wall of the subject property as it will not survive.

16. Referencing Exhibit O-4, Dr. Saffer testified as to pervasive water runoff and pooling issues on her property caused by the construction of the Office.

17. Jeffrey Slaff, a licensed realtor in the Millburn/Short Hills Area, provided sworn testimony that he has worked for Keller Williams Realtors and Weichert Realtors for the past 20 years, and has listed and sold dozens of homes in the area. He was offered by Mr. Lipari as an expert to provide testimony as to the impact of the Office on the value of the Saffer/Pantoni properties. However, since Mr. Slaff was not a licensed appraiser and proffered no study of value or marketability impacts directly due to the construction of an accessory building such as the Office, he was found by the Board to lack expert qualification and could not provide probative testimony on issues relevant to the consideration of the application by the Board. Accordingly, Mr. Slaff was precluded from offering valuation or related testimony in opposition to the application.

18. Vincent Salese, 52, Ridge Drive, East Hanover, a “longtime landscaper” but not a licensed landscape architect, provided sworn testimony that the limited six feet of space between the retaining wall and the Office was insufficient for the proposed Green Giant Arborvitae plantings, causing the retaining wall to eventually collapse. Mr. Salese further noted that Green Giant Arborvitae are pear shaped, and that the proposed plantings will result in spaces between the trees that will expose the view of the Office from neighboring properties. He commented

further that the proposed plantings are in fact not deer resistant, and that deer will damage same up to four feet in height. Finally, Mr. Salese noted that there is not enough sunlight to achieve the proposed growth of the Green Giant Arborvitae as testified to by Mr. Greenberg and Mr. Keller, and that it will take about five years before the Green Giant Arborvitae would grow to a height in excess of the Office's 13 foot height that would potentially conceal the view of the Office from the Saffer/Pantoni properties. Mr. Greenberg responded to this claim by noting that since the entire rear yard of the subject property faces south, there will be no negative impacts on the growth rate of the trees.

19. Ms. Sanfillipo and Mr. Pantoni commented that the Office disrupts the feel and enjoyment of their back yard, and that water runoff issues adversely impacting their property have increased since the Office structure was built.

20. 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[.]

21. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances where a deviation from the Zoning Ordinances would advance the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the "MLUL"), and the benefits of the deviation would substantially outweigh any detriment.

22. 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").

23. The Board finds that the Applicant has not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested variance relief to permit the Office to remain in its present location with a rear-yard setback, lot coverage and building coverage deviations. No proofs were provided by the Applicant that the subject property is different in size or shape from other properties in the neighborhood or the R-4 zone. No extraordinary topographic conditions were presented to the Board that distinguish the property from other properties in the neighborhood or in the R-4 zone. No competent evidence was provided by the Applicant to demonstrate that the style or layout of the existing single family home on the property provides a hardship in this matter. The property has sufficient lot area, width and depth for the R-4 zone. The Applicant also failed to identify other properties in the R-4 zone that

received similar setback, lot coverage and building coverage variance relief in connection with the installation of an accessory building similar in size to that of the Office. This proposal continues to be an eyesore and imposing to the neighbors most impacted by the proposal and out of character to the neighborhood, as expressed by the neighbors providing the above sworn testimony in opposition to the application. No testimony was provided by the Applicant to demonstrate that there would be no substantial impairment to the intent and the purpose of the zone plan and zoning ordinance of the Township of Millburn. Mr. Keller did not rely on the testimony of Mr. Greenberg in providing his professional planning opinions relative to this matter.

24. Similarly, the Applicant has failed to satisfy the criteria for variance relief under N.J.S.A. 40:55D-70c(2). The Applicant failed to demonstrate that the application constitutes a better zoning alternative for the subject property. The application will only benefit the Applicant, not the surrounding neighborhood. The Applicant failed to satisfactorily demonstrate that the application advances any of the purposes of the MLUL, or how the benefits of the deviations for which variance relief was sought would substantially outweigh any detriment. To the contrary, the aforementioned testimony from the neighboring property owners and Mr. Salese appropriately articulated the reasons why the Applicant failed to meet his burden of proof as to the positive or negative criteria for C2 variance relief, including but not limited to, how the Applicant's proposal adversely impacts the neighboring properties. Further, the Applicant did not propose any storm water management measures to mitigate adverse impacts from the excessive building coverage and lot coverage at the property. The Board finds that the variances triggered by the application would not advance the purposes of the MLUL, do not provide a better zoning opportunity for the property, nor would any potential benefits of the application substantially outweigh its detriments.

25. The development proposed by the application is excessive given the subject property's compliant lot area; does not further the purposes of providing sufficient space for residential use or a desirable visual environment; and any benefits of the proposed landscaping fail to substantially outweigh the application's detriments imposed by exceeding the bulk requirements contained in the Township Zoning Ordinance, and as otherwise set forth above. The positive and negative criteria for variance relief have therefore not been met by the Applicant pursuant to N.J.S.A. 40:55D-70c. For all the reasons stated above, the Board concludes that the variance relief requested relating to the proposed construction cannot be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 16th day of May, 2022, that the variance relief requested by the Applicant to permit an accessory structure rear-yard setback from a neighboring lot line of 8 feet to the proposed Office, where 12 feet from the rear-yard lot line is the minimum required setback for an accessory structure; a building coverage of 16.57%, where a maximum building coverage of 14% is permitted; and a lot coverage of 39.62% (46.55% existing), where a maximum lot coverage of 35% is permitted, denied by this Board at its meeting of April 4, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

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 16th day of May, 2022.

Cal#3858-22, Wendy & Bruce Prashker, 26 Park Road, Short Hills

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

Amy Lawrence – yes

Craig Ploetner – yes

the following memorializing resolution was adopted:

**WENDY & BRUCE PRASHKER
BLOCK 1401, LOT 4**

**CAL. NO. 3858-22
MAY 16, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the statutory denial of certain variance relief requested by the Applicants, Wendy and Bruce Prashker (hereinafter the “Applicants”), in Calendar No. 3858-22 to permit the construction of a partially in-ground pool, raised pool coping, a new pool patio, and associated improvements, on property located at 26 Park Road, Short Hills, New Jersey, and designated as Lot 4, Block 1401, on the Official Tax Map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on March 21, 2022 and April 18, 2022, as to Calendar No. 3858-22 to permit the construction of a partially in-ground pool, raised pool coping, a new pool patio, and associated improvements, on property located at 26 Park Road, Short Hills, New Jersey, and designated as Lot 4, Block 1401, on the Official 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 and April 18, 2022 hearings, the application and service of notice were found to be in order. Mrs. Prashker appeared without counsel, and together with Angelo Onello, P.E., the Applicants’ Professional Engineer, provided sworn testimony in support

of the application. The Applicants did not present a professional planner to provide planning testimony in support of the application.

2. The Applicants are the owners of the subject property, which contains a single-family residence, and is located in the Township's R-4 Zone District (the "R-4 Zone"). In 2017, the Applicants received variance relief from the Board for floor area ratio, building coverage, and side yard setbacks in connection with a one-story addition to the principal dwelling on the property. The Applicants currently propose to construct a partially in-ground pool, raised pool coping, a new pool patio, and associated improvements including the replacement of two wood-tie retaining walls with masonry block retaining walls, as well as new perimeter landscape screening and a rear-yard perimeter fence and stormwater control facilities behind the Park Road-facing residence.

3. The proposed construction would result in lot coverage and accessory structure coverage percentages in excess of that permitted by Ordinance, as further specified below. Therefore, variance relief is required.

4. Mrs. Prashker testified that their proposal includes a partially in-ground pool in the rear-yard of the property, similar to the location of pools on residential properties in the surrounding area. She further noted that there is already extensive landscaping on the subject property. Mrs. Prashker acknowledged an existing stormwater drainage issue pertaining to her property which the Applicants intend to address via the Applicants' proposed site improvements.

5. Mr. Onello testified that the lot area of the subject property is undersized at approximately 12,000 square feet, where a minimum lot area of 20,000 square feet is required in the R-4 Zone. He testified that the proposal will include an approximately 597 square foot increase in lot coverage, including the water surface area of the proposed pool.

6. Mr. Onello further testified that the benefits of the Applicants' proposal outweigh any detriments, as the proposal adds stormwater maintenance facilities to the subject property, as well as an increased perimeter landscape screening. He testified that water that falls within the pool "remains in the pool," and as such, the proposed pool will act as a 500 gallon dry well.

7. Referencing the plans previously submitted to the Board, Mr. Onello testified as to the existing and proposed landscaping. He testified that the Applicants propose additional landscaping including approximately 12 arborvitae along the top of the existing retaining wall, each 10' to 12' tall at the time of planting, but that the Applicants will leave the final decision as to the particular type of species for proper screening to the Township Arborist.

8. Francisco Del Campo, 28 Park Road, Short Hills, provided sworn testimony as to the application. He expressed his concerns as to storm water runoff from the project impacting his adjoining property. He did not oppose the installation of a pool on the Applicants' property, just the location of the pool proposed by the Applicants.

9. Lisa Romano, 20 Park Road, Short Hills, provided sworn testimony as to the application. She commented that the subject property had submitted an application in 2017, which included five different variances, and did not include a swimming pool. She stated that the previous application was denied due to downhill water flow and a lack of a hardship.

10. Howard Margolis, 14 Cross Gates, Short Hills, provided sworn testimony as to the application. He lives “below” the subject property and has had detrimental experiences with storm water and flooding on his property, even with the most moderate of rainfalls. Mr. Margolis introduced into evidence as Exhibit O-1, a markup of the set of plans submitted to the Board by the Applicants. Mr. Margolis commented that the subject property is more steeply sloped in its rear yard area toward its rear lot line, with storm water funneling into a narrow channel. Mr. Margolis believes that the subject property is not large enough for the proposed uses.

11. Returning to the Board with revised plans, Mr. Onello introduced into evidence as Exhibit A-1, a two sheet Site Plan dated April 6, 2022, which was revised in an effort to address the Board’s apparent concerns with the application. Reading from a letter previously submitted to the Board dated April 6, 2022, he described the proposed changes to the pool and patio locations, including adding an open sloped lawn area next to the pool so to reduce the proposed rear yard accessory impervious coverage and lot coverage, rebuilding the existing patio, reducing the size of the “upper” deck, and providing an additional staircase for easy access.

12. As to stormwater management on the subject property, Mr. Onello testified that the Applicants’ proposal was revised to include a new drywell (in addition to the existing drywell at the property), as well as two new catch basins (for a total of five catch basins) at the perimeter of the rear yard of the subject property.

13. Mr. Onello introduced into evidence as Exhibit A-2, updated Site Plans dated April 18, 2022, with landscaping specifications, including taller arborvitae, and a pool that is now proposed to be two feet above the ground, not four-feet, eight-inches above the ground as previously proposed.

14. Mr. Onello testified that he is in receipt of the Township Engineer’s review memorandum as to storm water management issues, dated April 11, 2022, and stipulated to complying with same.

15. Mr. Onello clarified at the April 18, 2022 Board meeting that the variance relief requested of the Board by the Applicants was as follows:

- a. Percentage of rear yard accessory lot coverage: 26.41 % originally proposed;
22.76% currently proposed;
20% permitted.
- b. Total Lot Coverage: 40.84% originally proposed;
38.90% currently proposed;
35% permitted.

16. Mr. Onello testified that in order to install a pool on the subject property without any variance relief, the patio would need to be eliminated and the pool would be too small to function as a typical residential pool.

17. Charles Baldanza, a licensed engineer and planner, was duly sworn and qualified as a professional engineer and planner, and testified before the Board as an objecting expert witness on behalf of neighboring property owners, Mr. Francisco Del Campo (28 Park Road), Mr. Howard Margolis (14 Cross Gates) and Mr. H. Steven Roth (18 Cross Gates). He submitted a letter to the Board dated April 7, 2022 summarizing his findings pertaining to the application, which correspondence was made part of the record of the within proceedings.

18. Mr. Baldanza noted that the requested variances for Maximum Lot Coverage and Accessory Lot Coverage, as set forth above, constitute significant increase over that permitted by the Ordinance. He believed that the Applicants failed to provide testimony or information as to how this application furthers the intent and purposes of the applicable zoning Regulations & Master Plan. According to Mr. Baldanza, the Master Plan reexamination of 2018 lists “Substantial Development Activity in Residential Areas” as one of the primary issues facing the Township.

19. He also believed the Applicants provided no testimony as to what is unusual regarding the subject property such that relief from total lot coverage and accessory lot coverage requirements that apply to the rest of the zone was warranted.

20. As to the stormwater management system proposed, Mr. Baldanza noted that it is designed only for the proposed additional 597 square feet of coverage. Since the proposed drainage system is only for the new proposed impervious coverage, he believed it cannot be considered a benefit to the public good, let alone a substantial benefit, since there will be no decrease in stormwater runoff as compared to existing conditions.

21. Mr. Baldanza testified that the pool can be installed at the property in an alternate location significantly reducing the need (or intensity) of variance relief; that there is nothing unusual about the property that warrants C1 variance relief; and the proposal does not mitigate any of the existing runoff issues.

22. With regard to the requested variance relief, Mr. Onello testified as follows:

- a. There are other pools in the neighborhood;
- b. There is a significant amount of landscaping proposed;
- c. There are no line of sight issues, as the neighbors have landscaping as well;

- d. The proposal will be aesthetically pleasing;
- e. A hardship exists due to the grading and contours of the subject property, which is undersized and has different elevations from the neighboring properties;
- f. The proposal is within the character of the neighborhood;
- g. The proposed pool is “midsized”;
- h. There are no current stormwater issues on the subject property, and the proposal contemplates stormwater management improvements;
- i. The proposal specifically includes five new drains along the perimeter of the rear-yard of the subject property and a new drywell that may be increased in size if desired by the Board; and
- j. The patios are currently existing.

23. 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[.]

24. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances where a deviation from the Zoning Ordinances would advance the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”), and the benefits of the deviation would substantially outweigh any detriment.

25. 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”).

26. The Board finds that the Applicants have not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested variance relief to permit the installation of the proposed partially in-ground pool and surrounding coping and patio, which will result in both accessory structure and total development coverage deviations. No proofs were provided by the Applicants that the subject lot is different in size or shape from other properties in the

neighborhood or the R-4 Zone. The minimum lot size in the R-4 Zone is 20,000 square feet, and the subject property contains approximately 12,000 square feet. However, no extraordinary topographic conditions were presented to the Board that distinguishes the property from other properties in the neighborhood or in the R-4 Zone. The Applicants failed to identify other properties in the R-4 Zone that received similar variance relief in connection with the installation of a pool. This project would be a detriment to the neighbors and out of character to the neighborhood, as expressed by the neighbors and Mr. Baldanza providing the above sworn testimony in opposition to the application. The subject property has already undergone extensive development with principal and accessory structures, including a driveway and a patio area.

27. Similarly, the Applicants have failed to satisfy the criteria for variance relief under N.J.S.A. 40:55D-70c(2). The Applicants failed to demonstrate that the application constitutes a better zoning alternative for the property. The application will only benefit the Applicants and their family, as opposed to the surrounding neighborhood. The Applicants failed to provide any professional planning testimony in support of C2 relief, including how the application advances the purposes of the MLUL or how the benefits of the deviation would substantially outweigh any detriment. To the contrary, the aforementioned comments from the neighboring property owners and Mr. Baldanza appropriately articulated the reasons why the Applicants failed to meet their burden of proof as to the positive or negative criteria for C2 variance relief, including but not limited to the proposed partially in-ground pool adversely impacting the stormwater runoff in the neighborhood. The Board finds that the variances triggered by the proposed accessory and total lot coverage would not advance the purposes of the MLUL, do not provide a better zoning opportunity for the property, nor would any potential benefits of the application substantially outweigh any detriments. Since the proposed drainage system is only for the new proposed impervious coverage, it cannot be considered a benefit to the public good, let alone a substantial benefit, since there will be no decrease in stormwater runoff as compared to existing conditions. The runoff detailed by the engineering design only compensates for the increase in impervious coverage, but existing uncontrolled stormwater runoff to neighboring properties will remain. Although there appear to be other pools present in the subject neighborhood, the Applicants were unable to confirm whether any of them obtained variance relief from this Board, or otherwise contain deviations from the Ordinance.

28. The development proposed by the application is excessive, even given the subject property's undersized lot area; does not further the purposes of providing sufficient space for residential use or a desirable visual environment; and any benefits of the proposed landscaping fail to substantially outweigh the application's detriments imposed by exceeding the bulk requirements contained in the Township Zoning Ordinance, and as otherwise set forth above. The positive and negative criteria for variance relief have therefore not been met by the Applicants pursuant to N.J.S.A. 40:55D-70c. For the reasons stated above, the Board concludes that the variance relief requested relating to the proposed construction cannot be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 16th day of May, 2022, that the variance relief requested by the Applicants to permit an deviation from the maximum accessory

coverage permitted and the maximum total lot area coverage permitted, statutorily denied by this Board at its meeting of April 18, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

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 16th day of May, 2022.

Cal#3860-22, Xingbo Xu/Yina Lu, 20 Great Hills Terrace, Short Hills

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

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

the following memorializing resolution was adopted:

**XINGBO XU & YINA LU
BLOCK 4102, LOT 2**

**CAL. NO. 3860-22
MAY 16, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of a modification of a previous condition of a memorializing resolution requested by the Applicants, Xingbo Xu and Yina Lu (hereinafter the “Applicants”), in Calendar No. 3860-22 to permit the extension of an existing retaining wall and alternative tree plantings, on property located at 20 Great Hills Terrace, Short Hills, New Jersey, and designated as Lot 2, Block 4102, 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 April 4, 2022 as to Calendar No. 3860-22 to permit the extension of an existing retaining wall and alternative tree plantings, on property located at 20 Great Hills Terrace, Short Hills, New Jersey, and designated as Lot 2, Block 4102, 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 April 4, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and 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"). On or about May 15, 2017, the Applicants' predecessor in title obtained variance relief from the Board in connection with Cal. No. 3540-17 to permit the construction of a detached garage and additions to the dwelling located at the subject property.

3. The Applicants seek to modify Condition 3 of Approval of Cal. No. 3540-17 ("Condition #3"), which states:

Prior to the issuance of a Certificate of Occupancy, the Applicant shall install columnar evergreens at a height of 20 feet above the root ball at the time of planting, for a distance of 45 feet along the westerly property line, commencing at the point where the Applicant's dwelling has a 6 foot side yard setback to a point even with the rearmost point of the rear façade of the dwelling.

4. The application seeks to amend Condition #3 in connection with its intent to widen an existing retaining wall by 2 – 3 feet and lengthen it by 5 feet, to create a newly-elevated portion of the subject property to match the ground level of the Applicants' neighbor's property, to install five, 12' trees in the newly-elevated area, and to plant an additional five, 14' trees outside of the newly-elevated area.

5. The Applicants testified that the proposed widening of the existing retaining wall is intended to support the proposed plantings. The Applicants stated that they would plant five, 12' trees in the newly-elevated area, and an additional five, 14' trees outside of the newly-elevated area, all of which will be planted 12 and 14 feet above the root ball, respectively. The Applicants stated that they are seeking this modification because adherence to the previous condition of approval would block landscaping equipment from accessing the property, while the proposed plantings are more likely to survive and thrive than the originally-required 20 foot plantings. The retaining wall is being increased in width to support some of the proposed tree plantings. The Applicants also stated that the application was made in consultation with Township Forester, Tom Doty. The Applicants stated they only sought to change the height of the proposed plantings to match the proposed elevated area to their neighbor's yard, and that adequate screening will still be maintained. The retaining wall height is not being changed. The Applicants concluded by confirming that all previous conditions of approval of Cal. No. 3540-17 as set forth in its memorializing resolution would remain.

6. John Cleary, II, 16 Great Hills Terrace, Short Hills, testified that he is the Applicants' neighbor most impacted by the application and is supportive of the application.

7. The Board finds the application to be reasonable, sensible and practical given the circumstances set forth above, and concludes that it is appropriate to grant the modification of Condition #3 as requested by the Applicants to permit the proposed construction. The need for such relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials and originally contained in Cal. No. 3540-17, and for the reasons set forth above. The Board finds that these deviations from the original Condition #3 are de minimis and can be accomplished without affecting any of the reasoning supporting the granting of Cal. No. 3540-17, without undermining the intent and purpose of the Township Zoning Ordinances, and without causing any detriment to surrounding properties. The Board further notes that the neighbor most impacted by the proposed modification to Condition #3 is in support of same.

NOW, THEREFORE, BE IT RESOLVED on this 2nd day of May, 2022, that the relief requested by the Applicants to Calendar No. 3860-22 to permit the modification of Condition #3 in connection with the extension of an existing retaining wall and the planting of additional trees, as set forth above, on property located at 20 Great Hills Terrace, Short Hills, granted by this Board at its meeting of April 4, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

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

2. The Applicants shall be required to comply with all previous conditions of approval in Cal. No. 3540-17 excluding Condition #3, but only to the extent Condition #3 is modified by the within approval.

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 16th day of May, 2022.

APPLICATIONS

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

The matter was carried to June 6, 2022.

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

Steven Azzolini, Attorney for the applicant, stated his appearance. The applicant is seeking variance relief to permit the construction of a roof-top deck. Proposal is in violation of:

- 606.7c – Not a permitted accessory use
- 606.7e4 – Allowable height
- 606.7b – Expansion of a non-conforming use

John Buchholz, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He indicated that the property is located in the B-4 zone district. The apartment building is a non-conforming use in the zone. The applicant would like to construct a roof-top deck on the 3-story structure. He referred to sheets A-0 and A-1 of the submitted plans. He stated that the proposed deck area is isolated from any existing single-family dwellings. The deck is not an aggressively large area. It is approximately 1300 SF of the 5000 SF roof area. There are low wall barriers proposed and the deck will not be visible to anyone walking down Millburn Avenue. It will be only slightly visible from Essex Street. There is no intent to have people come off the street to utilize the deck area. It is for use by residents of the building only. This area of the roof is currently a black, hot tar roof. The intent is to utilize self-levelling roof panels within the proposed area which will give a better surface for the deck area. The applicant also proposes to insulate the space between the roof and the apartment below. There is no sound system/speaker system proposed.

Board Attorney, Rob Simon, questioned whether there was any investigation done to determine whether any lease or related approvals for the existing telecommunications equipment on the roof prevented any outdoor activities on the roof. Mr. Buchholz stated that he would defer that question to the building owner. He added that there is no cell equipment in the proposed deck area.

Jessica Glatt questioned how far the building is from Taylor Park. Mr. Buchholz stated that it is approximately 1500 feet away from Taylor Park. Ashley Avigdor asked how much

taller the post is than the wall. Mr. Buchholz stated that it is approximately 1-1/2 feet taller. Steve Togher asked how many people would be allowed on the deck at one time and how it would be enforced. He also asked for some testimony as to the view of the deck from the neighboring buildings. Mr. Buchholz stated that the deck could probably accommodate between 35-40 people at its highest use time. Mr. Buchholz also stated that this building is a 3-story structure surrounded by many 1 and 2-story structures so the visibility of the deck area will be minimal. Mr. Buchholz stated that there will be furniture on the roof top that will be secured and fastened. There will be no umbrellas on the deck.

Andrew Cohen, owner/managing member of the entity, appeared and was sworn. He gave a brief description of the proposal. He indicated that many of the building's residents go up to the roof area currently. He added that the roof-top access was a life-line for the residents during COVID and they are excited to designate a specific area and enhance it for the outdoor enjoyment of their residents. The roof area, by law, has to be accessible to the residents at all times for fire egress purposes.

Mr. Cohen responded to questions from the Board as to safety precautions that will be undertaken as well as the breakdown of units per floor. He indicated that there will be guard rails to prevent falls and there is no smoking permitted on the premises. There will be a maximum capacity and they may impose time restrictions as well. He stated that there are 5 apartments on each of the 3 floors and 2 apartments in the basement for resident staff.

Alex Dougherty, P. P., appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as A-1: series of 12 slides

Mr. Dougherty stated that the subject property is located in the B-43 zone district. The subject lot contains a 3-story apartment building, which was constructed in the 1940's. There are 17 apartment units within the building and the applicant is proposing to add a roof-top amenity deck area, which will benefit the tenants of the building as well as add vibrancy to the downtown.

Mr. Dougherty stated that the proposal advances the purpose of the MLUL; specifically as it relates to sections a, g, i and m of section 40:55D-2. He stated that safety will be addressed during the permitting process, since the safety of the residents is their first priority. There is no expansion to the building footprint. The use is being intensified to an extent but the deck area is available only to tenants of the building. There are no additional units being constructed.

In response to a Board question as to the effect this deck area will have on the neighboring apartment building, Mr. Dougherty stated that this amenity will be no different, in terms of nuisance and noise, than the existing uses in the district, such as outdoor restaurant dining. The deck has been proposed to be constructed at the furthest point from the adjacent apartment building.

Overall, Board members did not feel the applicant met the positive and negative criteria. They were disappointed with the lack of specificity with regard to safety and the overall use of the area. They felt that these added amenities would create more distraction and noise. They did not feel that the potential noise emanating from 30-40 people on the roof could be equated to having 30 people in an apartment with the window open, as was testified to. They did not agree with the applicant's testimony that this roof-top deck would add vibrancy to the downtown.

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

Amy Lawrence – yes
Jyoti Sharma – yes
Steve Togher – yes
Chandru Harjani – yes
Ashley Avigdor – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3853-21, Associates 29 LLC, 291 Millburn Avenue, was **DENIED**.

CAL#3865-22, SONDR & JASON KASDON, 20 OVAL ROAD, MILLBURN

Sondra and Jason Kasdon appeared and were sworn. They would like to reconfigure a patio area. The current patio is non-configured as to side yard setback. The proposed patio will have a setback of 4 feet on the right side and 7.2 feet on the left side, where 12 feet is required on each side. Proposal is in violation of:

606.2e1e1a – Side yard setback

Entered as Exhibit A-1: 7 photos

Ms. Kasdon gave a brief description of the patio proposal. It will not be visible from the street and will allow for an area outside for their enjoyment.

Jessica Glatt expressed her support for this application and acknowledged the hardships due to the lot's configuration. She agreed that the lot has an irregular shape, causing a lack of space on the side yards. Chandru Harjani also supported this application. He stated that the proposed patio will make the site more in conformity with what the rest of the area looks like, and will not be intrusive to neighbors.

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

Amy Lawrence – yes
Jyoti Sharma – yes

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

Cal#3865-22, Sondra & Jason Kasdon, 20 Oval Road, was **APPROVED**.

CAL#3866-22, CJM PLACE LLC, 9 SLOPE DRIVE, SHORT HILLS

Richard Schkolnick, attorney for the applicant, stated his appearance. The applicant would like to install an in-ground pool and a patio. Proposal is in violation of:

606.2e2b – Lot coverage

Mr. Schkolnick described the proposal as modest.

Mark Gimigliano, P.E., appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Gimigliano gave a brief description of the applicant's proposal.

Entered as Exhibit A-1: Aerial photos, 5/16/22

Entered as Exhibit A-2: 4 photos, 5/16/22

Entered as Exhibit A-3: Grading plan, 5/16/2022

The proposal also includes 13 green giant arboretum to provide additional screening.

The site is in the R-3 zone. The proposal would result in 38.3% lot coverage, where only 35% is permitted. 1,826 SF would be added. The lot is undersized, measuring at 24,889 SF.

Amy Lawrence asked if the applicant looked at the entire site to consider how this proposal can be conforming. Mr. Gimigliano stated he considered other areas of the lot where coverage could be eliminated. They considered removing parts of the existing circular driveway, however it is an undersized lot and the driveway helps the lot continue to fit in with the neighborhood.

Rob Simon asked if the 20 foot drainage easement in the rear was picked up from the tax map or if there is an actual easement on the record, and if so, whether there are any terms or conditions of this easement's impact. Mr. Gimigliano was unsure where the easement was picked up. The applicant has to confirm whether the proposed arborvitaes can be planted in the easement, as preferred by them. However, if they cannot be planted there then they would be planted between the easement and the retaining wall.

The public portion of the meeting was opened.

Carrie Nussbaum, 15 Slope Drive, appeared and was sworn. As a neighbor of the applicant, Ms. Nussbaum supported this application.

Wendy Minocha, 50 Twin Oak Road, appeared and was sworn. Ms. Minocha's property is on the south property line. She expressed her support for this application and appreciates the evergreen line being proposed by the applicant.

The public portion of the meeting was closed.

Jessica Glatt agreed that the lot is undersized and felt the applicant was not asking for too much. She supported this application.

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

Amy Lawrence – yes
Jyoti Sharma – yes
Steve Togher – yes
Chandru Harjani – yes
Ashley Avigdor – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3866-22, CJM Place LLC, 9 Slope Drive, was **APPROVED**.

CAL#3868-22, MURTAZA SHIKARI, 33 KEAN ROAD, SHORT HILLS

Matthew Capizzi, attorney for the applicant, stated his appearance. The applicant would like to install a pool and a patio. Proposal is in violation of:

606.2e2b – Lot coverage

Jeff Egarian, P.E., appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the applicant's proposal. Mr. Egarian spoke to Sheet 1 of the submitted plans.

The site is located in the R-4 zone. It includes an existing circular driveway, contributing largely to the excessive lot coverage. With the proposed plans, the applicant would be over the maximum lot coverage permitted by 925 SF. The rear yard is heavily wooded with trees, providing a natural vegetative screen.

Because increased lot coverage increases storm water runoff, the applicant is proposing a 1,290 gallon seepage tank. With the re-grading of the rear yard, the area will be levelled off and create a better drainage condition, minimizing impacts on the site and neighboring properties.

Entered as Exhibit A-1: Satellite Google Earth photo

To minimize lot coverage, the applicant would consider removing the rear most portion of the sidewalk along with the fire pit area. Those two areas equate to about 237 SF, lowering the proposed lot coverage by about 1% (39.9%). The applicant is not proposing to remove that exact area at this time; it is just a suggestion for the Board to consider.

Erwin and Marlene Cohen, 29 Kean Road, appeared and were sworn. They are concerned with the slope of the subject property. They discussed how the lots have been thinned out due to drainage issues.

In response to the Cohen's concerns, Mr. Egarian stated revisions can be made to tighten the spacing of the evergreens. The evergreens can be planted 6 feet on center to establish a denser buffer. With this change, 12 to 15 evergreens would be planted on the western and rear sides of the property. These evergreens would be 8 feet in height at the time of planting. Regarding drainage, Mr. Egarian stated that it will be addressed by the Engineering Department upon the permitting process.

Craig Ploetner was troubled by this application. The lot is oversized, with an area of 23,000 SF where only 20,000 SF is the required lot area in the zone. He thinks this application could be trimmed down. He did not fully support this application.

Jessica Glatt felt this application raised many issues. She highlighted the variance relief being sought, which is lot coverage. There are no setback issues with the proposal, and the applicant put significant effort to maximize the number of plantings and screening.

Steve Togher stated that the applicant's large driveway is a big reason why variance relief for lot coverage is needed. He appreciates the dense landscaping being proposed.

Matthew Capizzi asked the Board for an opportunity to revise this application and create an optimal solution that will better suit the neighbors.

This matter was carried to June 20, 2022.

CAL#3869-22, JASON LOSKO, 9 REEVE CIRCLE, MILLBURN

Jason Losko appeared and was sworn. The applicant would like to construct a small dormer addition. Proposal is in violation of:

- 606.2e1d – front yard setback
- 606.2e1f – side setback combined

Jason Losko referred to sheet 1 of the submitted plans. Both conditions are pre-existing non-conforming. These conditions are not being further exacerbated. This addition is designed to accommodate an office space.

Overall, the Board was supportive of the application and felt it was a modest request.

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

Amy Lawrence – yes
Jyoti Sharma – yes
Steve Togher – yes
Chandru Harjani – yes
Ashley Avigdor – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3869-22, Jason Losko, 9 Reeve Circle, was **APPROVED**.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Steve Togher, seconded by Amy Lawrence, and carried with a unanimous voice vote. (10:30 PM)

Eileen Davitt
Board Secretary

Motion: ST
Second: AA
Date Adopted: 6/6/22