

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
June 6, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 6, 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  
Joseph Steinberg  
Steve Togher  
Wolfgang Tsoutsouris  
Chandru Harjani  
Ashley Avigdor  
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 May 16, 2022, was made by Steve Togher, seconded by Ashley Avigdor, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3852-21, Ashish Vats & Neha Krishan, 10 Stewart 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  
Craig Ploetner – yes

the following memorializing resolution was adopted:

**ASHISH VATS & NEHA KRISHAN  
BLOCK 2201, LOT 7**

**CAL. NO. 3852-21  
JUNE 6, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the applicants, Ashish Vats and Neha Krishan (hereinafter the “Applicants”), in Calendar No. 3852-21, to permit the construction of certain outdoor amenities, including an 800 square foot pool and a 64 square foot spa, a patio, fencing and landscaping, on property located at 10 Stewart Road, Short Hills, New Jersey, and designated as Lot 7, Block 2201, on the Official 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 and May 2, 2022, as to Calendar No. 3852-21 to permit the construction of certain outdoor amenities, including an 800 square foot pool and a 64 square foot spa, a patio, fencing and landscaping, on property located at 10 Stewart Road, Short Hills, New Jersey, and designated as Lot 7, Block 2201, 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 both the April 4 and May 2, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared with Samantha Alfonso, Esq., of Dempsey, Dempsey & Sheehan, and together with Richard Nusser, the Applicants’ Engineer and Planner, 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-3 Zone District (the “R-3 Zone”). The subject property is a “flag-lot”, and therefore does not have the typical side and rear yards one would typically see within the Township.

3. The proposed construction would result in an accessory structure located in a side-yard where same may only be located within a rear yard; pool equipment being stored in the front yard with a setback 24 feet, where accessory structures in a front yard must be set back a minimum of 36 feet; and a total accessory coverage of 59.2%, where a maximum total accessory coverage of 20% is permitted. Therefore, variance relief is required.

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

a. Coverage Calculations, prepared by Richard Nusser, P.E., P.P., dated April 29, 2022, introduced into evidence as Exhibit A-1, on May 2, 2022.

5. Both the Applicants and Richard Nussar, the Applicants' Engineer and Planner, testified that the subject property is very uniquely shaped, and combined with the positioning of the existing single-family dwelling creates a hardship for the Applicants. Namely, there is almost no potential occupancy/use of the property's rear yard as defined by the Township Ordinance. The property is further constrained by its sloping topography which slopes upward from the front lot line to the rear lot line by approximately 20 feet. Mr. Nussar testified that the variance relief requested as part of the Applicants' proposal does not create any negative impacts for the other properties in the subject neighborhood. Mr. Nussar also stated that the proposal is for an average sized pool and an average sized patio, both of which are consistent with what is seen throughout the neighborhood.

6. The Applicants testified that there is no other place to locate the proposed improvements, as the location of the dwelling makes it "nearly" impossible to locate same anywhere else on the subject property. The Applicants stated that the area behind the house, which is technically a side yard, is very private and there will not be any detriment to the neighbors. They believe the surrounding residential neighborhood contains at least four pools.

7. N.J.S.A. 40:55D-70c(1) states:  
Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

8. N.J.S.A. 40:55D-70 further states "[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance" (the so-called "negative criteria").

9. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed construction. While accessory structures can only be located in a rear yard in the R-3 Zone, the subject property's unique status as a "flag lot", with no rear yard pursuant to the Township Zoning Ordinance, creates an undue hardship for the Applicants. The need for variance relief is related to this and other existing conditions affecting the property, dwelling and other site improvements, as set forth above and contained in the application materials. The Board finds these conditions to be extraordinary and exceptional

conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

10. The Board further notes that the Applicants received a Certificate of Appropriateness from the Township's Historic Preservation Commission for the proposed construction, with a landscaping plan to be approved by the Township forester as a condition of said approval.

11. The Board concludes that the proposed construction preserves the character of the subject neighborhood given that it will not be visible to neighboring properties, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The proposal to create a functional, family-friendly outdoor living area is reasonable and not overreaching, especially given that the Applicants have no other location alternatives for the proposed improvements. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6<sup>th</sup> day of June, 2022, that the variance relief requested by the Applicants to permit the construction of certain outdoor amenities, including an 800 square foot pool and 64 square foot spa, a patio, fencing and landscaping, on property located at 10 Stewart Road, Short Hills, New Jersey, granted by this Board at its meeting of May 2, 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 bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and at the public hearing, and as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

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

4. The Applicants shall 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 6<sup>th</sup> day of June, 2022.

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**Cal#3856-22, Wen-Shing Chou & Wei Hung Chen, 58 Pine Street, Millburn**

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

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

the following memorializing resolution was adopted:

**WEN-SHING CHOU & WEI HUNG CHEN  
BLOCK 207, LOT 11**

**CAL. NO. 3856-22  
JUNE 6, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the applicants, Wen-Shing Chou and Wei Hung Chen (hereinafter the “Applicants”), in Calendar No. 3856-22, to permit the construction of a second-story addition on an existing single-story dwelling, and a two-story addition in the rear, on property located at 58 Pine Street, Millburn, New Jersey, and designated as Lot 11, Block 207, on the Official 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 May 2, 2022, as to Calendar No. 3856-22, to permit the construction of a second-story addition on an existing single-story dwelling, and a two-story addition in the rear, on property located at 58 Pine Street, Millburn, New Jersey, and designated as Lot 11, Block 207, 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 May 2, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and together with Douglas Miller, the Applicants’ Licensed Architect, and Richard Keller, P.E., P.P., the Applicants’ Engineer and

Professional Planner, 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 in the Township's R-5 Zone District (the "R-5 Zone"). The Applicants' lot is undersized for the R-5 Zone with a number of additional pre-existing non-conformities, including those related to Floor Area Ratio ("FAR"), lot coverage, and other applicable bulk standards.

3. The application requires the following variance relief pursuant to the Township Zoning Ordinances:

a. A side-yard setback deviation (right side) of five feet is proposed (5.55' existing), where a minimum side-yard setback of 12 feet is required;

b. A side-yard setback deviation (right side) of five feet is proposed (5.81' existing), where a minimum side-yard setback of 16 feet is required;

c. A combined side-yard setback deviation of 16.85 feet is proposed (17.4' existing), where a minimum combined side-yard setback of 20.3 feet is required;

d. Building coverage of 19.8% is proposed (17.2% existing), where a maximum permitted building coverage of 18% is permitted;

e. Lot coverage of 45.39% is proposed (43.47% existing), where a maximum lot coverage of 35% is permitted; and

f. Floor Area Ratio ("FAR") of 33.76% is proposed (26.88% existing), where a maximum FAR of 30% is permitted.

4. At the May 2, 2022 hearing, the Board received and considered the following additional documents submitted in support of the application:

a. A photo-board containing photographs of neighboring properties, an aerial photograph of the subject property, and a copy of the relevant section of the Township Tax Map, which contains the subject property, prepared by Douglas Miller, A.I.A., on or about March 20, 2022, introduced into evidence as Exhibit A-1, on May 2, 2022; and

b. An aerial photograph prepared by Richard Keller, P.E., P.P., on or about March 21, 2022 and the relevant section of the Township Tax Map, introduced into evidence as Exhibit A-2, on May 2, 2022.

5. Both the Applicants and Douglas Miller, A.I.A, the Applicants' architect, testified that the proposed construction is intended to modernize the subject residence while increasing its

functionality, and that the proposed construction was designed to have the subject residence be similar in appearance to other residences in the subject neighborhood.

6. Mr. Miller testified that the proposal is for a “modest” addition, which will include a new master bedroom and bathroom, necessary to accommodate the needs of a growing family. Mr. Miller stated that the Applicants’ proposal calls for a six-foot, nine-inch “bump-out” of the existing single-family dwelling to create additional interior space, and that the Applicants have no other option to expand the dwelling without the need for variance relief.

7. Mr. Miller testified that even with the proposed modifications and/or additions to the existing single-family dwelling, the dwelling will look exactly the same as viewed from Pine Street. He opined that the proposal will not be out of character with other homes within the subject Pine Street neighborhood.

8. Richard Keller, P.E., P.P., the Applicants’ Engineer and Professional Planner, testified that there are no conforming lots located on Pine Street, with other homes on the street having bulk deficiencies including those relating to side-yard setbacks. Mr. Keller testified that the lot area of the subject property is 45% of what is required, with the depth and width of the lot also being deficient.

9. Mr. Keller stated that the existing dwelling, even with the proposed additions, will be smaller in scale as compared to some of the dwellings on neighboring properties. He testified that the proposed addition will be constructed closest to the Applicants’ driveway, with sufficient distance mitigating any detrimental impacts to the neighboring property adjacent to the driveway.

10. As to the request for FAR relief, Mr. Keller testified that the mass of the addition is proposed to be placed in the rear of the dwelling and the subject property so that it will not create any impact on the surrounding neighborhood. He stated that, with the proposed addition, there will still be a minimum of 21 feet between the subject dwelling and the closest neighboring dwelling, which appears to be generally consistent with the distances between dwellings in the remainder of the neighborhood.

11. Finally, Mr. Keller noted that this is a modest application with a reasonable request for variance relief. He stated that the application was well thought-out, and it will make the single-family dwelling look a bit more contemporary, so to benefit the surrounding neighborhood.

12. 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[.]

13. In a floor area ratio (“FAR”) variance application pursuant to N.J.S.A. 40:55D-70(d)(4), an applicant must demonstrate that the proposed site will accommodate any problems associated with the proposed floor area larger than that permitted by the Zoning Ordinance, so to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).

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 so-called “negative criteria”).

15. The Board finds that the Applicants have also satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(d)(4) for FAR variance relief, and concludes that it is appropriate to grant this variance relief requested by the Applicants to permit the proposed construction. The Board is satisfied that the proposed construction is modest in size and similar to other houses in the subject neighborhood. Although the proposed construction requires FAR variance relief as set forth above, the deviation from the requirements are modest in light of the size of the property and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance. Although the application proposes to increase the FAR by 3.76% (or 249 square feet) above the allowable FAR for the R-5 Zone, the increase is reasonable and can be accommodated by the subject property and will not negatively impact neighboring properties. Additionally, the application proposes no encroachment into the existing front yard setback, and does not materially increase any of the subject property’s other existing nonconforming conditions.

16. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. Specifically, the subject property can accommodate the negligible impact of the application’s proposed construction. The subject property will accommodate any perceived problems associated with the proposed FAR larger than that permitted by the Township Zoning Ordinance, so to establish special reasons. The proposed construction will result in the residence on the subject property remaining similar in size to other residences in the subject neighborhood. The scale and design of the proposed addition is also in keeping with that of neighboring homes and properties.

17. The positive and negative criteria for FAR variance relief have therefore been met by the Applicants. For the reasons stated above, the Board concludes that the granting of the FAR variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

18. The Board further finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials, specifically, the subject property's undersized nature in lot area, width, and depth for the R-5 Zone. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants. The Board further concludes, for all the reasons set forth above, that the granting of C1 variance relief to permit the proposed addition can be accomplished 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 6<sup>th</sup> day of June, 2022, that the variance relief requested by the Applicants to permit the construction of a second-story addition on a single-story dwelling, and a two-story addition in the rear, on property located at 58 Pine Street, Millburn, New Jersey, granted by this Board at its meeting of May 2, 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 bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and at the public hearing, and as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall 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 6<sup>th</sup> day of June, 2022.

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**Cal#3861-22, Dennis Hickey, 93 Slope Drive, Millburn**

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

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

the following memorializing resolution was adopted:

**DENNIS HICKEY  
BLOCK 3101, LOT 7**

**CAL. NO. 3861-22  
JUNE 6, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the applicant, Dennis Hickey (hereinafter the “Applicant”), in Calendar No. 3861-22 to permit the expansion of an existing patio in both a side yard and front yard, and the construction of a new outdoor kitchen, pergola and hot tub, on property located at 93 Slope Drive, Millburn, New Jersey, and designated as Lot 7, Block 3101, on the Official 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 May 2, 2022, as to Calendar No. 3861-22 to permit the expansion of an existing patio in both a side yard and front yard, and the construction of a new outdoor kitchen, pergola and hot tub, on property located at 93 Slope Drive, Millburn, New Jersey, and designated as Lot 7, Block 3101, 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 May 2, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared with counsel, Anthony Prieto, Esq., and together with Anthony Gallerano, P.E., P.P., the Applicants’ Engineer and Professional Planner, provided sworn testimony in support of the application. There was no public opposition to the application.
2. The Applicant is the owner of the subject property, which contains a single-family residence in the Township’s R-3 Zone District (the “R-3 Zone”). The subject property is a “corner lot” pursuant to the Township Zoning Ordinance, and therefore has two front yards as

defined in the Township Zoning Ordinance. The Applicant proposes to expand an existing patio in both a required side yard and front yard, and to construct a new outdoor kitchen, pergola and hot tub in a side yard of the Oxford Drive-facing portion of the residence, which is technically located in the area that would be considered the front yard setback for Oxford Drive.

3. The proposed construction would result in an accessory structure located within 80 feet of a front yard setback for a corner lot (17.2 feet from Oxford Drive and 10.3 feet from Slope Drive), where accessory structures are not permitted to be located; and an accessory structure located within 12 feet of a side yard setback (5.6 feet for the patio and 3.7 feet for the pergola). Therefore, variance relief is required.

4. Both the Applicant and Anthony Gallerano, P.E., P.P., the Applicant's Engineer and Planner, testified that the subject property is a slightly undersized lot, located in a manner that constitutes a "corner lot" facing both Slope Drive and Oxford Drive. He noted that the pergola will only be seven to eight feet in height above the patio. Mr. Gallerano stated that the proposed construction would be sufficiently screened by a combination of proposed plantings (evergreen trees planted three feet above the root ball) and existing mature evergreen trees, and that decorative elements of the proposal would match the decorative elements of the subject residence that are visually similar to existing residences and structures in the subject neighborhood.

5. Mr. Gallerano testified further that not only is this a "corner lot", but there is limited area available behind the residence for any improvements. He stated that the orientation of the dwelling creates this hardship limiting the Applicant's ability to improve the subject property in conformance with the Township Ordinance.

6. Mr. Gallerano testified that the Applicant's proposal meets special reason (g) under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL"), stating that there is sufficient space in appropriate locations for residential use on the Property, and that the proposal is a logical use of said space. Mr. Gallerano stated that in his opinion, "no one would be disturbed on the other side of the property." He stated that this is a clear hardship, as this is a "tight" property based on the existing structure.

7. N.J.S.A. 40:55D-70c(1) states:  
Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

8. N.J.S.A. 40:55D-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.

9. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance” (the so-called “negative criteria”).

10. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed construction. While accessory structures can only be located in a rear yard in the R-3 Zone, the subject property’s status as a “corner lot”, with two front yards pursuant to the Township Zoning Ordinance, creates an undue hardship for the Applicant when considering the existing conditions affecting the property, dwelling and other site improvements, as set forth above and contained in the application materials. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant.

11. Although the proposed construction requires variance relief to permit an accessory structure located in a front yard, where accessory structures are not permitted to be located, the deviations from the requirements are appropriate given the aforementioned “corner lot” status of the subject property and the location of the existing home. Accordingly, it appears the Applicant is using the available space on the subject property in a logical manner. The existing and proposed landscaping will also provide an effective screen and buffer to adjacent residential properties.

12. The Board further finds that, pursuant to N.J.S.A. 40:55D-70c(2), and the positive criteria for meeting same, the Applicant’s proposal meets the special reasons set forth in the MLUL to grant the requested variance relief.

13. The Board concludes that the proposed construction preserves the character of the subject neighborhood given that it will not be visible to neighboring properties, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. Therefore, the positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to both N.J.S.A. 40:55D-70c(1) and c(2). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6<sup>th</sup> day of June, 2022, that the variance relief requested by the Applicant to permit the expansion of an existing patio in a side yard and front yard, the construction of a new outdoor kitchen, as well as a new pergola with a

hot tub in a side yard, on property located at 93 Slope Drive, Millburn, New Jersey, granted by this Board at its meeting of May 2, 2022, 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 evergreen trees to provide screening for the proposed construction at a height of three feet above the root ball at the time of planting.
2. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professional and at the public hearing, and 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 Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The Applicant shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 6<sup>th</sup> day of June, 2022.

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**Cal#3863-22, David Williams, 86 Cedar Street, Millburn**

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

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

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the applicant, David Williams (hereinafter the “Applicant”), in Calendar No. 3863-22, to permit the construction of a master bedroom and bathroom suite, along with a pool and terrace in the rear yard, on property located at 86 Cedar Street, Millburn, New Jersey, and designated as Lot 17, Block 302, on the Official 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 May 2, 2022, as to Calendar No. 3863-22 to permit the construction of a master bedroom and bathroom suite, along with a pool and terrace in the rear yard, on property located at 86 Cedar Street, Millburn, New Jersey, and designated as Lot 17, Block 302, 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 May 2, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel, and together with John James, A.I.A., the Applicant’s Licensed Architect, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicant is the owner of the subject property, which contains a single-family residence located in the Township’s R-5 Zone District (the “R-5 Zone”) and within the Wyoming historic district. The subject property currently contains existing deviations from the Township Ordinance as to side yard setback requirements which will be intensified with the Applicant’s proposal.

3. The application requires the following variance relief pursuant to the Township Zoning Ordinance:

a. A side-yard setback (right side – over 18 feet) of 10.7 feet is existing and proposed (5.55’ existing), where a minimum side-yard setback of 13.9 feet is required;

b. A side-yard setback (left side – over 18 feet) of 11.04 feet is existing and proposed, where a minimum side-yard setback of 12.83 feet is required;

c. A height of 33.75 feet is existing and proposed, where the maximum permitted height is 32 feet.

4. The Applicant and John James, A.I.A., the Applicant's Licensed Architect, testified that the subject property constitutes an undersized lot (10,000 square feet vs. 14,500 square feet required) with deficient lot width. Mr. James stated that the proposed construction would add a new master bedroom and bathroom, with a bathroom dormer on the third floor, and a gable on the second floor. He testified further that the new construction would be aligned with the existing side yards of the existing house. The new second floor addition will maintain the existing non-conforming side yard setbacks. If the subject property had a standard lot width of 75 feet, the existing and proposed side yard setbacks would be compliant.

5. Mr. James noted that the proposed construction will be consistent with the adjacent properties, and that the proposed design scheme was reviewed and approved by the Township's Historic Preservation Commission.

6. 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[.]

7. 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").

8. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed construction. While the current conditions of the Applicant's property exceed the Township's Zoning Ordinance standards, the subject property is an undersized and exceptionally narrow lot, and the proposal will maintain and not exacerbate said existing zoning deviations.

9. Although the proposed construction requires variance relief to permit the proposed improvements, the deviations from the requirements are appropriate given the aforementioned "undersized lot" and nonconforming status of the subject property pursuant to the Township Zoning Ordinance. The proposed construction is thoughtful and shows moderation and restraint when compared to the size and design of other homes in the subject neighborhood.

10. The Board concludes that the proposed construction preserves the character of the subject neighborhood, and that any negative impact from the proposed improvements is

negligible and not a substantial detriment. The positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6<sup>th</sup> day of June, 2022, that the variance relief requested by the Applicant to permit the construction of a master bedroom and bathroom suite, along with a pool and terrace in the rear yard, on property located at 86 Cedar Street, Millburn, New Jersey, and designated as Lot 17, Block 302, on the Official Tax Map of the Township of Millburn, New Jersey, granted by this Board at its meeting of May 2, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professional and 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.
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 6<sup>th</sup> day of June, 2022.

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**Cal#3864-22, Srujana Adusumilli & Tarun Kothuri, 2 North Brook Drive, Short Hills**

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

Jyoti Sharma – yes

Steve Togher – yes  
Chandru Harjani – yes  
Craig Ploetner – yes

the following memorializing resolution was adopted:

**SRUJANA ADUSUMILLI & TARUN KOTHURI  
BLOCK 4204, LOT 15**

**CAL. NO. 3864-22  
JUNE 6, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the Applicants, Srujana Adusumilli and Tarun Kothuri (hereinafter the “Applicants”), in Calendar No. 3864-22 to permit the construction of an 80 foot long, 6 foot high white vinyl fence, along South Orange Avenue, on property located at 2 North Brook Drive, Short Hills, New Jersey, and designated as Lot 15, Block 4204, on the Official 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 May 2, 2022, as to Calendar No. 3864-22 to permit the construction of an 80 foot long, 6 foot high white vinyl fence, along South Orange Avenue, on property located at 2 North Brook Drive, Short Hills, New Jersey, and designated as Lot 15, Block 4204, 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 May 2, 2022 hearing, the application and service of notice were found to be in order. The Applicant, Tarun Kothuri, 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-5 Zone District (the “R-5 Zone”). The subject property is bound by roads on three sides. The Applicants propose to construct a six-foot tall fence along the South Orange Avenue side of the residence, where a fence with a maximum height of four-feet is permitted pursuant to the Township Zoning Ordinance. Therefore, variance relief is required.

3. Mr. Kothuri testified that the Applicants desire to install a six-foot fence along South Orange Avenue, a County roadway four lanes wide with a speed limit of 50 miles per hour. Mr. Kothuri testified that the proposed fence would be similar in appearance to the fences on other properties along the same roadway in the subject neighborhood. Mr. Kothuri also stated that the Applicants propose to plant evergreen trees, four to six feet tall at planting, along the side of the fence closer to the Applicants’ home, for additional screening. He testified further that the fence installation will enhance safety and security for the Applicants’ family, will dampen

noise coming from the County roadway, and is intended to match the appearance of the other properties in the neighborhood.

4. Based on questions from Board members, the Applicants agreed to install a wooden fence (natural wood tone) in lieu of the originally proposed white vinyl fence originally proposed.

5. Kar Palagugu, 7 Lawrence Drive, Short Hills, and Sai Nara, 30 Kilmer Drive, Short Hills, both spoke in support of the Applicants' proposal.

6. 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.

7. 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").

8. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(2), and concludes that the Applicants' proposal satisfies several of the stated purposes of zoning, as set forth in N.J.S.A. 40:55D-2, as the proposal promotes and increases the safety and security on the Applicants' property along a busy stretch of County roadway, as well as providing adequate light, air and open space and an aesthetically pleasing and desirable fence design to match that of the surrounding neighborhood. While fences are permitted at a maximum height of four feet, the subject property's location along a busy stretch of roadway also creates an undue hardship for the Applicants. The need for variance relief is related to the purposes of zoning, as well as other existing conditions affecting the property. The Board concludes that the proposed construction preserves the character of the subject neighborhood given that the proposed fence will match the neighboring properties, and that any negative impact from the proposed improvement is negligible and not a substantial detriment. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(2). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6<sup>th</sup> day of June, 2022, that the variance relief requested by the Applicants to permit the construction a six foot fence where fences are permitted at a maximum height of four feet on property located at 2 North Brook Drive, Short Hills, New Jersey, granted by this Board at its meeting of May 2, 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 plant evergreen trees, four to six feet tall at the time of planting, along the side of the fence closer to the Applicants' home.
2. The Applicants shall install a wooden fence (natural wood tone) in lieu of the originally proposed white vinyl fence originally proposed.
3. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
4. 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.
5. 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.
6. 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 6<sup>th</sup> day of June, 2022.

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**APPLICATIONS**

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

The matter was carried to July 18, 2022.

**CAL#3876-22, DRIOLA LLC, 150 ESSEX STREET, MILLBURN**

Craig Ploetner recused and left the meeting room. Steve Togher assumed the role of Board Chair in his absence.

Anthony Cerciello, attorney for the applicant, stated his appearance. The applicant is seeking approval to provide outdoor dining. The proposal is in violation of:

609.8 – second principal use on site  
609.10 – sign variance

Board Attorney, Robert Simon, alerted Mr. Cerciello of the need for five affirmative votes for the “d” variance being sought, and there are only six voting members. Mr. Cerciello indicated that he was prepared to proceed at this time.

Richard Keller, P.E., P.P., appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Keller reviewed the Master Plan and Downtown Vision Plan. The restaurant, La Pergola, operates on the site. The restaurant’s hours of operation are 11:30 AM - 10:00 PM, Monday through Saturday, and 11:30 AM – 9:00 PM on Sunday. On the busiest days, there are typically 13 employees working at La Pergola. There is no plan to increase the number of employees as part of this application.

The applicant proposes to utilize 2,585 SF of outdoor patio space, located at 150 Essex Street, for outdoor dining in support of their existing restaurant at 120 Essex Street. This outdoor seating area is limited to 62 seats.

In early 2020, the applicant sought to provide outdoor dining, since indoor dining was not viable due to the COVID-19 pandemic. The restaurant has limited frontage along Essex Street, and is not in proximity to Millburn Avenue, where public space for restaurants was made available. The applicant saw the potential to create a safe outdoor dining space and entered into a lease agreement with the owner of the subject lot to renovate the existing garden area for the outdoor dining of their restaurant patrons.

Mr. Keller spoke to the variances being sought. He stated that the site is particularly suited for the proposed outdoor dining given its proximity to the restaurant, the downtown parking deck, and the train station. This is not intended to be supplemental seating, as the kitchen can only handle the 80 seats inside the establishment.

Mr. Keller believes that this applications causes no detriment to the public good or the intent and purpose of the Master Plan and Zoning Ordinance. The space was an underutilized, barren terrace that was often populated by transient persons seeking to be off the surrounding streets. The applicant has revitalized the area and created a meticulously maintained outdoor dining area. It has become a cherished space within the community and has provided an aesthetic improvement to the property.

Wolfgang Tsoutsouris asked if this variance would attach to the property. Rob Simon stated that the variance would in fact run with the land.

Chandru Harjani asked if the owners of 120 Essex Street and 150 Essex Street are the same persons. Anthony Cerciello indicated that they are two different owners.

Jyoti Sharma asked if the applicant will be increasing the restaurant's capacity. Mr. Keller stated that the restaurant will continue taking reservations for in and out, but will not exceed 80 seats in capacity. Jyoti Sharma also asked if there will be additional lighting. Mr. Keller indicated that there will be small holiday lights on the trees, but no other additional lighting.

Chandru Harjani asked how parking will be managed. Mr. Keller stated that there will be no increase to patronage. Therefore, this application does not require a parking variance.

Jafar Tabib, 319 & 327 Millburn Avenue, Millburn, appeared and was sworn. He objected to the applicant's request. Mr. Tabib fears he will lose access to his rear door which is a fire exit. This will have a negative impact on future expansion of his building.

Donald Richards, 93 Wingfoot Drive, Livingston, appeared and was sworn. Mr. Richards spoke to the character of the applicant and his restaurant. He stated that they have gone to great lengths to beautify the outdoor area.

Heather Janquine, 201 Sagamore Road, Millburn, appeared and was sworn. She stated that she is the Director of the Millburn Short Hills Chamber of Commerce. She stated that La Pergola has been an important part of the community and emphasized how much the establishment has revitalized the site.

Mary Joreich, 14 Talbot Court, Short Hills, appeared and was sworn. Ms. Joreich believes the applicant has beautified the site. She feels the garden area has been a great benefit to the community. She does not agree with the objections voiced by some community members.

Belle Bennett Cole, 156 Vintage Lane, Coral Gables, Florida, appeared and was sworn. Ms. Bennett stated that she is the property owner of the subject site and the building was built in 1985. She believes the tenant maintains a beautiful restaurant. Ms. Bennett claims the neighboring property owner does not maintain their property, which has resulted in unwanted odor and vermin.

Anthony Cerciello summarized and respectfully requested a favorable outcome by this Board. Steve Togher highlighted that the terms of prior approval will apply here. Rob Simon reiterated that the use variance will require five affirmative votes. The applicant must demonstrate special reasons and the proposed use must promote the general welfare while not substantially impairing the zone plan/zoning ordinance.

Wolfgang Tsoutsouris is concerned with the easement area and the specified use. He felt it is a great use of the space but would like the use, if granted, be specific as to the language. Ashley Avigdor supported the variance for signs. She feels their sizing was adequate and improves the surrounding area. Amy Lawrence mentioned that the space was created during the COVID-19 pandemic and that this increased the number of customers wanting to dine outside. She believes this would be an asset to the downtown. Chandru Harjani also supports this application. He agrees that outdoor seating is important. He also indicated that there are no

single-family dwellings in the area that would be negatively impacted by the proposed use. Jyoti Sharma also supports this application.

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

Amy Lawrence – yes  
Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Chandru Harjani – yes  
Ashley Avigdor – yes

Cal#3876-22, Driola LLC, 150 Essex Street, Millburn, “c” sign variance relief was **APPROVED.**

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

Amy Lawrence – yes  
Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Chandru Harjani – yes  
Ashley Avigdor – yes

Cal#3876-22, Driola LLC, 150 Essex Street, Millburn, “d” use variance relief was **APPROVED.**

Craig Ploetner returned to the meeting room and resumed as the Board Chair.

**CAL#3867-22, KAPIL DHINGRA, 95 FALMOUTH STREET, SHORT HILLS**

Danial Dubinett, architect, and Kapil Ruchika, appeared and were sworn. Mr. Dubinett’s credentials were presented and accepted by the Board. The applicant proposes a one-story addition. Proposal is in violation of:

606.2e1d – Front yard setback  
606.2e3d – garage facing/opening onto the public street

Entered as Exhibit A-1: 4 slides

The subject property is a corner lot with irregular lot lines. The existing garage is non-conforming as it faces the front. The garage is proposed to be extended 7’, which will require variance relief. The expansion also results in a small triangular area that encroaches into the

required front yard setback. The proposed expansion will have no negative impact on the zone plan or surrounding properties.

Martin Woros, 52 Slayton Drive, asked if storm water management will be addressed as part of the application. Dan Dubinett stated that the Engineering Department will require that adequate storm water management be addressed.

Steve Togher feels that this was not an aggressive application and agrees that it would have no negative impacts on the neighborhood. Amy Lawrence indicated the lot's irregular size and configuration are hardships for the applicant. Craig Ploetner feels this application was a reasonable request.

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

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

Cal#3867-22, Kapil Dhingra, 95 Falmouth Street, Short Hills, was **APPROVED**.

**CAL#3870-22, DEBJIT & INDRANI BANERJEE, 100 CANOE BROOK ROAD, SHORT HILLS**

Tim Klesse, Architect, and Debjit Banerjee, appeared and were sworn. Mr. Klesse's credentials were presented and accepted by the Board. The applicant proposes to construct a one-story rear addition, deck and a small second floor addition and portico. Proposal is in violation of:

606.2e2a – building coverage  
606.2e1f – combined side yard

Entered as Exhibit A-1: presentation of aerial photos

The building coverage of the existing structure is 13.5% (1,980 SF). The applicant is proposing a building coverage of 19.8%, where up 18% is permitted. The proposal is over by 270 SF, which is about the size of the new bedroom.

Combined side yard setback variance relief is also required. The lot is 22' wider than required in the zone, which results in a larger combined side yard setback requirement. The applicant would be agreeable to planting 15 green giants along the left side property line and also along the rear property line.

Amy Lawrence indicated that the combined side yard setback is an existing non-conforming element of the site, which she understands is a hardship. However, she is concerned with the building coverage variance request.

Craig Ploetner stated that because this is an oversized lot, some creative engineering could propose a conforming coverage. Amy Lawrence agreed with this point. Steve Togher felt this house seems to be out of character for the neighborhood. Wolfgang Tsoutsouris felt this site has no significant hardship.

Joseph Steinberg disagreed with some of the comments made by Board members. He believes the overall building coverage is fairly small and that the proposal has great merit. Mr. Steinberg suggested that the applicant reposition the driveway away from the neighbor.

Tim Klesse emphasized that the applicant really wants to add a bedroom. They would agree to reduce the building coverage relief to 150 SF. The applicant amended their request to a 1% variance (125 SF). Board members appreciated the reduction to requested building coverage.

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

Amy Lawrence – yes  
Jyoti Sharma – yes  
Joseph Steinberg – yes  
Steve Togher – no  
Wolfgang Tsoutsouris – yes  
Chandru Harjani – yes  
Craig Ploetner – no

Cal#3870-22, Debjit & Indrani Banerjee, 100 Canoe Brook Road, building coverage variance relief was **APPROVED**.

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

Amy Lawrence – yes  
Jyoti Sharma – yes  
Joseph Steinberg – yes  
Steve Togher – no  
Wolfgang Tsoutsouris – yes  
Chandru Harjani – yes  
Craig Ploetner – yes

Cal#3870-22, Debjit & Indrani Banerjee, 100 Canoe Brook Road, combined side yard setback variance relief was **APPROVED**.

**CAL#3872-22, THOMAS & ANN MCCARTHY, 6 RIVER LANE, MILLBURN**

Christine Miseo, Architect, P.P., and Annie & Thomas McCarthy, appeared and were sworn. Applicants would like to construct an addition to the dwelling. Proposal is in violation of:

- 606.2e1e1b – side yard setback over 18’
- 606.2e1f – combined side yard
- 606.2e2d – floor area ratio
- 606.2e1a – rear yard unoccupied
- 606.2e1d – front yard setback

Christine Miseo’s credentials were presented and accepted by the Board. She gave a brief presentation of the applicant’s proposal.

Entered as Exhibit A-1: five photos

The applicant’s proposal includes a two-story addition to the rear of the dwelling to accommodate a kitchen, mudroom, master suite and a covered porch.

Steve Togher question the requested floor area ratio. Christine Miseo stated that the proposal is not as big as it may seem. Ms. Miseo indicated that this is an undersized lot, with an area of 5,140 SF in a zone where 6,000 SF is the minimum lot size.

Robert Simon stated that a “d” variance requires five affirmative votes. Mr. Simon asked if the site can accommodate problems associated with the deviation.

Steve Togher stated that he has never seen a 17.3% floor area ratio encroachment. He said he understands the needs of the family, but that they perhaps just need a bigger house. Wolfgang Tsoutsouris indicated that this is a very small lot that is typical for this area. He believes the proposal is too much for the lot. Craig Ploetner agrees with other Board members and thought the requests are too excessive.

This matter was carried to July 18, 2022.

**CAL#3873-22, GASTON & KRISTEN HAUPERT, 47 CEDAR STREET, MILLBURN**

Gaston & Kristen Hauptert, and Siro Prisco Tarquinio, Architect, appeared and were sworn. The applicant would like to alter the roof line of the family room area. Proposal is in violation of:

- 606.2e1e1a – side yard setback
- 606.2e1f – combined side yard setback

Kristen Haupert gave a brief description of the proposal. The existing family room has a roof pitch of 2.5 on 12. They are proposing to alter that to 8 on 12. The Historic Preservation Committee has reviewed the project and granted their approval.

Craig Ploetner feels this is a thoughtful proposal. The rest of the Board also supports this application.

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

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

Cal#3873-22, Gaston & Kristen Haupert, 47 Cedar Street, 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 Joseph Steinberg, and carried with a unanimous voice vote. (11:10 PM)

Eileen Davitt  
Board Secretary

Motion:ST  
Second: WT  
Date Adopted: 7/18/22