

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
May 17, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, May 17, 2021** 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:

Craig Ploetner  
Jyoti Sharma  
Joy Siegel  
Steve Togher  
Wolfgang Tsoutsouris  
Amy Lawrence  
Chandru Harjani  
Joseph Steinberg, Chairman

Also present:

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

**MEMORIALIZATIONS**

**Cal#3785-21, Preeti & Kamal Singh, 93 Addison Drive, Short Hills**

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

Craig Ploetner – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Amy Lawrence – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the denial of variance relief requested by the Applicants, Preeti and Kamal Singh (hereinafter the “Applicants”), in Calendar No. 3785-21 to construct an addition to the property located at 93 Addison Drive, Short Hills, New Jersey, known and designated as Lot 5, Block 5203 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 5, 2021, in Calendar No. 3785-21 filed by the Applicants, requesting permission to construct an addition to the first floor of the property located at 93 Addison Drive, Short Hills, New Jersey, known and designated as Lot 5, Block 5203 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 5, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and together with Timothy P. Klesse, Licensed Architect, testified in support of the application. Marla Sultan, 77 Addison Drive, Short Hills, New Jersey, testified in opposition to the application. All witnesses were sworn before the Board.

2. The Applicants are the owners of the subject property, which is located in the R-5 zone district. The Applicants propose to construct a bedroom addition to the first floor of the subject property. The Township Zoning Ordinance requirements for the R-5 zone include a minimum accessory structure side yard setback of 12 feet pursuant to §606.2e(3)(a); a minimum combined side yard setback of 35% pursuant to §606.2e(1)(f); a minimum side yard setback of 12 feet for a building up to 18 feet in height pursuant to §606.2e(1)(e)(1)(a) and an additional minimum side yard setback of .33 feet for each foot in height of any building segment over 18 feet in height but under 32 feet in height pursuant to §606.2e(1)(e)(1)(a). The proposed addition would result in a 4.87 foot accessory structure side yard setback where 12 feet is required; a combined side yard setback of 15.7% where 35% is required; a side yard setback of 3 feet where 12 feet is required for a building exceeding 18 feet in height; and an additional side yard setback of 3 feet where 16 feet is required for a building exceeding 18 feet in height but under 32 feet in height. Therefore, variance relief is required.

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

- A. Five (5) Photographs of the Subject Property, taken by Mr. Klesse on March 5, 2021, which were admitted into evidence as A-1 on April 5, 2021;
- B. Photograph taken by Mr. Klesse of a survey of the property located at 87 Addison Drive, Lot 4 Block 5203, dated November 6, 2020, prepared by Schmidt Surveying, which was admitted into evidence as A-2 on April 5, 2021;
- C. Video taken by Mr. Klesse on April 1, 2021, of the streetscape on Addison Drive, which was admitted into evidence as A-3 on April 5, 2021; Site Plan prepared by Klesse Forbes Architects, consisting of five (5) sheets, labeled BOA-1 through BOA-5, dated January 25, 2021.

4. The subject property contains a single family residence with a detached garage in the rear. The Applicants propose to construct an addition to the residence that will result in a new first floor bedroom. As noted above, this proposed addition requires bulk variance relief for accessory structure side yard setback, combined side yard setback, side yard setback for a building up to 18 feet in height, and additional side yard setback for building exceeding 18 feet in height but under 32 feet in height.

5. The subject property contains multiple existing nonconformities. The existing deck has an accessory structure side yard setback of 2.8 feet where a minimum of 12 feet is required; a 19.3% combined side yard setback where a minimum of 35% is required; a side yard setback of 6.8 feet where a minimum of 12 feet is required; and an additional side yard setback of 9 feet where a minimum of 16 feet is required for a building over 18 feet in height but under 32 feet in height.

6. The variance relief requested by the Applicants would result in an increase in the accessory structure side yard setback from 2.8 feet for the existing deck to 4.87 feet for the proposed patio, where 12 feet is required. The application also proposes to decrease the combined side yard setback from 19.3% to 15.7%, where 35% is required. Additionally, the application proposes to decrease the side yard setback from 6.8 feet to 3 feet, where 12 feet is required. Finally, the application proposes to decrease the additional side yard setback from 9 feet to 3 feet for a building over 18 feet in height but under 32 feet in height, where 16 feet is required.

7. The Applicants testified that Mr. Singh's mother will be living with the Applicants for a few months per year when she visits from overseas, and that they want to build a bedroom on the first floor as Mr. Singh's mother has difficulty climbing stairs. The Applicants testified that the only logical place to put the proposed addition is on the left side of the house (when facing the front of the subject property), and it would not make any functional sense to place the proposed addition in the rear of the home. The Applicants spoke to their neighbors and believed that none of them had an issue with the design of the proposed addition as set forth in the application.

8. The Applicants' Architect, Timothy P. Klesse, was qualified as an expert by the Board. Mr. Klesse testified that the proposed addition would encompass the entire left side of the residence on the subject property. Mr. Klesse testified that the proposed addition would result in a five foot decrease (from 50 feet to 45 feet) in the distance between the front left corner of the Applicants' residence and the nearest front corner of the neighbor's residence. Mr. Klesse testified that there is an existing raised deck that would be removed in favor of an on-grade patio if the application were approved.

9. Mr. Klesse further testified that the subject property was pie-shaped, and that the shape of the lot was the reason for the lack of compliance with side yard setbacks for an accessory structure. Mr. Klesse testified that the width of the lot at the front of the property is 105 feet, where the required lot width in the R-5 zone is 75 feet. Mr. Klesse testified that the Applicants agreed to create a buffer using conifer green giant plantings to screen the view of the proposed addition. Mr. Klesse testified that the plantings were proposed to be 4 feet tall, but could be taller if requested by the Board. Mr. Klesse testified that an existing generator would also have to be relocated to the back yard of the subject property to accommodate the proposed addition. Mr. Klesse testified that the power lines would need to be extended upon relocation of the generator, and that the air conditioning unit would be moved to the right side of the property (when facing the front of the subject property). He further testified that the proposed addition would increase the width of an existing nine foot wide room by five feet.

10. During the course of the hearing on the application, Board members expressed concerns about the extent of variance relief requested in the application. While the Applicants agreed to lower the overall height of their proposed addition by six feet to alleviate the need for variance relief from the additional side yard setback requirement for a building over 18 feet but under 32 feet, the Board believed that granting the remaining three variances would render the home looking out of place in the subject neighborhood due to the numerous proposed setback deviations (including a three foot side yard setback) and overall size and placement of the proposed addition. The Board also expressed concerns as to the overall size of the house if the proposed addition was granted in relation to the size of the other houses in the neighborhood. The Board further expressed concern that while the massing or configuration of homes within the subject neighborhood streetscape was mainly horizontal, granting the application would render the home on the subject property appearing out of place in the neighborhood especially given the property's excessive lot width.

11. Marla Sultan, 77 Addison Drive, testified under oath that it was important to make sure that the proposed addition would be in keeping with the overall character of the neighborhood's streetscape, and emphasized that this was even more important due to the existence of a number of pie shaped lots in the neighborhood, including the subject property.

12. The Board finds that the application does not qualify for bulk variance relief under N.J.S.A. 40:55D-70c(2) as no competent proofs were presented in support of such relief. Further, the Applicants' proposed development does not constitute an opportunity for improved zoning that will benefit the surrounding neighborhood.

13. As to the positive criteria for the requested bulk variance relief, 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[.]

14. 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 “negative criteria”).

15. The Board finds that the Applicants have not satisfied their burden of meeting the positive and negative statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the variance relief requested by the Applicants to permit the proposed addition in violation of the Township Zoning Ordinance. As to the positive criteria, the Applicants failed to meet their burden of proof that the subject property is exceptionally narrow, shallow, or shaped in a way that the application of the Township Zoning Ordinance would result in an undue hardship upon the Applicants. Extended visits from parents and in-laws may constitute a personal hardship for the Applicants, but does not constitute a hardship caused by the condition of the subject property warranting relief under the MLUL. Since the Applicants’ need for variance relief is not a result of any extraordinary or exceptional conditions affecting the property itself, the Applicants were unable to satisfy the positive criteria required to grant the variances requested. Despite the property’s “pie shape”, the portion of the property where the addition is proposed exceeds the minimum lot width for the R-5 zone. Therefore, the shape of the property itself has not imposed a hardship or burden on the Applicants which would warrant variance relief. Further, the Applicants failed to present any evidence or testimony as to how the property’s narrowness, shallowness or shape is “exceptional” especially when compared to other properties in the neighborhood. Similarly, no evidence was presented by the Applicants to demonstrate that any “exceptional” or “extraordinary” topographical conditions, physical feature or situations exist that “uniquely” affect the subject property. The Applicants failed to demonstrate that the condition of the property prevented the construction of a conforming addition. No professional planning or other testimony was presented by the Applicants as to how the subject property’s existing conditions related to those experienced by other properties in the neighborhood so as to justify the required variance relief.

16. For all the reasons set forth above, the Applicants have not satisfied their burden of proof as to the positive criteria enumerated in N.J.S.A. 40:55D-70c(1) to demonstrate entitlement to the required variance relief. The Applicants failed to demonstrate that any practical difficulties or hardship associated with their property is “peculiar” or “exceptional” especially as compared to other residential lots in the subject neighborhood.

17. The Applicants also have not met their burden of proving the proposed addition satisfies the negative criteria under N.J.S.A. 40:55D-70c(1). The Board finds that the negative impacts associated with the installation and use of the proposed addition is a substantial detriment to the surrounding residential neighborhood and nearby properties in the R-5 Zone, especially given its proposed size and inconsistency in form, mass and width when compared to the surrounding residential neighborhood and nearby properties. Township Zoning Ordinance Section 606.2(e), “Area and Setback Requirements” contains a note that explicitly states “[a]dequate consideration shall be given to impact on adjoining properties.” The Township Master Plan’s goals include “[t]o protect the character of established neighborhoods.” The Board finds that even with the elimination of the fourth variance requested by the Applicants (requesting 3 feet of additional side yard setback for a building over 18 feet in height but under 32 feet in height, where 16 feet is required), it cannot allow the installation and use of this accessory structure in a side yard, with a 4.87 foot accessory structure side yard setback (where 12 feet is required, constituting approximately 40% of the required minimum), a combined side yard setback of 15.7% (where 35% is required, constituting approximately 45% of the required minimum), and a side yard setback of 3 feet (where 12 feet is required for a building exceeding 18 feet in height, constituting 25% of the required minimum), without severely undermining the intent and purpose of the Township’s Zoning Ordinance and Master Plan. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested herein cannot be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township’s Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 17th day of May, 2021 that the variance relief requested by the Applicants to construct a proposed addition to the residence on the subject property, resulting in a 4.87 foot accessory structure side yard setback, a combined side yard setback of 15.7%, and a side yard setback of 3 feet where 12 feet is required for a building exceeding 18 feet in height, and as amended to remove the need for variance relief for an additional side yard setback of 3 feet where 16 feet is required for a building over 18 feet but under 32 feet, denied by the Board at its meeting of April 5, 2021, is hereby 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 17th day of May, 2021.

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**Cal#3768-20, Spiro & Lauren Skouras, 10 Alexander Lane, Short Hills**

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

- Craig Ploetner – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**SPIRO & LAUREN SKOURAS  
BLOCK 5002, LOT 7**

**CAL. NO. 3768-20  
MAY 17, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Spiro and Lauren Skouras (hereinafter the “Applicants”), in Calendar No. 3768-20 to permit the construction of a proposed patio area around the Applicants’ in-ground swimming pool, on property located at 10 Alexander Lane, Short Hills, New Jersey, known and designated as Lot 7, Block 5002, on the 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 December 7, 2020, and April 19, 2021, as to Calendar No. 3768-20 to permit the construction of a proposed patio area around the Applicants’ in-ground swimming pool, on property located at 10 Alexander Lane, Short Hills, New Jersey, known and designated as Lot 7, Block 5002, 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 with counsel, Samantha T. Alfonso, Esq., and together with Robert Roselli, the Applicants’ Engineer, and Joseph Polacek, the Applicants’ Landscape Architect, provided sworn testimony in support of the application. All witnesses were placed under oath. There was no public opposition to the application.
2. The Applicants are the owners of the subject property, which is located in the R-4 zone district. The Applicants propose to construct the proposed patio area around the

Applicants' existing Hampton-style, in-ground swimming pool. The pool measures approximately 40 feet by 21 feet. Currently, there is no patio around the existing pool, only grass.

3. The subject property, comprised of a single family residence with an attached garage, contains three (3) existing nonconforming conditions pertaining to the Township Zoning Ordinance for the R-4 zone: (a) a minimum side yard setback of 22 feet for a building over 18 feet in height is required, and the subject property has an existing side yard setback of 19 feet for a building over 18 feet in height; (b) a minimum accessory use mechanical setback of 36 feet is required and the subject property has an existing accessory use mechanical setback of 21.4 feet; and (c) a minimum driveway setback of 5 feet is required and the subject property has an existing driveway setback of 4.1 feet.

4. The Applicants' original proposal would have resulted in a lot coverage of 37.6% where the maximum allowable lot coverage is 35%, and an accessory use coverage of 23.9% of rear yard area where the maximum allowable accessory use coverage is 20% of the rear yard area. During the course of the hearings on the application, and in response to concerns expressed by the Board, the Applicants amended their application to reduce the overall size of the proposed pool patio area. The amended proposal would result in a lot coverage of 36.7% where the maximum allowable lot coverage is 35%, and an accessory use coverage of 22% of rear yard area where the maximum allowable accessory use coverage is 20% of the rear yard area. While the Applicants reduced the extent of Ordinance deviations through their pool patio redesign, variance relief remains required.

5. In addition to reviewing and considering the application materials and plans, at the April 19, 2021 hearing the Board received and considered the following document submitted by the Applicants:

A. Google Maps Image of the subject property, which was admitted into evidence as Exhibit A-1, on April 19, 2021;

6. At the December 7, 2020 hearing, the Applicants' Engineer, Robert Roselli, testified that the Applicants received a permit to install the existing pool, and that the Applicants now seek to construct a patio area around the existing pool. The Applicants testified that they chose the shape and size of the pool because they liked how it looked, and after they began using the pool, realized that the grass currently surrounding the pool would get wet and slippery when their children used the pool, causing their children to slip and fall.

7. As a result of comments and concerns expressed by the Board at the December 7, 2020 hearing, at the April 19, 2021 hearing, the Applicants agreed to reduce the size of the patio on three (3) sides of the pool from 3 feet to 2 feet as well as to install additional plantings and landscaping on the subject property to further screen the proposed patio area from street view and from the neighboring properties. These additional plantings and landscaping are reflected on a Planning Plan of Eden Design, Landscape Architects, dated March 11, 2021 filed with the application.



8. The Applicants testified that they attempted to design the pool patio in a way that would not require variance relief, but were unable to do so given the existence and location of the existing structures on the property. The Applicants also testified that they chose the pool patio design option that would most closely conform to the Township's Zoning Ordinance. According to the Applicants, they spoke with their adjacent and across-the-street neighbors, and stated that none of their neighbors had any concerns with or objections to the application.

9. At the April 19, 2021 hearing, Joseph Polacek, the Applicants' Landscape Architect, testified that the revised landscaping plan now includes an evergreen screen along the north, south, and west boundaries of the property, consisting of 57 green giant arborvitae evergreen trees, installed at 7 – 8 feet in height, which will screen the proposed pool patio, as well as 6 additional ornamental trees to be planted, for a proposed total of 63 trees, as well as additional shrubs to be planted around the north side of the pool.

10. The Board finds that the Applicants have satisfied the statutory criteria required by N.J.S.A. 40:55D-70(c)(1) and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed pool patio construction. The need for variance relief is related to several already-existing conditions affecting the property, dwelling and other site improvements, including the location of the existing in-ground pool. The Board finds these conditions to be exceptional and extraordinary circumstances uniquely affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants. Although the proposed pool patio requires variance as set forth above, the deviation from the requirements are modest in light of the inability to further reduce the area devoted to the pool patio, and without undermining the intent and purpose of the Township Master Plan and Zoning Ordinance. The Board finds that the existing conditions on the subject property, including the location of the existing in-ground pool and the existing hammerhead-shaped driveway providing access to the residence and to the attached garage, cause a hardship on the Applicants when attempting to comply with the Township Zoning Ordinance. It does not appear that the overall coverage could be further reduced without sacrificing functionality, and the proposed pool patio appears similar in size and design to other existing pool patios in the neighborhood. The pool patio installation also corrects a safety issue when the existing grass surrounding the pool becomes wet, as set forth above.

11. The application will not result in any increase in the already existing nonconformities on the subject property, and will only result in a 1.7% increase above the maximum allowable lot coverage, and a 2% increase in accessory use coverage of rear yard area above the maximum allowable accessory use coverage of the rear yard area. The Board concludes that the proposed development preserves the character of the subject neighborhood, especially given the proposed landscaping as set forth above, and that any negative impact from this proposed use is negligible and not a substantial detriment. Therefore, for all the reasons set forth above, the Board concludes that the granting of the variance relief requested herein can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 17th day of May, 2021 that the variance relief requested by the Applicants to construct a pool patio resulting in a 36.5% lot coverage and a 22% accessory use rear yard area coverage for the property at 10 Alexander Lane, Short Hills, granted by this Board at its meeting of April 19, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicants shall abide by the amended landscaping plan, as described at the April 19, 2021 Board meeting and identified above, to screen the proposed pool and pool patio from view from the street and surrounding properties.
2. The Applicants shall insure that all new plantings be maintained in order to screen the view of the pool and the pool patio from the street and surrounding properties.
3. The Applicants shall be bound to comply with the representations made before this Board by the Applicants at the public hearing, as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
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 17th day of May, 2021.

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**Cal#3788-21, Melissa Rodriguez, 8 Wells Lane, Short Hills**

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

- Jyoti Sharma – yes
- Steve Togher – yes
- Amy Lawrence – yes
- Chandru Harjani – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**MELISSA RODRIGUEZ  
BLOCK 2111, LOT 19**

**CAL. NO. 3788-21  
MAY 17, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the partial granting of variance relief requested by the Applicant, Melissa Rodriguez (hereinafter the "Applicant"), in Calendar No. 3788-21 to permit the enlargement of an existing deck and the construction of a proposed patio, on property located at 8 Wells Lane, Short Hills, New Jersey, known and designated as Block 2111, Lot 19, 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 19, 2021, as to Calendar No. 3788-21 to permit the construction of a proposed patio and the enlargement of an existing deck, on property located at 8 Wells Lane, Short Hills, New Jersey, known and designated as Lot 19, Block 2111, 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 19, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel, and together with Thomas Singer, the Applicant's Licensed Architect and Planner, provided sworn testimony in support of the application. Xiaolou Yuan and Zhiyuan Wang, 8 Wyndham Road, provided sworn testimony in opposition to the application.

2. The Applicant and her husband are the owners of the subject property, which is located in the R-4 zone district. The Applicant proposes to enlarge the existing 117 square foot deck to 289 square feet (17 feet by 17 feet), and to construct the proposed patio, measuring 14 feet by 14.3 feet.

3. The subject property contains a single family residence, and is an undersized lot for the R-4 zone, as it consists of a lot area of 14,753 square feet where 20,000 square feet is the required minimum lot area, and a lot depth of 109.2 feet where 125 feet is the required minimum lot depth. Beyond its condition as an undersized lot for the R-4 zone district, the subject property also contains two additional nonconforming conditions pertaining to the Township Zoning Ordinance for the R-4 zone: (a) a minimum side yard setback of 22 feet for a building over 18 feet in height is required, and the existing building (over 18 feet in height) has a side yard setback of 19.4 feet; (b) a minimum rear yard unoccupied area of 25% is required, and the subject property has an existing rear yard unoccupied area of 21.39%.

4. The Applicant's proposal would result in a rear yard unoccupied area of 19.6% where 25% is the required minimum, and an accessory structure to be located in a side yard

where accessory structures are only permitted in a rear yard. Therefore, variance relief is required.

5. The Board received and considered the following document submitted with the application materials:

- A. Google Maps Image of the subject property, which was admitted into evidence as Exhibit A-1, on April 19, 2021;

6. The Applicant testified that the existing deck is in disrepair and unsafe to use in its current condition. The Applicant desires to repair and expand the deck, and construct the proposed patio, so that the Applicant can engage in event planning with others for the Applicant's non-profit organization, Missy's Miracles, in a socially-distanced outdoor environment during the current State of Emergency caused by the pandemic. The Applicant clarified that no events sponsored by Missy's Miracles would take place on the subject property. The proposed patio would be located in the area where an existing swing set was recently removed from the property.

7. At the April 19, 2021 hearing, the Applicant's Architect and Planner, Thomas Singer, testified that there was no opportunity to construct the proposed patio in the rear yard due to the shape of the lot and the location of the existing residence. Mr. Singer testified that these existing conditions and restrictions imposed by the undersized lot, as well as additional topographical features of the property, precluded the Applicant from constructing conforming accessory structures such as a deck and patio on their property, and that decks and patios are common in the neighborhood and contemplated by the Township Zoning Ordinance. Mr. Singer further testified that only the proposed patio would be located in the side yard of the residence, with both the existing deck and the proposed deck expansion occupying the rear yard. Mr. Singer believed that neither the proposed deck expansion nor the proposed patio could be located elsewhere on the property without further violating the Township Zoning Ordinance. Mr. Singer stated that the proposal would result in a reduction of 95 square feet of rear yard unoccupied area from current conditions. Namely, the existing rear yard unoccupied area is 2,295 square feet, and the proposed rear yard unoccupied area would be 2,117 square feet. Mr. Singer testified that the proposed deck expansion would extend 10.7 feet to the rear from the deck's current location, and the proposed patio would be set back 81 feet from Wells Lane. Mr. Singer informed the Board that the proposed patio would be located 58 feet from the nearest home, and that the proposed deck expansion would be located 48 feet from the nearest home. While Mr. Singer testified that other homes in the subject neighborhood contain decks and patios, he did not identify a patio located within a property's side yard.

8. During the course of the hearing, Xiaolou Yuan and Zhiyuan Wang, 8 Wyndham Road, questioned whether the application included a fence sufficient to screen the proposed patio and deck from view; inquired about the height and location of any proposed fence; inquired whether the Applicant would consider planting evergreens to further screen the proposed patio and deck; expressed concerns about the patio and deck's visibility from their property due to the

Applicant's yard being 10 feet higher in elevation than Mrs. Yuan and Mr. Wang's yard; and expressed privacy concerns.

9. During the course of the hearing, and in response to the concerns expressed by Mrs. Yuan, Mr. Wang, and the Board, the Applicant confirmed that there is an existing metal fence in the rear yard of the property, and the Applicant agreed to install an additional 6 foot tall cedar fence for privacy along the entire back side of the Applicant's property.

10. N.J.S.A. 40:55D-70(c)(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[.]

11. 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."

12. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for rear yard unoccupied area only to the extent so to permit the proposed expansion of the existing deck. The need for rear yard unoccupied area variance relief pertaining to the proposed expansion of the existing deck is related to several existing conditions affecting the property, dwelling and other site improvements, including the shape, shallowness and size of the lot and the location of the existing residence. The Board finds these conditions to be exceptional circumstances affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant. Although the proposed deck expansion requires a variance as set forth above, the deviation from the applicable requirement is modest in light of the inability to relocate the existing deck elsewhere on the property without requiring the same or additional variance relief, or without undermining the intent and purpose of the Township Zoning Ordinance. The proposed deck expansion will only result in a 1.73% decrease below the already-existing rear yard unoccupied area. The Board concludes that the deck expansion is in connection with needed repairs to the existing deck and will preserve the character of the subject neighborhood. Any negative impact from this proposed use is negligible, mitigated by the aforementioned 6 foot tall cedar fence to be installed for privacy along the entire back side of the Applicant's property, and does not constitute a substantial detriment. Therefore, for all the reasons set forth above, the Board concludes that the granting of the variance relief

requested relating to the rear yard unoccupied area to the extent caused by the proposed deck expansion 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.

13. The Board finds, however, that the Applicant has not satisfied the statutory negative criteria as required by N.J.S.A. 40:55D-70c(1) to permit the proposed patio in a side yard. The patio will be located only 58 feet from the nearest adjacent home, and the rear windows of the nearest adjacent home directly face the proposed patio area. The Applicant also failed to explain why it was not possible to locate the proposed patio outside the side yard of the property. The Board finds that the negative impacts associated with the installation and use of the proposed patio is a substantial detriment to the surrounding residential neighborhood and nearby properties, especially given its location in close proximity to the Applicant's neighbor's property, the subject property's existing elevation above the neighbor's property, and the proposed size of the proposed patio. The Board finds that the Applicant failed to meet her burden of proof to demonstrate that the variance relief requested could be granted without substantially impairing the intent and the purpose of the Township Master Plan and Zoning Ordinance. Therefore, for all the reasons stated above, the Board concludes that the granting of the accessory side yard variance relief relating to the proposed patio requested herein cannot be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township's Master Plan and Zoning Ordinance. With the elimination of the proposed patio due to the Applicant's failure to meet her burden of proof for variance relief pertaining to the location of the proposed patio in the side yard of the property, the Applicant's proposal results in a rear yard unoccupied area of 20.27% (instead of 19.66% with the proposed patio) where 25% is the required minimum unoccupied rear yard area.

**NOW, THEREFORE, BE IT RESOLVED** on this 17th day of May, 2021 that the variance relief requested by the Applicant to construct a proposed patio in a side yard where accessory structures are not permitted in a side yard, denied by this Board at its meeting of April 19, 2021, and the variance relief requested by the Applicant to expand an existing deck resulting in a rear yard unoccupied area of 20.27% where 25% is the required minimum, approved by this Board at its meeting of April 19, 2021, for the property at 8 Wells Lane, Short Hills, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall install a 6 foot cedar privacy fence along the entirety of the property's rear lot line as per the Applicant's testimony at the April 19, 2021 Board meeting.
2. The Applicant shall be bound to comply with the application materials, plans, and representations made before this Board by the Applicant at the public hearing, as further set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

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

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

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 17th day of May, 2021.

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**Cal#3789-21, Jordan Bettman, 1 Minnisink Road, Short Hills**

Upon a motion made by Wolfgang Tsoutsouris, seconded by Jyoti Sharma, and with a roll-call as follows:

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

the following memorializing resolution was adopted:

**JORDAN BETTMAN  
BLOCK 3104, LOT 15**

**CAL. NO. 3789-21  
MAY 17, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Jordan Bettman (hereinafter the “Applicant”), in Calendar No. 3789-21 to permit the construction of a swimming pool and pool house on property located at 1 Minnisink Road, Short Hills, New Jersey, and designated as Lot 15, Block 3104, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on April 19, 2021 as to Calendar No. 3789-21 to permit the construction of a swimming pool and pool house on property located at 1 Minnisink Road, Short Hills, New Jersey, known and designated as Lot 15, Block 3104, on the tax map of the Township of Millburn; and

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

1. At the April 19, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel, and together with John James, the Applicant's Architect, and Rich Keller, the Applicant's Engineer and Planner, testified in support of the application. Gregg Grunstra, 2 Minnisink Road, Short Hills, testified in opposition to the application. All witnesses were sworn prior to giving testimony.

2. The Applicant and his wife are the owners of the subject property, which is located in the R-3 zone district. The Applicant proposes to construct a new swimming pool and pool house, and to install a fence to enclose the proposed swimming pool.

3. The subject property, containing a detached single family residence, constitutes a corner lot per the Township Zoning Ordinance, and is located at the intersection of Minnisink Road and Highland Avenue. The Township Zoning Ordinance requirements for the R-3 zone include a minimum 80 foot setback from a front lot line for accessory uses on a corner lot, a maximum accessory use coverage of 7%, and do not allow fences in front yards. The proposed swimming pool and pool house would result in required variance relief to permit a 75.3 foot front yard setback for the proposed accessory structures on a corner lot where 80 feet is required, an 8.5% maximum accessory structure coverage where 7% is the maximum allowed, and to install a fence in the front yard where fences are prohibited from being in the front yard.

4. The subject property received previous approval from the Township Historic Preservation Committee ("HPC") for the application, with the condition that the terraces in the front of the subject property shall be maintained.

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

- A. Pool and Pool House Site Plans prepared by John James, Architect, consisting of three (3) sheets identified as T-02, P-01, and P-02;
- B. Topographic Survey, prepared by Casey & Keller, Inc., consisting of one (1) sheet identified as Dwg. No. 1, dated August 6, 2020;
- C. Ten (10) Photographs, taken in February and March of 2021, which were admitted into evidence collectively as Exhibit A-1, on April 19, 2021;
- D. Aerial Photograph, taken by Casey & Keller, Inc., which was admitted into evidence as Exhibit A-2, on April 19, 2021.

6. The Applicant's Architect, John James, testified that the Applicant proposes to construct a new pool and pool house. Mr. James also testified that the subject property was



located on a corner lot, and there exists a large grassy area on the subject property adjacent to Minnisink Road. Mr. James testified that the application proposes to install a black aluminum fence within the front yard setback, and that the Applicant will plant 4 foot high evergreen shrubs per the submitted plans to provide screening for the proposed pool and pool house. Mr. James further testified that the proposed pool house was designed to be half-opened and half-enclosed, and the proposed pool house will also contain a fireplace with a window above. Mr. James testified that the proposed pool house would be winterized and that pool equipment would be located inside the pool house.

7. Mr. James testified that the application also proposed to install new bluestone steps, a small arbor with a decorative fence, and an evergreen hedge. Mr. James testified that the subject property suffered a hardship due to the property being both a corner lot and shaped as a trapezoid. Mr. James testified that a raised flat area in the back of the property was chosen as the perfect location for the proposed pool, and that the pool house will be set back as far as possible from the street. Mr. James also testified that existing, mature trees on the property will not be impacted by the proposed development, and that the proposed pool and pool house will be screened with landscaping. Mr. James testified that even with the proposed construction of the pool and the pool house, the property will still be well under the maximum building coverage and maximum lot coverage permitted in the R-3 zone.

8. Rich Keller, the Applicant's Engineer and Professional Planner, testified that the subject property was an oversized lot for the R-3 zone, as well as a trapezoid shaped lot with a very unique plateau topography. Mr. Keller also testified that there was a hardship created by the geometry of the property as well as by the lawfully existing structures on the property. Mr. Keller also testified that the proposed pool house is appropriate for the property given that the principal residence on the subject property is located a considerable distance from the pool. Further, no adjacent or neighboring homes would be adversely impacted by the proposed development if the application was granted. Mr. Keller testified that there are other pools in the neighborhood, a number of which contain cabanas that are larger than what is proposed in the application. Mr. Keller testified that the floor area ratio ("FAR") was 11.96%, which is less than half of what is permitted in the R-3 zone.

9. Mr. Keller stated that the application meets the hardship requirements of N.J.S.A. 40:55D-70(c)(1) due to the property being a corner lot, the narrowness and shallowness of the lot relative to Minnisink Road, the unique shape of the lot, a unique plateau located on the property, and the location of lawfully existing structures on the property. Mr. Keller also testified that the proposed fence meets the requirements of N.J.S.A. 40:55D-70(c)(2) for variance relief because the fence would be more visible from the street if it was located in a conforming location, which would also require re-grading of the subject property. Mr. Keller testified that the fence was aesthetically pleasing, required around the pool for safety, and that its proposed location advances the general welfare by preserving open space, air and light. Mr. Keller testified that pools and pool houses were typical to the neighborhood, and that the pool and fence proposed in the application would be hidden from view by existing, mature landscaping. Mr. Keller concluded by testifying that the pool house was set back as much as possible and was mostly "open air."

10. Gregg Gunstra, 2 Minnisink Road, testified that he did not receive formal notice for this application. Mr. Gunstra also testified that he had previously raised concerns with the HPC about the application, and believes the proposed additions will be visible from Minnisink Road. Mr. Gunstra did not believe the proposed pool house was “tucked” into the rear of the subject property or otherwise concealed from view as was described by Mr. Keller, and believed the proposed pool would be visible from his home given that his front stoop is 350 feet to the closest part of the proposed pool. Mr. Gunstra believed the proposed fence did not fit the aesthetics of Short Hills, and requested that the Applicant install more plantings than those proposed to be included within the four foot hedgerow intended to screen the proposed pool.

11. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70(c)(1) and (c)(2), and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed pool, pool house and fence. The need for variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. The subject property is a corner lot and there is no location on the subject property where either the pool or the pool house can be located that would not result in the same or additional variance relief. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant. Although the proposed patio requires variance relief to permit a 75.3 foot setback from the front lot line where 80 feet is the required minimum, an 8.6% accessory coverage where 7% is the maximum allowed, and to locate a fence in the front yard where fences are prohibited from being located in the front yard, the deviation from the requirements are modest in light of the inability to relocate the proposed pool, pool house and fence elsewhere on the property without requiring the same or additional variance relief, or without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. The proposed pool and pool house will be adequately screened from view from neighboring properties by both new and existing plantings. As for the proposed fence, variance relief can be justified under N.J.S.A. 40:55D-70(c)(2) as numerous purposes of the MLUL under 40:55D-2 are advanced by the application – namely, subsections a (promoting the general welfare), c (providing adequate light, air and open space), g (providing sufficient space for residential use) and i (to promote a desirable visual environment).

12. The Board concludes that any negative impact on the surrounding neighbors from the proposed minor deviations is negligible and far from constituting a substantial detriment, especially given the location of the proposed improvements and the existence of other pools, pool houses and fencing in the neighborhood. The benefits of the fence deviation also substantially outweigh any detriment. It is further noted that the Applicant received approval for the proposed improvements from the Township’s Historic Preservation Committee on or about February 4, 2021. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested herein under N.J.S.A. 40:55D-70(c)(1) and (c)(2) 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 17th day of May, 2021 that the variance relief requested by the Applicant to construct a pool and pool house resulting in a 75.3 foot side yard setback for the proposed accessory structures on a corner lot, an 8.5% maximum accessory coverage, and to install a fence in the front yard, on property located at 1 Minnisink Road, Short Hills, granted by this Board at its meeting of April 19, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall abide by the representations made at the April 19, 2021 Board meeting as to screening the proposed pool and pool house from view from the street and surrounding properties.
2. The Applicant shall insure that all new plantings be maintained in order to screen the view of the pool and the pool house from the street and surrounding properties.
3. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
4. The Applicant shall be bound to comply with the representations made before this Board by the Applicant 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 remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
6. 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 17th day of May, 2021.

#### **APPLICATIONS**

**CAL#3792-21, SCOTT DORFMAN, 19 RANDALL DRIVE, SHORT HILLS**

\*Craig Ploetner recused and left the meeting room.

The applicant did not forward the certified mail slips or the newspaper notice for verification by the Board Secretary. As a result the matter could not go forward.

The matter was carried to July 19, 2021.

\*Craig Ploetner returned to the meeting room.

**CAL#3794-21, 90 FARLEY ROAD LLC, 90 FARLEY ROAD, SHORT HILLS**

Bart Sheehan, Attorney for the applicant, stated his appearance. He gave a brief history of the subject property, which was the result of a subdivision granted in 2015.

The applicants would like to construct a new single family dwelling on the property. Proposal is in violation of:

- 608.5 – Steep slope disturbance in excess of 1000 SF
- 608.71 – Distance between retaining walls
- 609.6 – Front yard wall height

Board Attorney, Robert Simon spoke to prior resolutions pertaining to the property. He indicated that the resolution references reports and conditions that the then applicant agreed to comply with. Mr. Sheehan was familiar with the prior conditions and indicated that all conditions will be complied with.

Richard Keller, P. E., P. P., Kunal & Jayna Patel, appeared and were sworn. Mr. Keller's credentials were presented and accepted by the Board.

Entered as A-1: Photoboard of 6 photos

Mr. Keller stated that the subject property was part of a 2.55 acre fully developed property containing a single-family dwelling. In 2017, the dwelling was demolished as part of a 2-lot subdivision. The subject property is the northerly of the 2 lots created and has a lot area of 1.058 acres.

The building envelope for any proposed structure includes the previously disturbed front yard area which contains a large area of slopes in excess of 20%. Some of the steep slope area appear to have been created when the original and surrounding properties were developed. The subject property is also irregularly shaped due to the angle of the street relative to the property's sidelines. The chosen placement of the dwelling on the lot is largely to provide for a rear yard area that will be able to accommodate future accessory structures while respecting the required 25% rear yard unoccupied. The applicant is seeking to disturb 6,268 SF of 23% slope where the ordinance permits disturbance of only 1000 SF, regardless of the lot size. Therefore, variance relief to disturb 5,268 SF is required.

Entered as A-2: foam cut-out reflecting steep slopes

Mr. Keller stated that the slope of the area being disturbed is 23%, slightly over the 20% cut-off. The applicant is also seeking relief to allow front yard wall height of 3 feet, where 2 feet

is the maximum permitted. Finally, relief is being requested to allow 3 foot separation between the 4 foot walls, which require a 4 foot separation and to allow for a 4 foot separation between the 6 foot walls, which require a 6 foot separation.

Entered as A-3: tree replacement plan dated 1/29/21

Amy Lawrence asked for clarity on the proposed driveway. Rich Keller stated that Farley Road is a difficult street to park on. The circular driveway proposed works best in a situation like this due to the large front setback and the grade change.

Steve Togher asked what percentage of the lot is in steep slope. Mr. Keller stated that 8,980 SF of the 46,088 SF lot, or 19.5% of the lot is in steep slopes.

Katla Srinath, 61 Joanna Way, appeared and was sworn. She stated that she owns 84 Farley Road, the property adjacent to the subject property, and is supportive of the application. She is happy to see the property being developed as it has been vacant for some time.

Bart Sheehan briefly summarized the application, stating that the property is being developed in such a way so that it has little to no adverse impact on the surrounding properties. Testimony was provided on all issues and he requests a favorable vote.

Overall, Board members were supportive of the application and felt the proposal is a good addition to the area.

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

Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Amy Lawrence – yes  
Joseph Steinberg – yes

Cal#3794-21, 90 Farley Road, LLC, 90 Farley Road, was **APPROVED** with the condition that a stormwater management plan be submitted and a permit obtained from the Township Engineering Department.

**CAL#3796-21, BETH & DEAN KAUFMAN, 367 WYOMING AVENUE, MILLBURN**

Danial Dubinett, Architect, Beth & Dean Kaufman, appeared and were sworn. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

606.2e2b – Lot coverage

606.2e1e1a – Side yard setback  
606.2e1e1b – Addt'l side yard setback  
606.2e1f – Combined side yard setback  
609.1d – AC unit location

Beth Kaufman gave a brief history of their property and the proposed construction they are proposing.

Danial Dubinett's credentials were presented and accepted by the Board. He gave a brief description of the applicants' proposal.

Entered as A-1: series of 13 slides

Mr. Dubinett spoke to slide #1 which is a tax map. The property is in the R-5 zone and is undersized for the zone as it relates to lot width. Mr. Dubinett spoke to slide #2 which is the marked-up survey showing the reduced patio size. The applicants are proposing a 72SF addition to their existing patio. The slide also showed the revised Attachment E which references the reduced lot coverage request from 43% to 41.6%. The existing lot coverage is non-conforming due to the existing driveway needed to access the rear garage.

The applicants are also seeking variance relief to allow an AC mini-split condenser unit to be placed in a front yard location. There is a small brick patio behind the existing office area with a barbeque that makes locating the AC unit in this conforming location difficult. This conforming location would also be much more visible to the adjoining property owner.

The proposed addition is above the existing office space on the left side of the dwelling and also requires side yard setback variance relief and combined side yard setback relief. This second floor addition will allow for a master bath and walk in closet. The combined side yard relief condition is existing and will be extended vertically but will not be any closer to the side yard property line. Mr. Dubinett stated that there is no negative impact to the surrounding properties and the relief being requested will afford the applicants the opportunity to modernize their house.

Joseph Steinberg opened questions to the public.

Robert and Jane Brauer, 369 Wyoming Avenue, stated that they are neighbors of the applicants and live on the side of the applicants' home that is being redeveloped. Mr. and Mrs. Bauer questioned the depth of the trim displayed in the conceptual rendering. They also asked about trees covering the condenser and whether the applicants and future residents will adequately cover the condenser in the front yard.

Danial Dubinett stated that the trim is approximately 5-1/2 inches.

Board Attorney, Rob Simon indicated that a condition of approval would be that the AC unit be screened and that condition would run with the property.

Beth Kaufman assured Mr. and Mrs. Brauer that the condenser will be well hidden, as they plan on adding extensive landscaping to the front yard.

Joseph Steinberg opened comments to the public.

Mr. and Mrs. Brauer, 369 Wyoming Avenue, appeared and were sworn. They stated that they strongly favor the proposal of trim details on the applicant's addition, as shown in the conceptual rendering. They requested that the details be included in the final plans, otherwise they would be opposed to the project. They indicated that they are concerned with the proposed placement of the AC unit as it will create noise that will negatively affect them.

The applicants and their Architect, Danial Dubinett, agreed to commit to these trim details and will include them in the final plans.

Steve Togher stated that he is against the condenser in the front and believes there is no reason for it not being in the backyard. He suggested a separate vote be taken for the relief being requested for the location of the condenser. Joy Siegel agreed with Mr. Togher.

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

Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Amy Lawrence – yes  
Chandru Harjani – yes

Cal#3796-21, Beth & Daniel Kaufman, 367 Wyoming Avenue, side yard setback and combined side yard setback variance relief was **APPROVED** with the condition that the Applicants shall include two decorative horizontal trim detail elements along the façade on the South side of the proposed second floor construction facing 369 Wyoming Avenue substantially similar to the trim elements depicted on Slide 4 of Exhibit A-1.

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

Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – no  
Wolfgang Tsoutsouris – yes  
Amy Lawrence – yes

Chandru Harjani – yes

Cal#3796-21, Beth & Daniel Kaufman, 367 Wyoming Avenue, lot coverage variance relief was APPROVED with the condition that the lot coverage is not to exceed 42%.

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

Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Amy Lawrence – yes  
Chandru Harjani – yes

Cal#3796-21, Beth & Daniel Kaufman, AC unit variance relief was **DENIED**.

Joseph Steinberg lost internet access for a period of time and therefore did not vote on the matter.

**CAL#3776-20, NEW CINGULAR WIRELESS, 340 MILLBURN AVENUE, MILLBURN**

\*Rob Simon and Jyoti Sharma recused and left the meeting.

Jonathan Drill took over as Board Attorney for the matter.

Judith Fairweather, applicant's attorney, stated her appearance and called Colleen Connolly, P. E., who appeared and was sworn. Ms. Connolly's credentials were presented and accepted by the Board.

Colleen Connolly spoke to the 8/21/20 site plans, showing the existing site conditions.

A structural analysis of both the existing steel platform and existing building were performed by Ms. Connolly's office. The analysis indicated that both structures are capable of supporting the existing loading as well as the additional loading proposed by AT&T.

An electric telephone, and gas line would be routed up the exterior and will be painted to match the existing building. The antenna placed at the front of the building would be behind a radio-frequency friendly screening wall. This screening wall would have an overall height of 54 feet and 6 inches, an extension of 6 feet and 6 inches above the existing parapet. The area of the AT&T equipment, T-Mobile equipment, and remaining antennas would be combined, and there would be one screening wall placed around that area. The screen walls will match the building in both pattern and color.



She stated that a height variance would be necessary. The allowable height is 40 feet, and the proposed height is 48 feet. The antenna would be 61 feet in height.

The proposed installation would be on land and will be monitored remotely. Technicians would come on a monthly basis for routine system checks.

A generator is also proposed on the roof. The noise associated with this generator would be below the levels mandated by ordinance. It would run for testing once a month during daytime, business hours. It would also comply with GEP standards.

Questions were opened to Board Members.

Joy Siegel asked whether all the dimensions described by Ms. Connolly will be shown using a visual representation. Ms. Connolly said there would be one.

Steve Togher asked why the number of antennas has increased. Ms. Fairweather indicated that this question was addressed at the prior meeting, where it was explained that this increase is a result of changing technology. Ms. Connolly stated that this question is more for the radio-frequency engineer.

Joy Siegel asked if more antennas will be asked to be installed in the future. Ms. Fairweather stated that based on her time working with AT&T, it is very likely that this may happen.

Board Secretary, Eileen Davitt, asked if the applicant no longer needed a variance for the setback. Judy and Ms. Connolly stated that this was due to a change in zoning districts. The applicant's planner would clarify this matter with his testimony.

Chandru Harjani asked if the antennas could be added without further aggravating the height variance. Ms. Connolly's response was that the antennas cannot be put on the sides or façade of the building because then they would be crossing the property lines.

Wolfgang Tsoutsouris asked what the concealment panels are made of. Ms. Connolly said these panels are made from fiberglass, and depending on the manufacturer may have a foam core, allowing the radio-frequency to transmit through them.

Craig Ploetner asked how big the generator being installed is. Ms. Connolly stated that it is an air-cooled, 35 KW generator.

Paul Ricci, P. P., appeared and was sworn. His credentials were presented and accepted by the Board.

Mr. Ricci presented the Millburn Township Zoning Map. He pointed out the site of the applicant being in the B-4 zone, as shown on the map. Eileen Davitt, Zoning Officer, stated that the zoning map being shown was incorrect. She explained that the Rahway River runs adjacent

to the property, making it impossible for the river portion to be in the B-4 zone. As a result, the applicant will still require variance relief for not meeting the required 10 foot setback to the c zone district boundary that abuts the subject property. Board Attorney, Jonathan Drill, encouraged the applicant to consider seeking the setback variance due to zone boundary issue.

Ms. Fairweather stated that they will seek side yard variance relief for the noted encroachment.

Mr. Ricci presented photographic simulations which show how the walls would cover the antennas and minimize the visual impact of their installation.

Mr. Ricci stated that the applicant is seeking a use variance for the expansion of a non-conforming use. A "d" height variance is being requested to allow 56.5 feet where only 40 feet is permitted. Variance relief is requested for more than one principle use of the lot. The applicant will also seek variance relief for distance from the zone boundary to allow 0.8 feet where 10 feet is required. He indicated that this is the best fit and at the right height in order to provide additional service to the area. Mr. Ricci stated that this proposal is the least obtrusive means to provide coverage.

Joy Siegel asked if an architect or designer was consulted for the proposed design of the screen walls. Ms. Connolly stated the designs were made by her office.

Steve Togher asked if this equipment would be associated with the production of 5G technology and if not, will new technology be required to support 5G. As far as Ms. Connolly was aware, the design did take into account 5G technology.

Wolfgang Tsoutsouris asked if any alternative screening design is possible. Ms. Connolly stated that an additional trim or molding can be added, but otherwise is the optimal design solution.

Joy Siegel felt that this design is not suitable for this building.

The matter was carried to June 21, 2021.

**BUSINESS**

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

**ADJOURNMENT**

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

Eileen Davitt  
Board Secretary

Motion: WT  
Second: JSi  
Date Adopted: 7/19/21