

Township of Millburn
Minutes of the Zoning Board of Adjustment
June 20, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 20, 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
Wolfgang Tsoutsouris
Ashley Avigdor
Jessica Glatt, Vice Chairwoman
Craig Ploetner, Chairman

Also present:

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

APPROVAL OF MINUTES

There were no minutes to be approved.

MEMORIALIZATIONS

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

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

Amy Lawrence – yes
Jyoti Sharma – yes
Ashley Avigdor – yes
Jessica Glatt – yes
Craig Ploetner – 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 Applicant, Associates 29, LLC c/o Rock Properties (hereinafter the “Applicant”), in Calendar No. 3853-21 to construct and utilize a rooftop deck on an existing, non-conforming, three-story apartment building, on property located at 291 Millburn Avenue, Millburn, New Jersey, and designated as Lot 8, Block 703, 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 16, 2022 as to Calendar No. 3853-21, to permit the construction and utilization of a rooftop deck on an existing, non-conforming, three-story apartment building, on property located at 291 Millburn Avenue, Millburn, New Jersey, and designated as Lot 8, Block 703, 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 16, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared with Andy Cohen, a representative of the Applicant, Steven Azzolini, Esq., the Applicant’s attorney, Alexander Dougherty, M.R.C.P., P.P. and John McDonough, P.P., the Applicant’s Professional Planners, and John Buchholz, A.I.A., the Applicant’s Licensed Architect, who each 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 three-story, non-conforming, residential apartment building, located in the Township’s B-4 Zone District (the “B-4 Zone”). The Applicant proposes to construct and utilize a rooftop deck on a portion of the roof of the building, an accessory use not permitted in the B-4 Zone, and would additionally constitute a prohibited expansion of a pre-existing, non-conforming residential apartment use within the B-4 Zone per the Township Ordinance (the “Ordinance”) since the existing residential apartment building contains residential units located on the first floor. Therefore, use variance relief is required.
3. The Board received and considered the following additional documents submitted in support of the application:
 - A. photographs/depictions of the subject property, consisting of 12 sheets/slides, prepared by John McDonough, P.P., introduced into evidence as Exhibit A-1, on May 16, 2022.

4. John Buchholz, A.I.A., the Applicant's Licensed Architect, testified that the subject property is almost fully developed, with little open or grass space to allow for the construction of an outdoor common space for the tenants' enjoyment. He stated that, due to the limited space, the Applicant proposes a modest, 1,300 square foot rooftop deck for the residents of the 17 apartments. Mr. Buchholz stated that due to cellular antennas and associated equipment located in the middle of the roof of the building, the proposed outdoor deck is to be located close to the rear of the apartment building, within approximately fifteen feet of an adjacent residential apartment building, and facing the train station and a bank. Mr. Buchholz testified that other than the adjacent residential apartment building, the subject property is surrounded by commercial properties.

5. Mr. Buchholz testified that the Applicant intends to install "low" guardrails along the top of the building's parapets, and that the rooftop deck would be illuminated with low wattage string lights, along with an illuminated emergency exit (fire escape) sign. Mr. Buchholz testified that as the rooftop is currently covered in "hot tar", the Applicant proposes to install roof panels that will be insulated to mitigate sound to the residents of the top floor of the building. Mr. Buchholz further testified that neither loudspeakers nor a sound system are proposed to be used as part of the rooftop deck.

6. Mr. Buchholz testified that the rooftop deck area will be "hidden" from Millburn Avenue, and will cover approximately 25% of the rooftop of the building. He stated that the rooftop deck will be able to accommodate 34 people and that any outdoor furniture to be placed within the rooftop deck area will be tied down. No furniture or other layout plan of the proposed rooftop deck was provided to the Board.

7. Andrew Cohen, the Managing Member of the Applicant and a resident of the subject property, testified that at all times the rooftop must remain open and accessible to the residents of the building as a second, or alternate, means of egress from the building in case of an emergency. He testified that there are sidewalk cafes and outdoor eating areas nearby, and that he believes the Applicant's outdoor amenity proposal is comparable in both scope and impact on nearby properties. He testified that any single-family residences in the area are located far away. Mr. Cohen stated that the subject apartment building, consisting of five residential units on each of its three floors plus two basement units, is professionally managed. While he failed to provide the Board with any proposed rules and regulations relating to the proposed use of the rooftop of the building as a deck, he agreed to impose same should the Board act favorably on the subject application.

8. Alexander Dougherty, P.P., the Applicant's Professional Planner, testified as to the current conditions on the subject property, the building, the zone district, and how the proposal is not "expressly permitted" in the zone. He testified that under the heightened standards set forth in the controlling case of Medici, the location of the subject property, as well as the proposed use, is particularly suited for a rooftop deck, as the building residents already have access to same.

9. Mr. Dougherty testified that the Applicant's proposal meets several criteria that espouse the purposes of zoning, as set forth in Section 2 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., including subsections (a), (g), (i), and (m), as the proposal allegedly promotes the preservation of light, air and open space, public socialization, and the efficient use of land. Mr. Dougherty testified that the proposed intensification of a non-permitted use can be reconciled by the fact that the amenity space proposal is of a small scale, and "off of Millburn Avenue". He testified that the only intensification of said non-permitted use will be limited, as only residents (and their guests) will be permitted to use the rooftop deck, as same will not be open to the public.

10. The Board has the power to grant "d(1)" variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." Medici v. BPR Co., 107 N.J. 1 (1987). The benefit to the general welfare from a non-inherently beneficial use is to derive not from the use itself but from the additional development of a site in a location that is particularly suited for the very enterprise proposed. Id. Thus, the standard the Board must employ to determine whether special reasons have been proven is whether the proposed use will promote the general welfare and whether the development of the property is particularly suited for the very use proposed.

11. Similarly, the Board has the power to grant "d(2)" variances to permit expansions of lawfully created pre-existing nonconforming uses pursuant to N.J.S.A. 40:55D-70d(2) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(2)" variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." Burbridge v. Mine Hill Board of Adjustment, 117 N.J. 376 (1990).

12. The Board may not exercise its power to grant a "d(1)" or "d(2)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... 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 purpose of the zone plan and zoning ordinance." As to the zone plan and zoning ordinance, the Medici court held that a "d(1)" variance applicant must prove, and the Board must find by an "enhanced quality of proof", that there will be no substantial impairment. The applicant must "reconcile" the use proposed with the ordinance's omission of the use from those permitted in the zone. Id.

13. The Board finds that the Applicant has not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d(1) or d(2) for the requested use variance relief to permit the proposed rooftop deck. The proposed accessory use is not permitted by Township Ordinance nor is it customarily associated with residential apartment building uses in the Township. The use of the apartment building will be intensified by inviting residents and their guests to engage in outdoor rooftop activities to the detriment of the surrounding properties including a residential apartment building on an adjacent property. Contrary to the testimony presented by the

Applicant's principal, the noise and related impacts from hosting the occasional indoor party (where space is enclosed by walls and ceilings and windows can be closed) are minor compared to permitting gatherings at an outdoor rooftop amenity space with no opportunity for sound mitigation. While the Applicant's professional planner identified various purposes of the MLUL that will allegedly be advanced by the Applicant's proposal, no specific proofs were provided as to how the proposal will provide such alleged benefits to the community, or how the subject property is particularly suited to the proposed accessory use. The Applicant submitted no evidence of how the outdoor space would be used or any associated safety measures; no proposed rules or regulations pertaining to the use; nor any intended layout of outdoor furniture to be used as part of the proposal. The Applicant failed to provide documentary or testimonial evidence to satisfy the statutory criteria that the proposed use should be permitted in this particular case or how any of the alleged "special reasons" are achieved. The current mechanical and antenna installations in the center portion of the roof of the building prevent the rooftop amenity space from being located as far away as possible from adjacent properties. The proposal will intensify the use of the roof of the apartment building to the detriment of other buildings in the subject neighborhood, including the adjacent residential apartment building located approximately 15 feet away, while providing no benefits to the community or the B-4 Zone. Since the existing residential apartment building contains prohibited residential units on the first floor, the number of potential users of the proposed outdoor amenity space would also be greater (by approximately 33%) than if the apartment building was itself a conforming structure with first floor retail space. Particularly suitability of the site to the proposed use has not been demonstrated.

14. The Applicant also failed to satisfy the enhanced quality of proof required by Medici. The Applicant did not "reconcile" the accessory use proposed with the Township Ordinance's omission of the use from those accessory uses permitted in the zone. The Applicant failed to identify other properties in the B-4 Zone, or the Township as a whole, that received similar variance relief in connection with the installation of a rooftop deck, let alone on the top of a three-story, nonconforming residential apartment building.

15. For all the reasons stated above, the Board concludes that the Applicant failed to present sufficient proofs to meet the positive criteria for use variance relief, and failed to demonstrate that the variance relief requested relating to the proposed rooftop deck can be accomplished without substantial detriment to the public good, and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of June, 2022, that the use variance relief requested by the Applicant to permit the construction of a rooftop deck on the top of a three-story, nonconforming building, denied by this Board at its meeting of May 16, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and

exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 20th day of June, 2022.

Cal#3866-22, CJM Place LLC, 9 Slope Drive, Short Hills.

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

- Amy Lawrence – yes
- Jyoti Sharma – yes
- Ashley Avigdor – yes
- Jessica Glatt – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**CJM PLACE, LLC
BLOCK 3304, LOT 11**

**CAL. NO. 3866-22
JUNE 20, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the approval of variance relief requested by the Applicant, CJM PLACE, LLC (hereinafter the “Applicant”), in Calendar No. 3866-22, to permit the construction of a pool, patio and other site improvements, on property located at 9 Slope Drive, Short Hills, New Jersey, and designated as Lot 11, Block 3304, 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 16, 2022, as to Calendar No. 3866-22, to permit the construction of a pool, patio and other site improvements, on property located at 9 Slope Drive, Short Hills, New Jersey, and designated as Lot 11, Block 3304, 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 16, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared with Richard S. Schkolnick, Esq., and together with Mark Gimigliano, P.E., the Applicant’s civil engineer, 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-3 Zone District (the "R-3 Zone"). The subject property currently contains existing deviations from the Township Ordinance, none of which will be intensified with the Applicant's proposal.

3. The proposed construction would result in an impervious lot coverage of 38.3%, where the maximum permitted lot coverage is 35% in the R-3 Zone. Therefore, variance relief is required.

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

- A. Aerial photo exhibit, introduced into evidence as Exhibit A-1, on May 16, 2022; A photo array containing four photographs, introduced into evidence as Exhibit A-2, on May 16, 2022; and
- B. Colorized Grading Plan, introduced into evidence as Exhibit A-3, on May 16, 2022.

4. Mark Gimigliano, P.E., the Applicant's civil engineer, testified that the subject property is an undersized lot for the R-3 Zone with oversized drywells on-site. Referencing Exhibit A-1, Mr. Gimigliano testified as to the existing conditions of the property, including the circular driveway in the front-yard, as well as how the stormwater runoff drains from the front of the subject property to the rear.

5. Referencing Exhibit A-2, Mr. Gimigliano testified as to the properties throughout the neighborhood. Mr. Gimigliano testified further that the Applicant intends to plant 13 Giant Green Arborvitae in the rear of the subject property, all of which will be approximately 8 to 10 feet tall at the time of planting, and will further screen the neighbors from the already well-screened property. He testified that if the new plantings cannot be planted within the drainage easement, there is ample room next to same to plant the additional vegetation.

6. Referencing Exhibit A-3, Mr. Gimigliano testified as to the slope of the subject property, which is "moderate," and contains two drywells, which he termed "oversized." He testified that the oversized stormwater management system would help reduce stormwater runoff, which will ultimately drain into a drainage easement located along the rear of the subject property.

7. Mr. Gimigliano testified that the Applicant's proposal will add approximately 1,826 square feet of impervious coverage to the subject property, which is 830 square feet in excess of what is permitted in the R-3 Zone. He stated that the Applicant attempted to reduce the impervious lot coverage, however, it needed to maintain safe and adequate on-site vehicular circulation, and thus could not reduce the area of, nor remove, the circular driveway.

8. Carrie Nussbaum, 15 Slope Drive, Short Hills, provided sworn testimony that she supports this application.

9. Wendy Minoch, 50 Twin Oak Road, Short Hills, provided sworn testimony that she appreciates the Applicant's proposal to install an evergreen tree line.

10. 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[.]

11. 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.

12. 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").

13. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicant. 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 lot area, as well as the size of the existing home and driveway serving the home, are hardships relative to lot coverage for the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant.

14. The deviation from the applicable requirements are relatively modest, especially given the hardships imposed by the subject property and lawfully existing structures thereon. The application proposes a modest deviation of 830 square feet of lot coverage, or 3.3% of the lot area. The Board also finds for the reasons stated above that the proposed construction can be accomplished without substantially undermining the intent or purpose of the Zone Plan or the Township Zoning Ordinance for the reasons set forth above.

15. The Board also finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(2) for the requested variance relief. The application advances multiple goals of the MLUL, specifically, goal (b) – to secure safety from flooding; (c) – to provide adequate light, air and open space; and, (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The application’s proposed construction is modest and consistent with the character of the subject neighborhood, while improving overall functionality of the Applicant’s dwelling. The Board finds these goals and objectives are furthered by the application’s proposed construction, including the drywell system and proposed landscaping.

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. The subject property can accommodate the negligible impact of the application’s proposed construction. The positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1) and (2). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of June, 2022, that the variance relief requested by the Applicant to permit the construction of a pool, patio and other site improvements, all of which, including the existing conditions on the subject property, will have 38.3% lot coverage, when a maximum of 35% is permitted, on property located at 9 Slope Drive, Short Hills, New Jersey, approved by this Board at its meeting of May 16, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicant shall plant 13 Giant Green Arborvitae in the rear of the subject property, all of which will be approximately 8 to 10 feet tall at the time of planting, and if the new plantings cannot be planted within the subject drainage easement, same will be planted adjacent to said drainage easement.

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 at the public hearing, including as set forth in the Board’s findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

4. The 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 20th day of June, 2022.

Cal#3869-22, Jason Losko, 9 Reeve Circle, Millburn.

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

- Amy Lawrence – yes
- Jyoti Sharma – yes
- Ashley Avigdor – yes
- Jessica Glatt – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**JASON LOSKO
BLOCK 402, LOT 49**

**CAL. NO. 3869-22
JUNE 20, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Jason Losko (hereinafter the “Applicant”), in Calendar No. 3869-22 to permit the construction of a second story addition over an existing ground floor portion of the dwelling, on property located at 9 Reeve Circle, Millburn, New Jersey, and designated as Lot 49, Block 402, 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 16, 2022 as to Calendar No. 3869-22, to permit the construction of a second-story addition over an existing ground-floor portion of the

dwelling, on property located at 9 Reeve Circle, Millburn, New Jersey, and designated as Lot 49, Block 402, 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 16, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel and 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 with a detached garage, located in the Township's R-6 Zone District (the "R-6 Zone").

3. The Applicant proposes to construct a second-story addition over an existing ground floor portion of the dwelling, on property located at 9 Reeve Circle, Millburn, New Jersey, and designated as Lot 49, Block 402, on the Official Tax Map of the Township of Millburn.

4. The subject property contains two (2) existing nonconforming conditions pursuant to the requirements of the R-6 Zone: (a) a minimum front-yard setback of 40 feet is required, where the subject property has an existing front yard setback of 34.09 feet; and, (b) a combined side yard setback 34.8% of the lot width, where a combined minimum side yard setback of 35% of the lot width is permitted.

5. The proposed construction will not result in an increase of the footprint of the existing dwelling, nor an increase in the minimum allowable front yard and/or combined side yard setbacks. Nevertheless, variance relief is required since the proposed expansion of the second floor of the home will maintain the existing ground floor setback of 34.09 feet and the existing combined side setback of 34.8% of the lot width.

6. The Applicant testified that the purpose of the addition is to increase the amount of living space by: (1) increasing the size of a master bedroom closet; (2) increasing the size of the bathroom in the master bedroom; (3) adding a personal-use home office area; and, (4) converting an existing closet to a second floor laundry room. The Applicant testified further that the proposed minimal expansion of the second floor over an existing ground floor will not result in a noticeable alteration the appearance of the home from either Reeve Circle or the surrounding residential dwellings. The Applicant testified that the proposed expansion of the second floor has been likewise designed to complement the home's existing architecture.

7. The Applicant testified that the proposal provides for adequate light, air and open space, promotes a desirable visual environment through creative development techniques, and good civic design and arrangement.

8. The Applicant testified further that there would be no detrimental impacts of granting the variance relief inasmuch as both the proposed front yard setback variance and relief

from the combined side yard setback requirements concern pre-existing, nonconforming conditions that will not be noticeably or significantly exacerbated by the proposed second floor expansion, if at all, and the benefits of the deviations from the Township Ordinance requirements will substantially outweigh any detriments.

9. Finally, the Applicant testified that, in his opinion, this is a “modest request,” and appropriate given the current tendency to work from home.

10. 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.

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” (the so-called “negative criteria”).

12. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(2) for the requested variance relief to permit a second-story addition over an existing ground floor portion of the dwelling, as numerous purposes of the MLUL under N.J.S.A. 40:55D-2 are advanced by the Application – namely, subsections (a) promoting the general welfare; (c) providing adequate light, air and open space; and (i) to promote a desirable visual environment, for all the reasons set forth above and contained in the Application materials.

13. The Board further finds that the benefits of the application will outweigh any proposed detriments proposed therein. 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 building footprint will not be expanded, and the Applicant’s proposal is consistent with the surrounding neighborhood and with the home’s increased functionality provides a better zoning alternative for the property. 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-70c(2) can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of June, 2022 that the variance relief requested by the Applicant to construct a second story addition over an existing ground floor portion of the dwelling, on property located at 9 Reeve Circle, Millburn, New Jersey, granted by this Board at its meeting of May 16, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

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

2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and at the public hearing, including as set forth in the Board’s findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 20th day of June, 2022.

Cal#3865-22, Sondra & Jason Kasdon, 20 Oval Road, Millburn.

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

- Amy Lawrence – yes
- Jyoti Sharma – yes
- Ashley Avigdor – yes
- Jessica Glatt – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**JAMES & SONDRAS KASDON
BLOCK 506, LOT 3**

**CAL. NO. 3865-22
JUNE 20, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the applicants, James and Sondra Kason (hereinafter the “Applicants”), in Calendar No. 3865-22, to permit the replacement and expansion of an existing backyard stone patio, and the replacement of the existing wood deck and steps that are adjacent to existing sliding glass doors in the rear of the house, on property

located at 20 Oval Road, Millburn, New Jersey, and designated as Lot 3, Block 506, 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 16, 2022, as to Calendar No. 3865-22 to permit the replacement and expansion of an existing backyard stone patio, and the replacement of the existing wood deck and steps that are adjacent to existing sliding glass doors in the rear of the house, on property located at 20 Oval Road, Millburn, New Jersey, and designated as Lot 3, Block 506, 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 16, 2022 hearing, the application and service of notice were found to be in order.
2. The Applicants appeared unrepresented, and provided sworn testimony in support of the application. There was no public opposition to the application.
3. The Applicants are the owners of the subject property, which contains a single-family residence located in the Township’s R-6 Zone District (the “R-6 Zone”). The subject property is an “irregularly” shaped lot, and therefore does not have the typical side and rear yards one would typically see on a conforming lot within the Township.
4. The proposed improvements would result in an accessory structure located within the left and right side yard setbacks at 7.2 feet and 4 feet respectively, where accessory structures in a side yard must be set back a minimum of 8 feet per side yard. Therefore, variance relief is required.
5. The Board received and considered the following additional documents submitted in support of the application: photograph array, introduced into evidence as Exhibit A-1, on May 16, 2022.
6. The Applicants testified that the subject property is very unique given its irregular shape and the positioning of the single-family dwelling on the lot. These conditions create a hardship in developing the property in accordance with the Township Ordinance.
7. The Applicants testified that the existing stone pavers sit in an area of the yard that serves as an unusable patio area because the land is uneven, and the ground is undulated with a large root system from a tree located on an adjacent lot.
8. The Applicants stated that the existing stone patio is approximately 270 square feet, and seek to expand it to 602 square feet so to create a usable stone patio area adjacent to the

existing covered porch. The Applicants testified that their intent is to install additional pavers and replace the deck to obtain a more contemporary look consistent with neighboring properties.

9. The Applicants stated that the deck provides an egress and ingress to the sliding glass doors located in the rear of the house. The Applicants propose to replace the existing wood deck and stairs with stone.

10. The Applicants testified further that the variance relief does not create any negative impacts for the Applicants or the other properties in the neighborhood. Referencing Exhibit A-1, the Applicants testified that the neighbors will not see the patio from the front of the house or the street, and the project will make the appearance of the rear yard to be consistent with rear yard development within the subject neighborhood.

11. 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[.]

12. 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”).

13. 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 cannot be located in a side-yard setback, the subject property’s status as an “irregularly” shaped lot 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. Although the proposed construction requires variance relief to permit accessory structures to be located within a side yard setback, the Board finds that the deviations from these requirements are appropriate given the aforementioned “irregular” shape of the subject property (including its triangular-shaped rear yard) and the location of the home on the property.

14. 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 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 20th day of June, 2022, that the variance relief requested by the Applicants to permit the replacement and expansion of an existing stone patio, and to replace the existing wood deck and steps that are adjacent to the existing sliding glass doors in the rear of the house, on property located at 20 Oval Road, Millburn, New Jersey, granted by this Board at its meeting of May 16, 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 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 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 20th day of June, 2022.

APPLICATIONS

CAL#3868-22, MURTAZI SHIKARI, 33 KEAN ROAD, MILLBURN—cont'd from 5/16/22

Joseph Steinberg and Wolfgang Tsoutsouris recused and left the meeting room.

Matthew Capizzi, attorney for the applicant, stated his appearance.

Jeff Egarian, P.E., appeared and remained sworn. He spoke to the revised plan dated June 6, 2022. He stated that the applicant took the Board's comments into consideration and applicant removed the pool patio originally proposed.

Marlene Cohen, 29 Kean Road, asked if the pool equipment will be visible to them. Jeff Egarian stated that the pool equipment is enclosed by a solid style fence which will screen it. In addition, the proposed vegetation around the equipment is 8' above the root ball.

Jeff Cohen, 29 Kean Road, appeared and was sworn. . Mr. Cohen stated he was pleased with the changes the applicant has made.

Ron Dvorsky, 37 Kean Road, appeared and was sworn. Mr. Dvorsky supports this application and feels it will add value to the property.

Jessica Glatt stated that she can support the revised application. She acknowledged that the existing circular driveway is a constraining factor for the site's lot coverage. Ashley Avigdor and Craig Ploetner agreed and also support this revised application.

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

Amy Lawrence – yes
Jyoti Sharma – yes
Ashley Avigdor – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3868-22, Murtazi Shikari, 33 Kean Road, Millburn, was **APPROVED**.

CAL#3800-21, CHAI CENTER, 437-439 MILLBURN AVENUE/7 BODWELL TERRACE, MILLBURN—cont'd from 4/18/22

Michael Lavigne, attorney for the applicant, stated his appearance. Mr. Lavigne reminded the Board that at the April 18, 2022 hearing, the Board heard testimony from the applicant's engineer, Michael Lanzafama. Testimony will be presented tonight by the applicant's architect, Danial Dubinett.

Danial Dubinett, architect, appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Dubinett presented the existing elevations.

Entered as Exhibit A-1: 7 slides

Mr. Dubinett indicated that the existing site consists of 3 lots, which would be merged upon the Board's approval, and 2 single-family dwellings, which would be demolished upon application approval. Mr. Dubinett stated that he looked at the architecture of the homes in the surrounding area in order to present a structure that would complement the neighborhood.

Danial Dubinett spoke to the zoning table and presented the bulk requirements as they relate to the R-6 zone and indicated that it complies with all R-6 bulk requirements. With regard to the conditional use requirements, Mr. Dubinett indicated that the application complies with the majority of the conditional use requirements that are applicable to houses of worship, including the requirements that the property front on a primary, secondary or collector street; minimum lot frontage of 200 feet; minimum lot depth of 250 feet; vehicle access from other than a local street; maximum allowable lot coverage; side yard setback; rear yard setback; and maximum building height.

Mr. Dubinett spoke to the architectural character of the proposed house of worship. He referenced slide #4 of the exhibit which showed a modeling of the building as well as the elevations from Millburn Avenue and Bodwell Terrace.

The building is entered from the main entrance off the parking lot. The first floor is a 4,323 SF space containing a gathering space, kosher kitchen, coat room, storage area, sanctuary, office space, and restrooms. The 4,323 SF basement has several "flex" classrooms, a small reception area, mikvah, mechanical room and storage room. The 1,674 SF second floor contains 4 classroom areas, a storage room and restrooms. The building materials will be hardi plank siding with asphalt shingle roof.

In response to comments received in the Planner's report, Mr. Dubinett indicated that the applicant will use a portion of the interior to hold trash until pick-up, which will be by private carting. All utilities will be underground.

Rabbi Mendel Bogomilsky, 1 Jefferson Avenue, appeared and was sworn. He stated that he is the spiritual leader of the congregation. He indicated that there are currently approximately 100 families in his congregation. Membership has been relatively stable for the past 10 years.

Rabbi Bogomilsky described a typical weekday/weekend as the house of worship. He stated that there are 2 services during the week on Monday and Thursday mornings at 7-8 AM attended by approximately 10 people. They are currently being held virtually. There are usually 2 evening classes attended by approximately 4-5 people which are also via zoom. There is a Sunday morning service at 8:30 and a Hebrew school from 9 AM -- 12 PM which is attended by about 20 children from 7 years of age to approximately 12 years of age. There is a Saturday morning service of about 30-35 people from 9:30 -12 with a small brunch after for the attendees. Saturday is the highest usage. The most usage of the facility would be on the high holidays of Rosh Hashanha and Yom Kippur. There are services held throughout the day and evening with between 100-150 attendees coming for an hour or so throughout the services.

Rabbi Bogomilsky indicated that the 25 parking spaces proposed are more than adequate for 95% of the time. The highest demand for parking is on Rosh Hashanha and Yom Kippur. He stated that he has spoken to the pastor at St. Rose's and was told that some spaces could be used by the proposed house of worship congregants. Also, Millburn High School is across the street and there is typically no school on the high holidays.

Rabbi Bogomilsky stated that, to his knowledge, there is no other Orthodox Jewish congregation in Millburn/Short Hills. Approval of this application would allow for members of the congregation to worship together. The services are orthodox; however, not everyone who attends the services is orthodox. Some attendees want the smaller atmosphere and some want the traditional services.

Craig Ploetner questioned the 8 classrooms and whether a nursery school would be offered. Rabbi Bogomilsky stated that there are no plans for a nursery school. The classrooms are flexible and are age-appropriate. Some are set up specifically for young children to play when services are being held.

Michael Lanzafama, P. E., appeared and remains sworn. In response to questions as they pertained to the emergency vehicle egress drive onto Bodwell Terrace, Mr. Lanzafama confirmed that the emergency egress area is a grid system placed in the top soil. It is seeded and looks like a lawn as you drive by. It is not an actively used driveway but is utilized for emergency egress only as needed.

The matter was carried to September 19, 2022.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Wolfgang Tsoutsouris, seconded by Amy Lawrence, and carried with a unanimous voice vote. (11:10 PM)

Eileen Davitt
Board Secretary

Motion: Wolfgang Tsoutsouris
Second: Amy Lawrence
Date Adopted: 8/1/2022