

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
July 6, 2020

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, July 6, 2020** 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:

Mary McNett  
Craig Ploetner  
Jyoti Sharma  
Joy Siegel  
Steve Togher  
Wolfgang Tsoutsouris  
Kevin Wenzel  
Jessica Glatt, Vice Chairwoman  
Joseph Steinberg, Chairman

Also present:

Gail Fraser, Board Attorney  
Eric Fishman, Court Reporter  
Eileen Davitt, Zoning Officer/Board Secretary

**MEMORIALIZATIONS**

**Cal#3744-20, Wilbur Henry, 108 Glen Avenue, Millburn, NJ, 07041**

With a motion made by Mary McNett, a second by Joy Siegel, and with a roll-call vote as follows:

Mary McNett – yes  
Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher –yes  
Joseph Steinberg – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief to the Applicant, Wilbur Henry, in Calendar No. 3744-20 to permit the construction of a deck on property located at 108 Glen Avenue, Millburn, New Jersey, known and designated as Lot 9, Block705 on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on June 15, 2020 in Calendar No. 3744-20 filed by Wilbur Henry (hereinafter the “Applicant”) to permit the construction of a deck on property located at 108 Glen Avenue, Millburn, New Jersey, known and designated as Lot 9, Block 705 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The subject property is located in the R-5 zone district. The Township Zoning Ordinance requirements for the R-5 zone include a minimum 12 foot accessory structure side yard setback. The Applicant’s proposed deck would result in a 4.2 foot accessory side yard setback at the deck and 9 foot accessory side yard setback at a mid-level landing. Therefore, variance relief is required.

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

A . A survey of the property prepared by Thomas M. Ernst, PLS, dated February 19, 2008, which was marked up by the Applicant to depict the proposed deck; and

B. Deck detail plans consisting of four sheets.

4. The property is a Non-Contributing Historic District Resource in the Wyoming Historic District. The Applicant’s proposed deck improvements were reviewed by the Millburn Township Historic Preservation Commission at its meeting on July 11, 2019 which authorized the issuance of a Certificate of Appropriateness, as memorialized in a Resolution adopted on August 1, 2019, subject to any variance approval.

5. The Applicant Wilbur Henry testified in support of the application.

6. The subject property is an existing lot with a 50 foot lot width in the R-5 zone district, which requires a minimum 75 foot lot width. The property is sloped and there is a deteriorating raised porch at the rear of the home, which is on a hillside and has a very steeply pitched exterior staircase to the back yard. The existing rear porch pre-dates the Applicant's ownership of the property. The Applicant advised the Board that the porch staircase is dangerous due to its steep pitch and that he suspects the existing rear porch may have been built without a permit. The Applicant wishes to replace the existing rear porch with an expanded rear open deck, preserving the existing roof overhang. The proposed deck would consist of two levels, a 14 foot deep by 23 foot wide upper level deck and an 8 foot deep by 4.5 foot wide lower level deck. The upper level and lower level decks would allow for a multi-level exterior staircase to access the rear yard, which would be safer than a single flight of stairs on this steeply sloped lot.

7. The existing dwelling has a 4.2 foot northeasterly side yard setback. The Applicant proposes to align the upper deck with the existing dwelling in order to provide level access between the interior of the home and the proposed deck via a sliding glass door. The proposed placement of the upper deck would result in a 4.2 accessory side yard setback instead of the minimum 12 foot setback required. In addition, the proposed lower level deck and staircase also require variance relief to permit the proposed 9 foot accessory side yard setback. The proposed improvements would be in keeping with the neighborhood as the nearest neighbor to the left also has a deck, which is located farther away from the shared property line.

8. The Board finds that the need for variance relief to permit the proposed deck is the result of the pre-existing undersized lot width and the placement of the dwelling on the property with its pre-existing nonconforming side yard setback, which the Board finds to be exceptional circumstances resulting in practical difficulties and undue hardship to the Applicant. The Board finds that this property has a lot width that is only two-thirds of the minimum lot width required in the R-5 zone. If this property had a conforming lot width, in all likelihood, no variance relief would be required. The Board is also satisfied that the proposed deck will correct the dangerous safety condition presented by the existing porch and steep exterior staircase and the proposed deck will be a visual improvement over the existing deteriorating rear porch. The proposed deck will be concealed from view from the street by the existing dwelling. The home with the proposed deck will be in keeping with other homes in the neighborhood. Therefore, the Board concludes that the granting of variance relief to permit the proposed construction may be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6th day of July, 2020 that the variance relief to permit the construction of a deck at the rear of the existing dwelling resulting in a 4.2 foot accessory side yard setback at the upper deck and a 9 foot accessory side yard setback at the lower deck/landing and stairs, granted by this Board at its meeting of June 15, 2020 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the survey by Thomas M. Ernst, PLS, dated February 19, 2008, which was marked up by the Applicant to depict the proposed deck.

2. The Applicant shall apply for a building permit within 365 days from the date of publication of this Resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

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

4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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

#### **CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 6<sup>th</sup> day of July, 2020.

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**Cal#3739-19, Vikas Shetty, 80 Hillside Avenue, Short Hills, NJ 07078**

With a motion made by Kevin Wenzel, a second by Wolfgang Tsoutsouris, and a roll-call vote as follows:

Wolfgang Tsoutsouris – yes  
Kevin Wenzel – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

The following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief to the Applicant, Vikas Shetty, in Calendar No. 3739-19 to permit the construction and maintenance of a play set and fence on property located at 80 Hillside Avenue, Short Hills, New Jersey, known and designated as Lot 35, Block 1506 on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS**, the Millburn Township Zoning Board of Adjustment (the “Board”) has held public hearings according to law on February 3, 2020 and June 15, 2020 in Calendar No. 3739-19 filed by Vikas Shetty (the “Applicant”) for permission to maintain a previously installed play set and to construct a fence on property located at 80 Hillside Avenue, Short Hills, New Jersey; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The subject property is located in the R-5 zone. Under the Township Zoning Ordinance, accessory structures on corner lots require a setback of two times the required front yard setback, which in this case would result in an 80 foot accessory structure setback requirement from Hillside Avenue and Hobart Avenue. In addition, fences are prohibited in front yards. The Applicant previously installed a play set with a 70 foot front yard setback from Hillside Avenue and a 10 foot front yard setback from Hobart Avenue. In addition, the Applicant proposes to install a four foot high fence in the Hobart Avenue front yard. Therefore, the Applicant requires variance relief to permit the maintenance of the previously installed play set and to construct a fence.

3. The following documents were submitted in support of the application:

A. A copy of a survey prepared by Morgan Engineering & Surveying, dated December 28, 2017, marked up by the Applicant to depict the approximate location of the previously installed play set; and

B. A one sheet plan prepared by Klesse Associates, P.A. entitled “Site Exhibit” dated June 3, 2020, which was admitted into evidence as A-1.

3. The Applicant, Vikas Shetty, his wife Shridevi Shetty, and Timothy Klesse, Registered Architect, testified in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Officer.

4. The property is a corner lot at the intersection of Hillside Avenue and Hobart Avenue. The property is approximately 150 feet deep when measured from Hillside Avenue, and between 93 feet and 103 feet deep when measured from Hobart Avenue. There is also a 15 foot wide storm drain easement along the northeasterly property line. There is an existing trampoline in the southwest corner of the property in the front yard. The Township Zoning Officer confirmed that no permit is required for a trampoline.

5. The Applicant seeks variance relief to permit him to maintain the play set in its current location because there is no conforming location within the fenced in area behind the home for the play set. The Applicant also seeks permission to install a front yard fence to enclose the play set and provide a safe and secured area for his children to play. During the course of the hearing, the Applicant agreed to remove the play set when his children are older, or upon the sale of the property.

6. The Applicant's architect, Timothy Klesse, testified that the property is constrained by several existing conditions which preclude the placement of a play set in a conforming location. As a corner lot, the property has two front yards and two side yards, including the side yard at the rear of the dwelling which contains the 15 foot storm drain easement. In addition, the existing dwelling is slightly skewed on the lot. Due to its placement, the existing attached rear deck and the 15 foot storm drain, there is virtually no feasible location for a play set on the property other than the location where the Applicant installed it. Hobart Avenue is a very visible street, as it is a main thoroughfare in the Township. In order to improve the safety of his children while using the play set in the Hobart Avenue front yard, the Applicant proposes to install a four foot high black aluminum estate fence, which would be placed along the inside of existing landscaping on the left side of the existing driveway, then run westerly along the Hobart Avenue property line, and then northerly to the front right corner of the home to enclose the area of the play set from the street. To mitigate the impact of the fence and the play set and to improve the streetscape of the property, the Applicant would move the existing trampoline and miscellaneous outdoor furniture in the front yard inside the proposed fenced-in area. He would paint the play set and the legs of the trampoline a dark brown color, as shown on the plan, so they would blend into the surroundings. In addition, the Applicant would clean up the underbrush along the Hobart Avenue frontage and install evergreen conifers to buffer the view of the accessory play set, trampoline and fence. The conifers would be installed under the existing trees and outside of the fence along the driveway and outside the fence along the Hillside Avenue front yard, while the conifers would be inside the fence along Hobart Avenue.

7. The Board concludes that variance relief requested by the Applicant may be granted to permit the maintenance of the existing play set and construction of the fence as depicted on the plan submitted by the Applicant as A-1. The Board is satisfied that maintaining the previously installed play set and proposed fence satisfies the criteria for granting variance relief pursuant to N.J.S.A. 40:55D-70c(1) and c(2). The placement of the play set is dictated by the placement of the home and deck on this corner lot, as well as the existing storm drain easement, which preclude the Applicant from installing a play set in a conforming location. The

Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The proposed play set location and configuration will maintain a 70 foot accessory structure corner lot setback from Hillside Avenue and a 10 foot accessory structure corner lot setback from Hobart Avenue. In order to buffer, or minimize the view of the play set from the street, the Applicant proposes to paint the play set so that it would blend into the landscape, install black aluminum fencing, and supplement the existing vegetation on the property and along Hobart Avenue with evergreen conifers which the Applicant proposes to install on the property. As for the proposed fence variance, the proposed fence will promote the general welfare as it will provide an enclosed area where the Applicant's children may safely play and it will be buffered from view of the street by the existing and proposed landscaping. Significantly, the Applicant proposes to move the existing trampoline and other miscellaneous outdoor furniture from their present placement in the Hillside Avenue front yard to the fenced-in area, which will be a vast improvement to the streetscape and benefit the neighborhood. As a result, the Board is satisfied that the benefit of granting variance relief to permit the proposed fence will exceed the detriment associated with the deviation from the front yard fence prohibition. Therefore, the Board also concludes that variance relief can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

**NOW, THEREFORE, BE IT RESOLVED** on this 6th day of July, 2020 that variance relief granted by this Board on June 15, 2020 to permit the installation and maintenance of a play set with a 70 foot accessory structure corner lot setback from Hillside Avenue and 10 foot accessory structure corner lot setback from Hobart Avenue and the installation of a 4 foot high black aluminum estate fence in the front yard of Hobart Avenue be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the one sheet plan prepared by Klesse Associates, P.A. entitled "Site Exhibit" dated June 3, 2020 which was admitted into evidence as A-1. The approved fence shall be limited to a 4 foot high black aluminum estate fence.
2. It is a condition of this approval that the Applicant shall remove the play set from the property prior to the sale or transfer of title to the property, or on June 15, 2030, whichever first occurs.
3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall relocate the existing trampoline and miscellaneous outdoor furniture and other items in the front yard to a location inside the fenced-in area depicted on the approved plan and the play set and trampoline legs shall be painted the darker color shown on the approved plan.
4. Prior to the issuance of a Certificate of Occupancy, the Applicant shall install 22 evergreen conifers with a height of eight feet above the root ball at the time of planting along the Hillside Avenue and Hobart Avenue sides and 5 evergreen conifers with a height of four feet above the root ball at the time of planting along the driveway to screen the fence and play set area from view, and maintain such evergreens in perpetuity for so long as either the play set or

fence exists on the property. Such maintenance shall include the replacement of any dead, dying or diseased evergreens which serve to screen the play area and fence from view from the street.

5. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall record a copy of this Resolution as a deed restriction in the Essex County Register's Office and provide the Board Secretary with a conformed copy of the document which bears the recording information.

6. The Applicant shall apply for a building permit within 365 days from the date of publication of this Resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

7. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals and other witnesses at the public hearings, if any, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

8. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 6th day of July, 2020.

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**Cal#3746-20, Michael Selan, 89 Elm Street, Millburn, NJ 07041**

With a motion made by Joy Siegel, a second by Craig Ploetner, and a roll-call vote as follows:

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes



The following memorializing resolution was adopted:

**MICHAEL SELAN  
BLOCK 202, LOT 3**

**CALENDAR NO. 3746-20  
JULY 6, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Michael Selan, in Calendar No. 3746-20 for permission to construct a second story dormer addition on the dwelling on property at 89 Elm Street, Millburn, New Jersey, known and designated as Lot 3, Block 202 on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on June 15, 2020 in Calendar No. 3746-20 filed by Michael Selan (hereinafter the “Applicant”) for permission to construct a second story dormer addition on the dwelling on property located at 89 Elm Street, Millburn, New Jersey, known and designated as Lot 3, Block 202 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. Arash Fazl of 88 Maple Street, Millburn, New Jersey, appeared at the hearing as an interested party.

2. The Applicant and his wife are the owners of the subject property, which is located in the R-5 zone. The R-5 zone district requires a minimum 40 foot front yard setback. The proposed second story dormer would result in a front yard setback of 37.95 feet. Therefore, variance relief is required.

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

A. Plans consisting of six sheets prepared by Michael G. Selan, Sheets AD-001 and A-102 dated February 10, 2020 and Sheets A-103, A-201 through A-203 dated January 19, 2020;

B. A survey of the property prepared by James W. Halsey, dated December 29, 2006;

C. Three photographs of the subject dwelling on the property.

4. Applicant Michael Selan and his contractor, Kevin Huffman of KDH Home Design, testified in support of the application.

5. The subject property has a conforming lot width and lot depth, but the lot area is a pre-existing nonconforming 10,125 square feet, whereas the R-5 zone requires a minimum 14,500 square foot lot area. The existing dwelling has a pre-existing nonconforming 37.95 foot front yard setback from Elm Street, which is consistent with the front yard setbacks of the homes on either side of the street. As the existing dwelling on the property was built in 1904, the existing front yard setback predates the Township Zoning Ordinance.

6. The Applicant proposes to construct a new dormer addition on the east side of the dwelling which would provide two additional bedrooms and one additional bathroom on the second floor of the home. The proposed dormer addition would maintain the same 37.95 foot front yard setback from Elm Street as the existing dwelling. Moreover, the proposed addition has been designed to match the character of the original 1904 bungalow style architecture. The proposed addition will not result in any negative impact on the adjacent properties as the home would be no closer to the side property lines than the existing dwelling. The home with the proposed dormers would continue to be in keeping with the existing front yard setback pattern on this street where many of the homes maintain front yard setbacks less than the minimum 40 feet required in the zone district.

7. The Board finds that the need for variance relief is the result of the placement of the existing home which results in a pre-existing nonconforming front yard setback from Elm Street. The existing home pre-dates the Township Zoning Ordinance. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. Although the proposed second story dormer requires variance relief to permit a 37.95 foot front yard setback, the proposed dormer will be no closer to Elm Street than the existing dwelling. In addition, the Board notes that the proposed front yard setback will be consistent with the front yard setback pattern along this street and the proposed dormer will serve to add interest to the existing dwelling in keeping with its original architectural character. Therefore, the Board concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6th day of July, 2020 that variance relief to permit the construction of a second story dormer on the dwelling that would result in a 37.95 foot front yard setback from Elm Street, granted by this Board on June 15, 2020 be and is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans consisting of six sheets prepared by Michael G. Selan, Sheets AD-001 and A-102 dated February 10, 2020 and Sheets A-103, A-201 through A-203 dated January 19, 2020;

2. The Applicant shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the

provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

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

4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.

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

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 6th day of July, 2020.

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**Cal#3745-20, Jumana & Brendan Culligan, 10 Forest Drive North, Short Hills, NJ 07078**

With a motion made by Jessica Glatt, a second by Mary McNett, and a roll-call vote as follows:

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**JUMANA AND BRENDAN CULLIGAN  
BLOCK 2108, LOT 6**

**CALENDAR NO. 3745-20  
JULY 6, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief to the Applicants, Jumana and Brendan Culligan, in Calendar No. 3745-20 to permit the construction of a mudroom addition and a terrace expansion on property located at 10 Forest Drive North, Short Hills, New Jersey, known and designated as Lot 6, Block 2108 on the tax map of the Township of Millburn.

## RESOLUTION

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on June 15, 2020 in Calendar No. 3745-20 filed by Jumana and Brendan Culligan (hereinafter the “Applicants”) to permit the construction of a mudroom addition and a terrace expansion on property located at 10 Forest Drive North, Short Hills, New Jersey, known and designated as Lot 6, Block 2108 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The subject property is located in the R-4 zone district. The Township Zoning Ordinance requirements for the R-4 zone include the following: maximum 7% accessory coverage, minimum 80 foot accessory corner lot setback and minimum 40 foot front yard setback. The Applicants’ proposed mudroom addition and terrace expansion would result in an 10.37% accessory coverage, a 60.7 foot accessory corner lot setback for the proposed terrace expansion and a front yard setback at the proposed mudroom addition of 16.7 feet at the roofline setback and 17.17 feet at the building wall. Therefore, variance relief is required.

3. The property is a Contributing Historic District Resource in the Short Hills Park Historic District. The Applicants’ proposed improvements were reviewed and approved by the Millburn Township Historic Preservation Commission which adopted a Resolution authorizing the issuance of a Certificate of Appropriateness on January 9, 2020.

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

A. Plans prepared by Douglas C. Wright Architects, consisting of five sheets, A-1.01, A-3.00 through A-3.03, dated July 16, 2019;

B. A survey of the property prepared by Brunswick Surveying Incorporated, dated January 2, 2018 bearing the designation of “Existing Condition” and a copy of the Brunswick survey bearing the designation “Proposed Condition” marked up to depict the proposed improvements;

C. Seven photographs of various views of the dwelling and property which were admitted into evidence as A-1;

D. A colored version of the Brunswick “Existing Condition” survey, which was admitted into evidence as A-2; and

E. A colored version of the Brunswick “Proposed Condition” survey, which was admitted into evidence as A-3.

5. The Applicants Jumana and Brendan Culligan and Richard Keller, P.E. and P.P., testified in support of the application.

6. The Applicants have resided at the property for ten years. They wish to replace their existing mudroom with a new larger mudroom addition in conjunction with their interior renovation of the existing kitchen. The proposed mudroom addition would also allow the Applicants to correct an existing leak in the existing mudroom which causes rain water to penetrate into the home. In addition, the Applicants propose modifications to and an expansion of the existing outdoor terrace areas, including the elimination of an existing bulging sidewall and existing crumbling railings.

7. The subject property is a corner lot at the intersection of Forest Drive and Park Place. The dwelling was originally built in 1895. Since then there have been several additions to the original dwelling. Although the property has a conforming lot area, lot width and lot depth, all three requested variances are pre-existing nonconforming conditions. Specifically, accessory coverage is presently 9.35%, the existing terrace has a 30.77 foot accessory corner lot setback, and the front yard setback of the dwelling from Park Place ranges from 12.1 feet at the garage to 15.2 feet at the existing kitchen. The existing mudroom serves as the connecting link between the garage and the kitchen. There is an existing covered porch with two columns in front of the existing mudroom, which faces Park Place. The roof overhang from the existing covered porch has a 16.7 foot front yard setback from Park Place and the northerly wall of the existing mudroom has a 22.39 foot front yard setback from Park Place.

8. The Applicants propose to extend the existing mudroom an additional 5.22 feet to the north, and replace the existing porch and columns. There would be no change in the existing roofline over the proposed mudroom addition which would continue to provide a 16.7 foot front yard setback. The wall of the proposed mudroom addition would provide a 17.17 foot front yard setback from Park Place. Although the proposed addition requires variance relief to permit a front yard setback of less than 40 feet, the proposed addition with its front yard setback from Park Place of 16.7 feet at the roofline setback and 17.17 foot at the building wall, would still maintain a greater front yard setback than the 12.1 foot front yard setback of the existing garage and the 15.2 foot front yard setback of the kitchen. The proposed mudroom addition would result in a 60 square foot increase in floor area ratio, but the home with the proposed addition would continue to satisfy the floor area ratio and building coverage requirements in the R-4 zone district.

9. The Applicants also propose to expand the existing lower level terrace and construct a connecting walkway to the basement entry. The property currently has two raised terrace areas, an upper level terrace which will remain unchanged and a lower level terrace which the Applicants propose to expand. The existing lower level terrace is a narrow area located between an exterior wall of the original 1895 dwelling and an existing railing along the southern edge of the terrace. The existing lower terrace railing is crumbling and no longer safely

affixed to the existing terrace. In addition, the sidewall of the existing lower level terrace is deteriorating. The Applicants propose to expand the width of the existing lower level terrace by approximately 4 feet so that it aligns with the side façade of the dwelling, which will increase the size of the lower level terrace by 129 square feet. The proposed lower level terrace expansion would include the relocation of the existing plantings beyond the newly expanded terrace area. The Applicants also propose to construct a 74 square foot terrace walkway, which would connect the proposed expanded lower level terrace to the existing exterior basement stairwell. The total 203 square feet of proposed lower level terrace improvements would result in a 60.67 foot accessory corner lot setback from Park Place and an increase of accessory coverage to 10.37%. Because the property is a corner lot, the required accessory corner lot setback is 80 feet. With the exception of the in-ground pool and pool surround, all existing terrace improvements are already pre-existing nonconforming conditions as the existing terrace areas are outside of the permissible accessory corner lot setback envelope. The upper level terrace has a 30.77 foot front yard setback from Park Place and the proposed lower terrace would provide a 60.67 foot accessory corner lot setback from Park Place. The proposed lower level terrace expansion would not have any negative impact on the streetscape as the terraced areas are concealed from view from Park Place by the existing dwelling, and from view from Forest Drive by dense evergreen landscaping. The proposed improvements would not have any negative impact on the adjacent neighbors as the existing and proposed improvements would be concealed from view by existing landscaping.

10. The Board finds that the Applicants have satisfied the statutory criteria for the granting of variance relief to permit the construction of the proposed mudroom addition and lower level terrace expansion. Although the subject property has conforming lot dimensions, its corner lot location and the placement of the existing dwelling and other improvements result in pre-existing nonconforming conditions, which include front yard setback, accessory coverage and accessory corner lot setback. As a result, it would be impossible for any expansion of the terrace areas to meet the 80 foot accessory structure corner lot setback and 7% accessory coverage. Moreover, the existing dwelling already has a pre-existing front yard setback from Park Place which ranges from 12.1 feet to 15.2 feet. The proposed mudroom addition will be no closer to Park Place than the existing dwelling and it will result in an aesthetic improvement to the Park Place streetscape. The Board finds the placement of the existing dwelling and other site improvements and the pre-existing nonconforming conditions to be exceptional circumstances resulting in practical difficulties and undue hardship to the Applicants. Despite the corner lot status of this property, the proposed expanded terrace will be concealed from view from the street by the existing dwelling and from the adjacent neighbors' view by mature, dense landscaping. The Board notes that while the proposed mudroom addition requires variance relief to permit a 17.17 foot front yard setback from Park Place, it will have a deeper setback from the street than the existing dwelling. The Board concludes that the proposed improvements will not result in any negative impact on the streetscape and the adjoining residential properties. Therefore, the Board concludes that the granting of the variance relief to permit the proposed construction may be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 6th day of July, 2020 that the variance relief to permit the construction of an addition to the dwelling and lower level terrace expansion resulting in 10.37% accessory coverage, a 60.7 foot accessory corner lot setback for the proposed terrace expansion and a front yard setback from Park Place consisting of 16.7 feet at the roofline setback and 17.17 foot at the building wall of the mudroom addition, granted by this Board at its meeting of June 15, 2020 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Douglas C. Wright Architects, consisting of five sheets, A-1.01, A-3.00 through A-3.03, dated July 16, 2019 and the copy of the survey prepared by Brunswick Surveying Incorporated, dated January 2, 2018 bearing the designation "Proposed Condition" admitted into evidence as A-3.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this Resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Township Land Development Ordinance shall provide otherwise.
3. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses at the public hearings, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 6th day of July, 2020.

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**APPLICATIONS**

**CAL#3749-20, HITESH SHAH, 55 LAKE ROAD, SHORT HILLS, NJ 07078**

Hitesh Shah appeared and was sworn. He would like to install a patio and fire pit. Proposal is in violation of:

609.5 – Accessory structure setback on a corner lot

Mr. Shah stated that his property is a corner lot and the intersection of Lake Road and Western Drive. He would like to build a grade level patio in the front yard area. The proposed patio cannot meet the required 80 foot front setback. In addition, the proposed patio and fire pit will be in the front yard area. He stated that, due to the placement of the dwelling on the property, there is nowhere to install the patio on the property without the need for variance relief. However, the dwelling is set back quite far from the street making the proposed patio and fire pit barely visible from the street.

The applicant was agreeable to the planting of additional screening in order to minimize the visibility of the patio from the streetscape.

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

Mary McNett – yes  
Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3749-20, Hitesh Shah, 55 Lake Road, was **APPROVED** with the following conditions: 1) additional screening of evergreens/bushes shall be planted and maintained in perpetuity; 2) a copy of this memorializing resolution shall be filed in the Essex County Register's Office and the Board secretary be provided with proof of filing prior to the issuance of a CO.

**CAL#3751-20, SPRINGFIELD 92 MILLBURN AVENUE URBAN RENEWAL, LLC, 92 MILLBURN AVENUE, SHORT HILLS, NJ 07078**

Gail Price, Attorney for the applicant, stated her appearance. The applicant is proposing to construct a mixed use property. Proposal is in violation of:

606.6.1c2 – Parking, parking lots, parking facilities, loading area and access drives are permitted accessory uses, but only for a principal or conditional use which lies entirely within the Township of Millburn.

The application also requires site plan approval as per section 606.6.1 and 606.6.1f of the Township ordinance. The applicant was initially seeking an interpretation in addition, but withdrew the request for an interpretation from the application.



Ms. Price stated that 95% of the property in question is located in the Township of Springfield and this project was approved as part of a Springfield Township Redevelopment Plan. There is a 20-foot strip of land that runs the length of Millburn Avenue which does not allow for access drives for uses that are not entirely in Millburn. She stated that this is functionally impossible.

Ben Crowder, P. E., Bohler Engineering, appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as A-1: Board application filed 6/1/20  
Entered as A-2: Springfield resolution of approval  
Entered as A-3: aerial exhibit dated 7/6/20

Mr. Crowder gave a brief description of the property. He stated that the property is approximately 9.7 acres in size of which 15,000 SF lies within the Township of Millburn. The site has two access points from Millburn Avenue. The existing site also abuts the rear yards of several residential dwellings in the Township of Springfield. As part of Springfield's approval, an enhanced buffer and screening is proposed around the perimeter of these residential properties. The existing 80,000 SF building that currently exists on the property will be demolished as part of the Springfield approval.

Entered as A-4: Overall development exhibit dated 7/6/20

Mr. Crowder spoke to the development exhibit. He indicated that the applicant received approval from Springfield Township for the construction of 270 residential units with 223 of those units located within a multi-family 4-story building along the Millburn Avenue frontage. All of the structures proposed are entirely within Springfield Township and nothing, from a building perspective, is located in the 20-foot strip along Millburn Avenue. In addition to these 223 units, approval was also granted for 47 townhouse units, several of which also front on Millburn Avenue. There is a small 5,215 SF ground floor retail component proposed as part of the project. There are 2 access points proposed. The driveway will extend through the 20-foot strip of land within Millburn to provide access to the back area, the townhouses, the parking facilities, and the main entry to the multi-family buildings. The second access point is a non-signalized full movement access point on the eastern portion of the frontage that allows access through the 20-foot strip and provides access to the parking facility and multi-family building. There is a third access point that extends out to Morris Avenue that will be a gated, resident and emergency vehicle only access.

The retail component is proposed to be 2-3 users and generates the need for 18 parking spaces. There are 19 spaces designated for the retail space on the eastern side of the site.

Entered as A-5: colorized version of sheet C04 of submitted plans

Mr. Crowder referenced the 20-foot strip of land located in Millburn. He indicated that the strip of land is located in the Township's B-3 zone. Utilizing the 10 foot front yard setback

and 25 foot rear yard setback requirement of that zone, it would render the strip of land undevelopable for any type of building structure. The applicant is proposing additional frontage improvements to the residential development, including a landscape design which is compliant to the Millburn Township design standards.

Mr. Crowder spoke to the outside agency approvals received by the applicant. He stated that approval was granted by Springfield Township Planning Board. In addition, the applicant has secured a flood hazard area permit from NJDEP as well as an NJDEP LOI footprint. Soil Conservation District approval has been received from the Somerset-Union-Soil Conservation District. NJDEP treatment works approval for the sewer connection has also been secured.

Steve Togher asked Mr. Crowder if there is a light planned for the entrance off Morris Avenue. Mr. Crowder indicated that no light is planned. Mr. Togher asked if the Millburn Avenue entrance will be used for deliveries and for people that want to shop. Mr. Crowder answered in the affirmative stating that the Morris Avenue entrance is gated and accessible only to tenants of the residential units.

Craig Ploetner asked if garbage pick-up will be done via Millburn Avenue. Mr. Crowder indicated that garbage pick-up would be done from Millburn Avenue.

Steve Togher asked if there was any consideration to allowing entrance and exit from the site from Baltusrol Avenue in Springfield. Mr. Crowder stated that there was no desire at the time to link that location. He indicated that they are providing an enhanced evergreen and fencing along that street.

Joy Siegel asked what schools children in the development would attend and how bus pick-up would be handled. Gail Price stated that school children would attend Springfield schools and buses would access the site from Millburn Avenue. She added that there would be no pick-up along Millburn Avenue.

David Minno, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He provided testimony as to the architectural elements of the proposal and the impact on Millburn. He stated that the proposed redevelopment creates a much more walkable community and a support community to the businesses along Millburn Avenue.

Mr. Minno stated that the applicant has made every effort to activate the frontage along Millburn Avenue. The retail element is to the east and the multi-family units are in the center portion with front doors directly onto Millburn Avenue. Although a lot of parking is required to support a project like this, none of it is really visible from Millburn Avenue.

The main residential entry is at the circle, which is where deliveries and visitors would go. Delivery trucks would enter the community, come into the circle, and deliver their packages. They would not be stopping along Millburn Avenue. The architecture is contemporary with 3- and 4-story heights along the frontage.

Entered as A-6: Architectural plans

Mr. Minno opined that the current site is an eyesore with a building that has been vacant for many years. This project is opening up more green space throughout the site. It is also filling in a portion of Millburn Avenue that has long been missing. This project will bring much needed pedestrian traffic to the area again.

Dan Disario, Traffic professional, appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Disario stated that the proposed development is a relatively low traffic generating proposal. There are 270 rental residential units proposed and approximately 5,200 SF of retail. The 5,200 SF of retail would generate 4 entering and 2 exiting vehicles in a single hour during a weekday morning between 7 AM and 9 AM. During a weekday evening between 6 PM and 8 PM, the retail component will generate approximately 33 vehicles entering and 35 vehicles exiting. Mr. Disario indicated that the retail will not create a significant traffic impact or the traffic operations along Millburn Avenue.

A traffic signal is being installed at the main driveway intersection of Millburn Avenue and Baltusrol Way. A traffic signal is warranted based on the existing traffic volumes at that intersection. The introduction of this development and the traffic associated with it does not warrant the signal. However, the applicant is committed to installing a signal, if needed. The signal will be a benefit to the residents of the Glenwood section as well as the general vehicular traffic along Millburn Avenue. It will create additional gaps in the traffic stream along Millburn Avenue which will indirectly benefit the residents trying to turn in and out of Glenwood.

Richard Keller, P. E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. He indicated that he would be providing testimony as a Planner and stated that he reviewed the Township Master Plan, as well as the application and plans for this site. He also reviewed the memorandums from the Township professionals. He spoke to the variance relief required. The applicant requires relief from section 606.6.1c2 which states that parking, parking lots, parking facilities, loading areas, and access drives shall be permitted accessory uses, but only for a principal or conditional use which lies entirely within the Township of Millburn. The applicant also requires minor site plan as per section 606.6.1f4. In speaking to the requirement for site plan approval, the Board is tasked with reviewing the impact that the retail component has on the traffic in the area. Mr. Keller indicated that the applicant's traffic expert provided testimony on that matter and indicated that there would be much less traffic impact on the area than the former use.

Mr. Keller spoke to the applicant's need for use variance relief. He stated that the applicant must establish special reasons in support of the application. They must also show that the site is particularly suited for the proposed use. Mr. Keller stated that the property is a single parcel which Millburn has historically used to provide access from the Springfield property to Millburn Avenue. The current application will continue this use of the access drives. The 20-foot strip of land in Millburn is not developable.

Mr. Keller stated that the application promotes the public health and safety, general welfare and provides for a desirable visual environment for the community. They are taking a derelict building and crumbling parking lot and improving them aesthetically.

The proposed buildings are entirely in Springfield and as such, there will be no impact to the Millburn school system. In addition, the architect showed that the development would be an attractive, layered development along Millburn Avenue and an improvement over the current structure and site conditions. The impact on the traffic generated by a nonresidential use on the streets, and driveway is virtually non-existent.

In order to mitigate any negative impacts, the applicant proposes a series of improvements at the intersection of Millburn Avenue at the main access driveway opposite Baltusrol Way. The project provides adequate on-site parking for the proposed residential and retail component. Mr. Keller concluded by stating that the proposed mixed-use development causes no substantial damage to the Township Master Plan.

Scott Loventhal, principal with the applicant, appeared and was sworn. He stated that he has more than 25 years of experience in land use and real estate development in New Jersey and has been involved in this development for the past year. He stated that the applicant is a locally-based developer. They have created what they hope is perceived by Millburn as a vibrant community that will benefit Millburn and Springfield.

Matthew Jessup, redevelopment counsel for Springfield Township, appeared and was sworn. He stated that this version of the redevelopment project is the result of a collaborative effort between Millburn and Springfield that started in February of 2019. He indicated that the redevelopment plan was developed with Millburn review and input. It was drafted to assure certain project details that were requested by Millburn. He stated that Millburn jointly agreed to the selection of Jay Troutman to prepare a traffic impact report.

The Board discussed the aspects of the testimony presented by the applicant's professionals. Based on these discussions, as well as input from the Township Engineer, Township Planner, and Township Police, the Board felt that they could not proceed with a vote until such time as an independent traffic expert was retained by the Board in order to review the application and render an impartial traffic analysis on any potential impacts that the proposed development will have on Millburn Avenue and the surrounding area.

A motion to retain the services of a traffic expert was made by Mary McNett, seconded by Jyoti Sharma and carried with a unanimous roll-call vote.

The matter was carried to July 20, 2020, for scheduling purposes only.

## **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 Craig Ploetner, and carried with a unanimous voice vote. (11:20 PM)

Eileen Davitt  
Board Secretary

Motion: MM  
Second: JSh  
Date Adopted: 8/3/20