

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
July 15, 2019

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, July 15, 2019** at 7:00 PM in Millburn Town Hall.

Chairman Joseph Steinberg opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Mary McNett  
Jyoti Sharma  
Joy Siegel  
Steve Togher – arrived at 7:10 PM  
Wolfgang Tsoutsouris  
Jessica Glatt, Vice Chairwoman  
Joseph Steinberg, Chairman

Also present:

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

**APPROVAL OF MINUTES**

A motion to re-approve the minutes of May 20, 2019, with corrections as noted, was made by Mary McNett, seconded by Joy Siegel, and carried with a unanimous voice vote.

A motion to approve the minutes of June 3, 2019, with corrections as noted, was made by Wolfgang Tsoutsouris, seconded by Jyoti Sharma, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3673-19, Katie & Tyler Foster, 9 Cape Court, Millburn**

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

Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes

Jessica Glatt – yes  
Joseph Steinberg – yes

the following memorializing resolution was approved:

**KATIE & TYLER FOSTER  
BLOCK 706, LOT 5**

**CALENDAR NO. 3673-19  
JULY 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Katie and Tyler Foster, in Calendar No. 3673-19 for permission to construct a patio and additions to the dwelling on property located at 9 Cape Court, Millburn, known and designated as Lot 5, Block 706 on the tax map of the Township of Millburn.

### **RESOLUTION**

**WHEREAS**, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on June 3, 2019 in Calendar No. 3673-19 filed by Katie and Tyler Foster (hereinafter referred to as the “Applicants”) for permission to construct a patio and additions to the existing single family home located at 9 Cape Court, Millburn, New Jersey known and designated as Lot 5, Block 706 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. Margo Strauss of 6 Cape Court and Margaret and Frank Meyer of 7 Cape Court appeared and testified as interested parties in favor of the application.
2. The Applicants are the owners of the subject property which is located in the R-6 zone district. The R-6 zone requirements include the following: maximum 36% floor area ratio, maximum 23% building coverage, maximum 30% front yard coverage, minimum 40 foot front yard setback, minimum 20% rear yard setback, minimum 25% rear yard unoccupied and accessory structures are permitted in the rear yard only. The proposed patio and additions to the dwelling would result in a 43.3% floor area ratio, 26.7% building coverage, 32.8% front yard coverage, 15.61 foot front yard setback, 6% rear yard setback, 8% rear yard unoccupied and an accessory structure in the side yard. Therefore, the Applicants require variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an applicant must demonstrate that the proposed site will accommodate the problems associated with the proposed floor area larger than that permitted by the zoning ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).
3. The Board received and considered the following in support of the application:

- A. Plans prepared by Klesse Architects, consisting of six sheets, BOA-21 through BOA-26, dated May 7, 2019;
- B. A survey of the property prepared by Control Layouts, Inc. dated April 10, 2013;
- C. A photo board with four photographs, which was admitted into evidence as A-1

4. The Applicants, Katie and Tyler Foster, and Timothy Klesse, Licensed Architect, testified in support of the application. The Board also heard testimony from Margo Strauss, Margaret Meyer and Frank Meyer.

5. The Applicants purchased the property in 2013 and moved to Millburn Township from New York City with their two children. They would like to construct an addition to meet the living needs of their growing family and to accommodate visits from their aging parents. The subject property is an undersized lot with an area of 4,760 square feet, 56 foot lot width and 85 foot lot depth, whereas the R-6 zone requires a minimum 6,000 square foot lot area, 60 foot lot with and 90 foot lot depth. The existing dwelling was built in the 1930's in the Colonial Revival style. The home has three bedrooms and one full bathroom, as well as several pre-existing nonconforming conditions, including a 36.4% floor area ratio, 25.91 foot front yard setback, and a 14% rear yard unoccupied. In addition, the front façade and main entry to the existing dwelling faces the easterly side yard of the property, which faces a narrow right-of-way containing a walkway that serves as public access to South Mountain Reservation located at the rear of the property. An enclosed porch on the southerly side of the dwelling is in the front yard along Cape Court and there is a detached garage in the rear yard, which has a pre-existing nonconforming 2.5 foot setback from the rear property line. Access to the existing detached garage is via a paved common driveway which the Applicants share with their neighbors to the west. However, the Applicants cannot park vehicles inside the existing detached garage because of its condition. As a result, the Applicants' cars are often parked on the street. The proposed renovations include the demolition of the existing detached garage in the rear yard, the construction of a basement level two-car garage at the front of the dwelling, the renovation and conversion of the existing enclosed porch in the Cape Court front yard into interior living space and the construction of a two-story addition on the east side of the dwelling to create an expanded kitchen on the first floor and a master bedroom suite on the second floor. After the proposed improvements, the home would have four bedrooms and two full bathrooms on the second floor and expanded first floor living space. The Applicants also propose a patio in the easterly side yard with direct access to the kitchen.

6. The placement and orientation of the existing dwelling on the property and the pre-existing nonconforming conditions affecting the property and the structure limit the alternatives for construction of additions to the dwelling without the need for variance relief. The existing enclosed porch has a 25.91 foot front yard setback. The construction of the proposed attached basement two-car garage would result in a 15.61 foot front yard setback, but the 10.3 foot increase in the deviation from the required 40 foot front yard setback would be

limited to the basement level garage as the first floor of the dwelling would not be expanding farther into the front yard beyond the limits of the existing enclosed porch with its pre-existing nonconforming 25.91 foot front yard setback. Although the proposed garage would be accessible from a new paved driveway in the front yard, the Applicants cannot remove that portion of the shared driveway in the front yard along the westerly property line because it is a shared common driveway which will continue to provide access to the neighbor's property. Because the garage will be submerged, the proposed new driveway will require retaining walls on either side, which will conform to the height requirements of the Millburn Township Zoning Ordinance. The home with the proposed basement garage facing Cape Court will be in keeping with the neighborhood, as seven of the nine homes on the street have garages at the front of the dwellings, although not all of them are subterranean. In fact, the neighboring property to the west has a one-car garage at the front of the property as well as a one-car garage at the rear of the property accessible from the shared common driveway.

7. In conjunction with the renovation of the enclosed porch and its incorporation into the living space of the home, the Applicants propose to replace the existing shed roof over the porch with a low-profile gable roof, which will serve as a further aesthetic improvement to the southerly façade and an enhancement to the streetscape. The Applicants cannot construct an addition to the dwelling which satisfies the required rear yard setback and rear yard unoccupied because of the pre-existing nonconforming dimensions of the lot and the placement of the existing dwelling on the property. Because the Applicants' rear property line abuts the South Mountain Reservation, the proposed new two-story addition to the northerly side of the dwelling in the rear yard of the property would result in the least impact on the nearest residential neighbors to the east and west. Similarly, the dimensions of the lot and placement of the dwelling preclude the Applicants from constructing a patio in a conforming location. Although the proposed patio is located in the easterly side yard, it would satisfy the required 12 foot accessory structure setback. Moreover, its placement is in the northeast corner of the property, so the proposed patio would not have an impact on the Cape Court streetscape. All existing walkways on the Applicants' property would be removed and a new bluestone walkway would be constructed from the front entry to the easterly side property line. Collectively, the proposed improvements to the dwelling would be an enhancement to the property and this neighborhood as the home has not had many improvements since the original dwelling was constructed in the 1930's.

8. Several Cape Court neighbors testified that they support the construction of the garage which would get cars off the street. Cape Court is a narrow private street and cannot be plowed in the winter unless all cars are off the street. Margo Strauss advised the Board that her property at 6 Cape Court also has a subterranean garage and there are three properties on the street where the homes face the side yard. Mr. & Mrs. Meyer also testified that in their opinion the proposed improvements would greatly enhance the streetscape. They also testified that the Applicants are often forced to park their cars partly on the grass and partly in the street, so the construction of the new garage and driveway would be a safety and aesthetic improvement benefiting the neighborhood, particularly the children in the neighborhood who live and play on Cape Court.

9. The Board concludes that the variance relief requested by the Applicants may be granted. The Board finds that the property can readily accommodate the proposed increase in floor area ratio. The proposed two-story addition to the dwelling will be located in the rear yard of the property where it will not be visible from the street. Moreover, the proposed addition is modest in size and will serve to update this 1930's home for modern living by providing four bedrooms, two and one-half bathrooms, functional interior living spaces on the first floor including an eat-in kitchen and a family room, both reasonable residential amenities, as well as an outdoor entertaining area. Although the proposed improvements require seven variances, three of the variances relate to pre-existing nonconforming conditions affecting the existing structures on the property and the property has undersized lot dimensions. If this property had conforming lot dimensions, the need for variance relief for floor area ratio and building coverage would be eliminated. The Board is also satisfied that the remaining variances are also the result of the undersized lot dimensions, as well as the placement and orientation of the existing dwelling and other improvements on the property, which includes a shared common driveway on the westerly side yard. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. Although the proposed basement garage addition will reduce the front yard setback from Cape Court, it will serve to provide interior parking spaces, which will improve public safety for the Applicants and other residents and visitors to this neighborhood, which is located on a narrow private street. The proposed two-story addition in the rear yard will not result in any substantial negative impact on the light, air or open space of the adjoining neighbors as the Applicants' property abuts the South Mountain Reservation at the rear. Moreover, the Applicants' lot appears larger than its actual size due to the existing public right-of-way along the east side of the property which serves as a walkway to the South Mountain Reservation. The Board recognizes that the Cape Court neighborhood is a unique area of the Township as the homes were all built in the 1920's and 1930's and all of the homes in the neighborhood are constrained by lawful pre-existing nonconforming conditions. The Board is satisfied that the Applicants' home with the proposed additions and new patio will be an enhancement to the streetscape and remain in keeping with the other homes in the neighborhood. Therefore, the Board further 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 15th day of July, 2019 that variance relief to permit the construction of a patio and additions to the Applicants' dwelling, which results in a 43.3% floor area ratio, 26.7% building coverage, 32.8% front yard coverage, 15.61 foot front yard setback, 6% rear yard setback, 8% rear yard unoccupied and an accessory structure in the side yard, granted by this Board on June 3, 2019 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 prepared by Klesse Architects, consisting of six sheets, BOA-21 through BOA-26, dated May 7, 2019. Retaining walls on either side of the new driveway shall conform to the requirements of the Township Zoning Ordinance.

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 Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

3. 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.

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

5. The Applicants shall 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 15th day of July, 2019.

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**Cal#3678-19, Robert Redden/Xiao Xian Li, 24 Rosedale Avenue, Millburn**

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

Mary McNett – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

the following memorializing resolution was approved:

**Robert Redden and Xiao Xian Li  
Block 405, Lot 2**

**Calendar No. 3678-19  
July 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Robert Redden and Xiao Xian Li, in Calendar No. 3678-19 for permission to construct a fence in the Milton Street front yard of

property located at 4 Rosedale Avenue, Millburn, known and designated as Lot 2, Block 405 on the tax map of the Township of Millburn.

### **RESOLUTION**

**WHEREAS**, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on June 24, 2019 in Calendar No. 3678-19 filed by Robert Redden and Xiao Xian Li (hereinafter referred to as the “Applicants”) for permission to construct a fence in the Milton Street front yard of property located at 4 Rosedale Avenue, Millburn, New Jersey known and designated as Lot 2, Block 405 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. Applicants Robert S. Redden and Xiao Xian Li appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The Applicants are the owners of the subject property which is located in the R-6 zone district. The Township Zoning Ordinance prohibits fences in the front yard. The Applicants have constructed a six foot high fence in the Milton Street front yard. They seek variance relief to permit the fence installed in the front yard.

3. The Board received and considered a survey of the property prepared by Casey & Keller dated June 15, 2018.

4. Robert S. Redden and Xiao Xian Li testified in support of the application.

5. The Applicants purchased the property last year. In conjunction with their renovations of the dwelling, they replaced a dilapidated fence with a new six foot high wooden picket fence. They were unaware of the need for a variance to construct the fence until they received a Notice of Zoning Violation. The subject property is a corner lot fronting on Rosedale Avenue and Milton Street. As a result, the property has two front yards and two side yards. The Applicants’ dwelling faces Rosedale Avenue and there is a detached garage at the rear of the dwelling in the westerly side yard. The Applicants’ westerly side yard is adjacent to properties located at 35 Milton Street and 23 Cypress Street. Both adjacent neighbors have detached garages in close proximity to the Applicants’ westerly property line. One neighbor also has a shed in proximity to the Applicants’ westerly property line and uses the area adjacent to the Applicants’ property for the storage of garbage cans, which makes the area unsightly. The Applicants’ detached garage only serves as a partial buffer of the garages, shed and garbage cans on the adjacent properties. As a result, the Applicants replaced the dilapidated fence with a new six foot high wooden picket fence to serve as a privacy buffer and visual screening device between the Applicants’ and the neighbors’ properties. The Applicants testified that, if the Board grants variance relief to permit the Applicants to maintain the fence installed in the Milton Street front yard, they plan to reverse the fence sections so the good or finished side of the fence

faces their neighbors. Trees planted along the Rosedale Avenue and Milton Street sides of the Applicants' property will screen the view of the fence from the streets. The Applicants confirmed that they have already replaced some of the dying evergreen trees on their property and the condition of some of the other trees may require their replacement as well.

6. The Board concludes that the variance relief requested by the Applicants may be granted. The Board is satisfied that the need for variance relief to permit the Applicants to maintain the replacement fence in the Milton Street front yard is the result of the corner lot status of the property resulting in two front yards and two side yards. A dilapidated fence existing in the Milton Street front yard was in need of replacement at the time the Applicants purchased the property. In addition, the Applicants' garage and the garages and other structures of their adjacent neighbors are in close proximity to the Applicants' westerly property line, which impacts on the views from the Applicants' and neighbors' properties. The Board is satisfied that these conditions are exceptional circumstances that resulted in undue hardship and practical difficulties to the Applicants. The Board is satisfied that the construction of the replacement fence is an aesthetic enhancement to the Applicants' property which also benefits the adjacent neighbors as it eliminated an existing dilapidated fence and will serve as a privacy buffer between the properties. The view of the fence from the street is screened by landscaping on the Applicants' property. Therefore, the Board further 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 15th day of July, 2019 that variance relief to permit the Applicants to maintain the six foot high wooden picket fence installed in the Milton Street front yard of the property, granted by this Board on June 24, 2019 is hereby 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 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.

2. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall reverse the fence sections so that the good side of the fence faces the neighbors' properties.

3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall replace all dead and/or dying trees planted on the property in the Rosedale Avenue and Milton Street front yards which serve to screen the fence from view.

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

5. 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.

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

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the July 15th day of July, 2019.

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**Cal#3681-19, Emily ChangPaolo Capofferri, 353 Wyoming Avenue, Millburn**

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

Jyoti Sharma – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

the following memorializing resolution was approved:

**Emily Chang-Zidarov and Paolo Capoferri  
Block 106, Lot 11**

**Calendar No. 3681-19  
July 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Emily Chang-Zidarov and Paolo Capoferri, in Calendar No. 3681-19 for permission to construct an addition to the dwelling on property located at 353 Wyoming Avenue, Millburn, known and designated as Lot 11, Block 106 on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS**, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on June 3, 2019 in Calendar No. 3681-19 filed by Emily Chang-Zidarov and Paolo Capoferri (hereinafter referred to as the “Applicants”) for permission to construct an addition to the existing single family home located at 353 Wyoming Avenue, Millburn, New Jersey known and designated as Lot 11, Block 106 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 Applicants are the owners of the subject property which is located in the R-5 zone district. The R-5 zone requirements include the following: minimum 12 foot side yard setback, minimum 18 foot side yard setback for building segments over 18 feet in height and minimum 35% combined side yard setback. The proposed addition to the dwelling would result in 7.58 foot and 7.90 foot side yard setbacks, 7.58 foot side yard setback for building segments over 18 feet in height and a 31.3%, or 19.58 foot, combined side yard setback at the new addition. Therefore, the Applicants require variance relief. Initially, the Applicants also sought variance relief to permit a 7.90 foot side yard setback for building segments over 18 feet in height on the left or southerly side of the property. The Applicants agreed to remove a projection on the southerly side containing a staircase connecting the first and second floors, which eliminated the need for the 7.90 foot southerly side yard setback for building segments over 18 feet in height.

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

A. Plans prepared by Local Parti Architecture, PC, consisting of five sheets, T-1, A-1 through A-4, dated February 14, 2019;

B. A survey of the property prepared by Scott M. Bleeker, PLS, dated October 9, 2018;

C. Sheet A-4 of the Local Parti Architecture plans, shaded, which was admitted into evidence as A-1;

D. Photographs of the subject property and neighboring properties which were admitted into evidence as A-2 and A-3.

4. The Applicants, Emily Chang-Zidarov, Licensed Architect, and Paolo Capoferri, testified in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Officer.

5. The subject property has an oversized lot area of 16,874 square feet, but the lot width is a pre-existing nonconforming 62.50 feet which tapers to 50 feet at the rear property line, whereas the R-5 zone requires a minimum 75 foot lot width. The property has an existing one-story dwelling with a walk-up attic and one-car attached garage. The existing home has two bedrooms and one and one-half bathrooms and its size and scale is out of keeping with many of the homes in the neighborhood. The existing home also has pre-existing nonconforming side yard setbacks of 7.90 feet on the southerly side of the property and 7.58 feet on the northerly side of the property, as well as a pre-existing nonconforming 24.8% combined side yard setback. In

addition, the dwelling is in an advanced state of disrepair with areas of rotted wood and cracks in the exterior surface of the foundation walls. The southerly side of the property has poor drainage and as a result the basement of the existing dwelling has suffered damage from standing water.

6. The Applicants propose to expand the first floor of the home farther to the rear of the property and convert an existing walk-up attic into a full second floor over the dwelling, which would result in a four bedroom, four bathroom home to meet the needs of their family, which includes four children. On the left or southerly side of the home, the existing sunroom at the front of the dwelling has a pre-existing nonconforming 7.90 foot southerly side yard setback, while an existing exterior access stairway to the basement has a pre-existing nonconforming 11.58 foot side yard setback. The right, or northerly side of the home, has a pre-existing nonconforming 7.58 foot side yard setback. The proposed renovations and additions to the home would include a partial demolition of portions of the existing dwelling as shown on the plans, elimination of the existing basement access stairway and the conversion of an existing attic into a full second story and a new two-story addition at the rear of the dwelling. Where possible, the proposed renovations would utilize the existing foundation and the northerly and southerly side walls of the existing dwelling. The Applicants seeks variance relief to expand the existing 7.9 foot side yard setback on the southerly side of the property to the new second story. The new two-story addition at the rear of the dwelling would provide a conforming 12 foot southerly side yard setback. On the northerly side of the dwelling, the Applicants seeks variance relief to permit the proposed 7.58 foot side yard setback and 7.58 foot side yard setback for building segments over 18 feet in height. Although the dwelling will continue to provide a 24.8%, or 15.48 foot, combined side yard setback when measured at the existing dwelling, when combined side yard setback is calculated based upon the 12 foot side yard setback at the location of the proposed new addition, the combined side yard setback would be 31.3%, or 19.58 feet. Although the proposed combined side yard setback requires variance relief, it is closer to a conforming combined side yard setback than the existing dwelling.

7. The Applicants intend to install landscaping on the southerly side of the property, but before doing so, they must address the poor drainage on that side of the lot, which currently results in basement flooding. The Applicants estimated that after the drainage issues are resolved, there would still be an area 10 feet in width on the southerly side of the property which would be sufficient to provide an evergreen landscape buffer between the Applicants' dwelling and the neighbor's home. In addition, the proposed addition will not have any impact on the light and air of the southerly neighbor as the neighbor's home is approximately 8 feet from the shared property line. To the north, the neighbor's driveway is closer to the shared property line than the neighbor's dwelling and there are tall arborvitae which serve as a privacy screen between the two properties. The home with the renovations and additions will remain in keeping with other homes in the neighborhood.

8. The Board concludes that the variance relief requested by the Applicants may be granted. The Board is satisfied that the need for variance relief is the result of the undersized lot width, and the pre-existing nonconforming side yard setbacks and combined side yard setback affecting the existing dwelling. If this property had a conforming lot width, in all likelihood the need for variance relief would be reduced or eliminated. The Board is satisfied that these

conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The proposed addition at the rear of the existing home will provide a conforming 12 foot southerly side yard setback. In conjunction with the proposed renovations and addition, the dilapidated conditions affecting the existing structure and the drainage issues will be resolved. The new façade of the home after the renovations and additions will be an aesthetic improvement to the property and the streetscape. The Board is satisfied that the home with the renovations and additions will be in keeping with other homes in the neighborhood. Therefore, the Board further 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 15th day of July, 2019 that variance relief to permit the construction of additions to the Applicants' dwelling, which results in a northerly 7.58 foot side yard setback, southerly 7.90 foot side yard setback, 7.58 foot northerly side yard setback for building segments over 18 feet in height and a 31.3%, or 19.58 foot, combined side yard setback at the new addition, granted by this Board on June 3, 2019 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicants shall submit revised plans depicting a conforming side yard setback for building segments over 18 feet in height on the southerly side of the property. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Local Parti Architecture, PC, consisting of five sheets, T-1, A-1 through A-4, dated February 14, 2019, and the survey of the property prepared by Scott M. Bleeker, PLS, dated October 9, 2018, revised in accordance with this condition.

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 Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall consult with the Township Forester and install a evergreen landscape buffer on the southerly side of the property to buffer the southerly neighbor's view of the addition, to the extent appropriate given the drainage condition of the property.

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.

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

4. The Applicants shall 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 15th day of July, 2019.

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**Cal#3689-19, Christophe & Allison Reibaud, 30 Southern Slope, Millburn**

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

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

the following memorializing resolution was approved:

**Christophe and Alison Reibaud  
Block 608, Lot 23**

**Calendar No. 3689-19  
July 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Christophe and Alison Reibaud, in Calendar No. 3689-19 for permission to construct an addition to the dwelling on property located at 30 Southern Slope Drive, Millburn, known and designated as Lot 23, Block 608 on the tax map of the Township of Millburn.

**RESOLUTION**

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on June 24, 2019 in Calendar No. 3689-19 filed by Christophe and Alison Reibaud (hereinafter referred to as the “Applicants”) for permission to construct a two-story addition to the existing single family home located at 30 Southern Slope Drive, Millburn, New Jersey known and designated as Lot 23, Block 608 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 Applicants are the owners of the subject property which is located in the R-6 zone district. The R-6 zone requirements include the following: maximum 36% floor area ratio, minimum 8 foot side yard setback, and minimum 35% combined side yard setback. The proposed addition to the dwelling would result in a 37.3% floor area ratio, 7.2 foot side yard setback and 32.8% combined side yard setback. Therefore, the Applicants require variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an applicant must demonstrate that the proposed site will accommodate the problems associated with the proposed floor area larger than that permitted by the zoning ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).

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

A. Plans prepared by Gregory Kolodeny, Architect, consisting of eight sheets, Zoning Plot Plan, A-1 through A-4 and Existing 1 through 3, dated April 21, 2016;

4. The Applicants, Christophe and Alison Reibaud, and Gregory Kolodeny, Registered Architect, testified in support of the application.

5. The existing dwelling is a three bedroom, one and one-half bathroom home, which was built in 1928 and has not been updated or expanded since its construction. The home has a small, unheated kitchen on the first floor, a small bathroom on the second floor and the washer and dryer are located in the basement. The Applicants propose a two-story addition to the rear of the home which would allow for an enlarged kitchen and breakfast room and mud room on the first floor, and an additional bedroom and new laundry room on the second floor with an expansion of the existing bathroom that will serve all four bedrooms. Although the property has a lot area of 6,253 square feet, which exceeds the minimum 6,000 square foot lot area required in the R-6 zone, the lot width is a pre-existing nonconforming 50 feet, whereas the R-6 zone requires a minimum 60 foot lot width. The existing dwelling and detached garage have a conforming 28.3%, or 1,770 square foot floor area ratio. Although there is a walk-up attic, it is not included in the calculation of floor area ratio because the habitable portion is less than 50% of the square footage of the second floor of the dwelling. The existing 7.2 foot side yard setback and the 32.8% combined side yard setbacks are pre-existing nonconforming conditions. The proposed addition would be located at the rear of the dwelling where it would be concealed from view from the street by the existing dwelling. The proposed addition would extend the existing 7.2 foot westerly side yard setback to a 3.0 foot portion of the second floor of the proposed two-story addition before the addition steps back from the westerly side property line to a conforming 8.5 foot side yard setback. The proposed addition would maintain the existing 32.8% combined side yard setback for a 3 foot deep portion of the two-story addition measured at the westerly side property line, but the greater majority of the proposed two-story addition would provide a conforming combined side yard setback. Thus, the proposed two-story addition would be no closer to the westerly side property line than the existing dwelling. The driveway of the

neighboring property to the west is closer to the proposed addition than the neighbor's dwelling. With respect to the side yard setback and combined side yard setback, both pre-existing nonconforming conditions are the result of the undersized 50 foot lot width of the property. If this lot had a conforming 60 foot lot width, in all likelihood, these two variances would not be required.

6. The Board concludes that the variance relief requested by the Applicants may be granted. The Board finds that the proposed addition is modest in size and appropriate to the dwelling and the other homes in the neighborhood. The property is slightly oversized and can readily accommodate the proposed increase in floor area ratio. The proposed addition will be located in the rear yard where it will not be visible from the street. The proposed addition will bring this home, built in 1928, up to modern standards by providing a functional eat-in kitchen and mudroom, which are both reasonable residential amenities, as well as a fourth bedroom. The Board is also satisfied that the remaining variances for side yard setback and combined side yard setback are the result of the undersized lot width, as well as the placement of the existing dwelling and other improvements on the property, which includes a paved driveway extending to the detached garage in the rear yard of the property. If this property had a conforming lot width, the need for variances for side yard setback and combined side yard setback would be eliminated. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The home with the proposed addition will not result in any substantial negative impact on the light, air or open space of the adjoining neighbors. The Board is satisfied that the home with the two-story addition will be in keeping with the other homes in the neighborhood. Therefore, the Board further 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 15th day of July, 2019 that variance relief to permit the construction of a two-story addition to the Applicants' dwelling, which results in a 37.3% floor area ratio, 7.2 foot side yard setback and 32.8% combined side yard setback, granted by this Board on June 24, 2019 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. If required by the Township Zoning Officer, prior to the issuance of a building permit, the Applicants shall submit revised plans to correct the correct zoning calculations for floor area ratio and combined side yard setback. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Gregory Kolodeny, Architect, consisting of eight sheets, Zoning Plot Plan, A-1 through A-4 and Existing 1 through 3, dated April 21, 2016 and revised in accordance with this condition.

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 Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

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.

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

4. The Applicants shall 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 15th day of July, 2019.

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**Cal#3693-19, Sara Carothers, 130 Hobart Avenue, Short Hills**

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

- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was approved:

**Sara Carothers  
Block 1604, Lot 32**

**Calendar No. 3693-19  
July 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Sara Carothers, in Calendar No. 3693-19 for permission to construct a fence in the front yard of property located at 130 Hobart Avenue, Short Hills, known and designated as Lot 32, Block 1604 on the tax map of the Township of Millburn.

## RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on June 3, 2019 in Calendar No. 3693-19 filed by Sara Carothers (hereinafter referred to as the “Applicant”) for permission to construct a fence in the front yard of property located at 130 Hobart Avenue, Short Hills, New Jersey known and designated as Lot 32, Block 1604 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. No objectors or interested parties appeared or testified at the hearing.
2. The Applicant is the owner of the subject property which is located in the R-5 zone district. Under the Township Zoning Ordinance, fences are prohibited in the front yard. The Applicant proposes to construct a four foot high fence in the Hobart Avenue front yard. Therefore, the Applicant require variance relief.
3. The Board received and considered the following in support of the application:
  - A. A survey of the property prepared by Halsey Brothers Engineers and Surveyors, dated February 1, 1968.
  - B. A one sheet proposed fence detail of the Walpole Westchester style fence with Westport style caps.
4. Applicant Sara Carothers and Gary Ross, the Applicant’s contractor, testified in support of the application. The subject property fronts on Hobart Avenue. A four foot high fence has existed along the Hobart Avenue frontage of the lot for more than 50 years. It is deteriorating and in need of replacement. The current fence consists of fence sections in varying lengths. The Applicant proposes to replace the fence with a four foot high Walpole Westchester fence with Westport caps and scalloped intermediate pickets. The fence would consist of seven fence sections in uniform seven foot lengths. The proposed replacement fence would continue to serve the safety purpose of separating the property from busy Hobart Avenue and the style of the fence would be in keeping with the architectural period of the existing dwelling on the property and be more aesthetically pleasing than the existing deteriorating fence.
5. The subject property is a Contributing Historic District Resource within the Short Hills Park Historic District. The Millburn Historic Preservation Commission (“HPC”) previously reviewed the Applicant’s proposed replacement fence plans and authorized the issuance of a Certificate of Appropriateness.

6. The Board concludes that the variance relief requested by the Applicant may be granted. The Board is satisfied that the need for variance relief to permit the construction of the replacement fence in the front yard of the property is the result of the location of the property, which fronts on Hobart Avenue and the condition of the existing fence, which is dilapidated and in need of replacement. The proposed replacement fence will promote safety by serving as a barrier between the street and the Applicant's property. The Board is also satisfied that the construction of the replacement fence with its uniform seven foot length sections will be an aesthetic enhancement to the streetscape as it will eliminate the existing dilapidated wood fence consisting of fence sections of varying lengths. The Board is satisfied that the property with the replacement fence will remain in keeping with the architectural character of the Short Hills Park Historic District. Therefore, the Board further 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 15th day of July, 2019 that variance relief to permit the construction of a four foot high fence in the Hobart Avenue front yard of the property in the same location as the existing fence, granted by this Board on June 3, 2019 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, consisting of a four foot high Walpole Westchester style fence with Westport caps and scalloped intermediate pickets in the Hobart Avenue front yard as depicted on the survey of the property prepared by Halsey Brothers Engineers and Surveyors, dated February 1, 1968.

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 Township Land Development Ordinance shall provide otherwise.

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

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 July 15th day of July, 2019.

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**Cal#3695-19, Rio Slaven, 75 Farley Road, Short Hills**

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

- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was approved:

**RIO SLAVEN  
BLOCK 1401, LOT 44**

**CALENDAR NO. 3695-19  
JULY 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Rio Slaven, in Calendar No. 3695-19 for permission to construct a one-car addition to an existing dwelling with a one-car garage on property located at 75 Farley Road, Short Hills, New Jersey, known and designated as Lot 44, Block 1401 on the tax map of the Township of Millburn.

**RESOLUTION**

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on June 3, 2019 in Calendar No. 3695-19 filed by Rio Slaven (hereinafter referred to as the “Applicant”) for permission to construct a one-car garage addition to an existing dwelling with a one-car garage on property located at 75 Farley Road, Short Hills, New Jersey, known and designated as Lot 44, Block 1401 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 Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The property is located in the R-4 zone, which requires a minimum 15 foot side yard setback and garages facing and opening onto a public street are prohibited. The Applicant proposes the construction of a one-story addition to the dwelling that would result in an 8.25 foot side yard setback and a garage facing on Farley Road. Therefore, the Applicant require variance relief.

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

A. A plan prepared by Katz Novoa, Architects, consisting of one sheet, Sheet SK-1, dated April 15, 2019.

B. A survey of the property prepared by Gary F. Hauenstein, PLS, dated January 29, 2011, marked up by the Applicant's architect to depict the proposed garage addition.

C. A photo board prepared by Katz Novoa, which was admitted into evidence as A-1.

D. A photograph of the property with a photo simulation of the proposed addition, which was admitted into evidence as A-2.

4. Applicant Rio Slaven, and Jonathan Katz, Registered Architect, testified in support of the application.

5. The Applicant and his wife moved to the property from New York City in 2011. The home has a one-car attached garage facing Farley Road, which is a pre-existing nonconforming condition. When the Applicant and his wife moved to the property the existing one-car attached garage on the property felt like a luxury to them because a garage was not available at their prior New York City address. Since moving to Millburn, however, the problems associated with the lack of a second garage have become more apparent. There is frequently a need to jockey cars around in order to use the car parked in the garage because there is always at least one car in the driveway, and more often two cars because the Applicant's mother is a regular visitor. In addition, the weather during the last few winters has convinced the Applicant of the need to construct a second garage bay so that both of the Applicant's cars may be parked indoors during inclement weather.

6. Although the property conforms to the dimensional requirements of the R-4 zone, it is irregularly shaped. In addition, the westerly side property line tapers towards the rear of the property and there is a significant change in grade on the east side of the dwelling. The placement of the existing dwelling results in a westerly side yard setback which ranges from 20.7 feet at the front of the existing garage to 16.88 feet at the rear corner of the garage. The Applicant proposes a 9.5 foot wide expansion of the existing garage, which would reduce the westerly side yard setback to 11.2 feet at the front corner of the proposed garage expansion and to 8.25 feet at its rear corner. Because the required minimum side yard setback is 15 feet, any

expansion of the garage, no matter how modest, would require variance relief. The proposed second garage bay would also be front facing on Farley Road. In conjunction with the proposed garage expansion, the Applicant would replace the existing garage door with a new, single 18 foot wide garage door that would give the appearance of two garage doors and the new garage door would be an aesthetic improvement to the front façade of the home.

7. The Applicant considered the placement of a garage addition for a second car on the east side of the dwelling. However, the placement of a garage on the east side of the property is not practical and such a placement would have a much greater impact on the streetscape and the neighborhood than the proposed garage expansion. Specifically, there is a significant drop in the grade of the property on the east side of the existing dwelling. As a result, the construction of an additional garage on that side of the home would result in greater impervious coverage, lot grading and land disturbance, reducing the large expanse of open space on that side of the property which currently contributes to the character of the neighborhood. A second garage on the east side of the home would require the construction of a contrived entry connection, which would be several feet below the main living space of the home. Creating the necessary connection would disrupt the interior layout of the first floor as the existing mudroom and kitchen are on the opposite side of the home adjacent to the existing one-car garage. Moreover, the construction of a second garage on the east side of the home would upset the balance of the existing front façade of the home, which would have a greater impact on the streetscape than the proposed addition on the west side of the dwelling.

8. Despite the reduced side yard setback and garage front facing on Farley Road, the proposed addition on the west side of the home would not have any negative impact on the nearest neighbor to the west. The westerly neighbor's property is at a much higher elevation and the neighbor's garage, which is closer to the Applicant's dwelling than their living space, is approximately 30 feet from the shared property line. As for the closest neighbor on the opposite side of Farley Road, the neighbor's driveway faces the Applicant's driveway, but the proposed garage expansion would not be visible from that neighbor's dwelling because of existing vegetation on the two properties and the deep setback of the neighbor's dwelling resulting in a significant distance between the two dwellings.

9. The Board is satisfied that variance relief may be granted to permit the proposed garage expansion, resulting in a two-car garage front facing on Farley Road. The Board finds that the placement of the proposed garage expansion is a function of the irregular shape of the property, the tapering westerly side yard property line, the topographic change in grade on the east side of the property, and the placement of the existing dwelling with its attached one-car garage front facing on Farley Road, which is a pre-existing nonconforming condition. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The proposed addition will serve to provide the Applicant with a safe, secure interior parking space for a second vehicle, which will serve to promote the general welfare and safety of the residents of the dwelling. In addition, despite the proposed garage facing on Farley Road, the proposed expansion of the existing one-car garage will not have a substantial impact on the nearest neighbors or the streetscape. The home with the garage expansion proposed by the Applicant will remain in keeping with the existing character of

the property and the neighborhood. Consequently, the Board concludes that variance relief can be granted 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 15th day of July, 2019 that variance relief to permit a garage expansion resulting in a two-car garage facing and opening onto Farley Road with an 8.25 foot side yard setback, granted by this Board on June 3, 2019, be and it 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 survey of the property prepared by Gary F. Hauenstein, PLS, dated January 29, 2011, marked up by the Applicant's architect to depict the location of the proposed garage addition and the plan prepared by Katz Novoa, Architects, consisting of one sheet, Sheet SK-1, dated April 15, 2019.

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 Township Land Development Ordinance shall provide otherwise.

3. Prior to the issuance of a Certificate of Occupancy, 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 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 hearing, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

5. The Applicant shall 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 15th day of July, 2019.

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**Cal#3696-19, C2 Education, 720 Morris Turnpike, Short Hills**

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

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

the following memorializing resolution was approved:

**C2 EDUCATION  
BLOCK1904, LOT 20**

**CALENDAR NO. 3696-19  
JULY 15, 2019**

Mr. Chairman, I move the adoption of the following Resolution memorializing the granting of an EIS checklist waiver, use and bulk variance relief, and minor site plan approval to the Applicant, C2 Education, in Calendar Number 3696-19 to permit a tutoring Center use in an existing first floor space in a multi-tenant building located at 720 Morris Turnpike, Short Hills, New Jersey; known and designated as Lot 20, Block1904 on the Tax Map of the Township of Millburn; and

**RESOLUTION**

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the "Board") has held a public hearing according to law on June 24, 2019 in Calendar No. 3696-19, filed by C2 Education (hereinafter referred to as the "Applicant") for permission to use a first floor space in an existing multi-tenant building at 720 Morris Turnpike, Short Hills, New Jersey for a tutoring Center; 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. Lisa Lomelo, Esq. represented the Applicant. The owner of the property, MSS Millburn Realty Co., consented to the application. No objectors or interested parties appeared or testified at the hearing.

2. The subject property is located in the B-2 Highway Business Zone District. The proposed tutoring center is not an expressly permitted use in the B-2 zone district. Therefore, the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed tutoring Center. In addition, the Township Ordinance permits a maximum 65% lot coverage and a minimum of 286 on-site parking spaces are required. The existing property has a pre-existing 94% lot coverage and 282 on-site parking spaces. As a result, variance relief is also required pursuant to N.J.S.A. 40:55D-70c to permit the Applicant's proposed use with the pre-existing lot coverage and on-site parking.

3. The Applicant also requested a waiver from the checklist requirement for the submission of an Environmental Impact Statement. The site is fully developed and the Applicant proposes no exterior structural changes to the building or property. Therefore, the Board concluded the request was reasonable and appropriate and granted the checklist waiver of the EIS requirement.

4. The Board received and considered the following documents in connection with this application:

a. A one sheet Use Variance and Minor Site Plan prepared by Casey & Keller, dated March 29, 2019.

b. The following reports from Township Departments and professionals: Township Fire Marshal dated May 22, 2019; Township Forester dated May 22, 2019; Millburn Police Traffic Bureau dated June 7, 2019; and Township Engineer, dated June 7, 2019.

5. Rick Smith, Vice President of Real Estate for the Applicant, C2 Education, and Richard Keller, P.E./P.P., testified in support of the application.

6. The Board adopts the following testimony given at the hearing as its findings of fact. The Applicant operates tutoring Centers that offer tutoring instruction in math, reading and science to middle school and high school students, SAT/ACT test preparation and college counseling. The Applicant has approximately 180 locations in 14 states, including 22 locations in New Jersey. Twenty-five of the Applicant's Centers are franchised while the remainder are company owned and operated. The Applicant chooses its location based upon proximity to excellent high schools, which makes Millburn Township a desirable location. The Applicant already serves Millburn High School students, who currently attend classes at one of the Applicant's Centers in Livingston, Chatham or Westfield. The proposed location would be a company owned and operated Center, staffed by one full-time Center Director, and one Assistant Director. The Center Director and Assistant Director operate the program and are responsible for overall planning and interaction with the parents of students. The Applicant employs graduate students and teachers to serve as part-time tutors. The number of tutors is based upon the number of students enrolled in a class to achieve a maximum student-teacher ratio of three to one. The proposed Center would contain a 10-seat testing room, which the Applicant uses to provide students with diagnostic tests and practice tests. At maximum occupancy, the proposed Center would have 45 occupants. The proposed hours of operation would be from 1:00 p.m. to 9:00 p.m. Monday through Thursday, and from 9:00 a.m. to 5:00 p.m. on Saturdays. The Center would be closed on Fridays and Sundays. Except for an initial consultation and progress meeting between the student's parent and the Center Director or Assistant Director, parents do not remain at the Center during classes, which are conducted in two-hour time slots, commencing at the end of the school day. Most of the Applicant's New Jersey Centers run at one-half to three-fourths of maximum capacity, except during periods approaching SAT/ACT testing deadlines which account for the peak period of maximum occupancy. In addition to tutoring services, the Center

provides their students with college counselling and college selection services based upon the student's testing, scores and interests.

7. Richard Keller, P.E./P.P. testified that the subject property is located in the B-2 zone district, which permits offices and financial institutions, beauty and barber shops, health and fitness facilities, laundry, cleaning and tailoring services, photographic studios, shoe repair shops and retail sales, which is defined in the Township ordinance as establishments engaged in sale of goods or merchandise for personal or household consumption and services incidental to the sale of such goods. Although the zone district does not have a minimum lot area requirement, the subject property is a large lot of 211,135 square feet fronting on Morris Turnpike. Mr. Keller testified that the proposed use is particularly suitable for the subject property for several reasons. The property is a fully developed site with an existing multi-tenant shopping Center building and an on-site paved parking lot with 282 parking spaces and a loading space at the rear of the building. The one-story components at either end of the building are occupied by YB Fitness Center on the west end and Panera Bread and Harmon, a beauty supply store, on the east end. Other first floor uses in the building include Massage Envy, Supercuts, and a wax/skin care center. A Shop-Rite supermarket is located on the opposite side of Morris Turnpike. However, the proposed space is one of two vacant spaces on the first floor and the property owner continues to have difficulty finding permitted uses for the building. The Applicant proposes to lease a 2,000 square foot space on the first floor which has been vacant for more than one year. Although the proposed use is not an expressly permitted use in the current Township Zoning Ordinance, it is a commercial use in a commercial zone district and it would be complimentary to the other existing uses in this shopping Center and other shopping venues along Morris Turnpike. Parents could drop their children off for a tutoring class, then grocery shop or take advantage of the other uses and services on the property or in the neighborhood, before returning to pick up their children after class. Moreover, there is ample on-site parking to serve the parking demands of the tenants in the shopping Center, which have different peak parking needs. The existing parking lot provides 282 parking spaces and the number of parking spaces for the proposed use is identical to the prior use of this vacant tenant space. It is significant that the uses in the shopping Center have different peak parking requirements. For example, the greatest parking demand for the fitness Center occurs in the morning, while Panera Bread's peak parking need is during the lunch time hours and the peak weekday parking demand of the proposed use would not occur until after school sessions have ended. The property is particularly suitable for the proposed tutoring Center use because of its proximity to the Millburn Middle School and Millburn High School as students at these institutions currently attend classes at other tutoring Centers owned and operated by the Applicant.

8. Mr. Keller testified that the proposed use satisfies several purposes of zoning as set forth in the Municipal Land Use Law, including specifically: purpose (a), promotion of the general welfare as the proposed use is educational in nature; purpose (g), promotion of a commercial and educational use to meet the needs of the community; and purpose (i) promotion of a desirable visual environment as it eliminates this vacant storefront.

9. Mr. Keller also testified that the proposed use also satisfies the negative criteria under the MLUL. He testified that the proposed use will not result in any detriment to the public

good because it is located in the B-2 zone district, which is designed for commercial uses. The Applicant's proposed tutoring Center is consistent with other experience uses recently approved by the Board that did not exist in the past when the Master Plan was first adopted, but now are contemplated in the most recent Master Plan Reexamination Report to ensure the B-2 zone district remains economically vibrant. Mr. Keller testified that the proposed use would not substantially impair the intent and purpose of the zone plan and zoning ordinance. He advised the Board that the Township Committee recently introduced Ordinance No. 2537-19, which is scheduled for public hearing and adoption at the Township Committee meeting on August 13, 2019. The proposed ordinance would amend the Township Zoning Ordinance to permit instructional schools and studios, defined to include classes or instruction in academics, as a permitted principal use in the B-2, B-3, B-4 and CMO zone districts. The Millburn Township Planning Board has already conducted a review of Ordinance No. 2537-19 and determined it is consistent with the Township Master Plan. Mr. Keller testified that if the Township Committee adopts Ordinance No. 2537-19 at its August 13, 2019 meeting, the proposed use would become a permitted use in the B-2 zone.

10. The Board concludes that the proposed use satisfies the positive and negative criteria as required for the granting of use variance relief under the Municipal Land Use Law. The Board is satisfied that the property is particularly suitable for the proposed use, which advances N.J.S.A. 40:55D-2 (a), (g) and (i) because it promotes the public good and general welfare by providing an educational use that serves the needs of the residents of the surrounding area and the local middle school and high school student populations and promotes a desirable visual environment. The Applicant has an existing Millburn Township student base and the proposed site is conveniently located in an existing shopping Center on a large lot with ample on-site parking to accommodate the Applicant's proposed use in proximity to the Millburn Middle School and Millburn High School. The Board is also satisfied that filling this storefront vacancy which has existed for more than one year will promote a more desirable visual environment.

11. Because the proposed use is not a permitted use, there is no specific parking standard associated with a tutoring Center use. The most conservative parking standard under the Township Ordinance for retail businesses would require a total of 10 parking spaces, one for each 200 square feet of building coverage, which is the same parking requirement of the prior use of the proposed space. As a result, the existing on-site parking lot remains four parking spaces short of the required 286 on-site parking spaces for the existing and proposed uses on the property. Because the property is fully developed, it would be impossible to provide four additional parking spaces without removing part of the building. The Board is satisfied that the existing parking lot with 282 parking spaces will continue to provide sufficient on-site parking to meet the needs of the existing tenants and the proposed use based upon the different peak parking needs of the uses in the shopping Center.

12. The Board finds and concludes that the proposed use also satisfies the negative criteria required by the Municipal Land Use Law. The Applicant is currently providing tutoring services to Millburn Township residents, albeit from other locations outside of Millburn Township. The proposed use is a commercial use which will be located in a commercial zone

district in an existing multi-tenant shopping Center. The Board recognizes that the Township Committee is currently considering an amendment to the Township Zoning Ordinance which, if adopted, would make the proposed use a permitted use in the B-2 zone district. The Board also acknowledges that the Millburn Township Planning Board has already determined that the proposed amendment to the Township Zoning Ordinance to permit the proposed use as a principal permitted use is consistent with the Township Master Plan. Therefore, the Board further finds and concludes that the proposed use will not result in a substantial detriment to the public good or to the zone plan or zoning ordinance.

13. The Board is also satisfied that the need for variance relief to permit the 94% lot coverage and 282 on-site parking spaces are the result of pre-existing nonconforming conditions affecting the property. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The site is fully developed with an existing building and a 282-space parking lot. The Applicant cannot meet the zone district requirements for lot coverage and on-site parking without removing lawful pre-existing nonconforming improvements. The Board finds that the 282 on-site parking spaces are more than sufficient to meet the needs of the existing and proposed uses in the shopping Center, justifying the grant of variance relief. Therefore, the Board finds and concludes that the granting of variance relief to permit the maintenance of the pre-existing 94% lot coverage and 282 striped on-site parking spaces will not result in a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance.

14. The Board also finds that the Applicant has satisfied the requirements for minor site plan approval.

**NOW, THEREFORE, BE IT RESOLVED**, on this 15th day of July, 2019, that the waiver of EIS checklist requirement, use and bulk variance relief and minor site plan approval requested by the Applicant to permit a tutoring center use in 2000 square feet of the first floor space in the existing multi-tenant shopping center building located at 720 Morris Turnpike, Short Hills, New Jersey, approved by this Board on June 24, 2019 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. The use approved is that of a tutoring Center as described in the testimony at the hearing, and depicted on the one sheet Use Variance and Minor Site Plan prepared by Casey & Keller, dated March 29, 2019.

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 Township Land Development Ordinance shall provide otherwise.

3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall comply with the requirements set forth in the May 22, 2019 Report of the Township Fire Marshal and submit proof of same to the Board Secretary.

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 be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals 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.

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

**CERTIFICATION**

I, Eileen Davitt, Clerk of the Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and exact copy of a resolution adopted at the meeting of the Board of Adjustment of the Township of Millburn held on the 15th day of July, 2019.

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**Cal#3697-19, Kelly Solomon, 65 Westview Road, Short Hills**

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

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

the following memorializing resolution was approved:

**KELLY SOLOMON  
BLOCK 4703, LOT 1**

**CALENDAR NO. 3697-19  
JULY 15, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Kelly Solomon, to permit the construction of a patio on property located at 65 Westview Road, Short Hills, New Jersey known and designated as Lot 1, Block 4703 on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS**, the Millburn Township Zoning Board of Adjustment (the “Board”) has held a public hearing according to law on June 24, 2019 in Calendar No. 3697-19 filed by Kelly Solomon (the “Applicant”) for permission to construct a patio on property located at 65 Westview Road, 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. Danial Dubinett appeared on behalf of the Applicant under a Power of Attorney. No objectors or interested parties appeared or testified at the hearing.

2. The subject property is located in the R-4 zone, which requires an 80 foot accessory structure front setback on a corner lot. In this case, the proposed patio would result in a 70.8 foot accessory structure front setback from Westview Road. Therefore, the Applicant requires variance relief to permit the construction of the proposed patio.

3. The Board received and considered a plan prepared by Dubinett Architects, LLC, consisting of one sheet, V-1, dated November 5, 2018 and revised through March 12, 2019, which was submitted in support of the application.

4. Danial Dubinett, Licensed Architect, testified in support of the application.

5. The subject property is a corner lot located at the intersection of Westview Road and Mohawk Road. The Applicant proposes to construct a 392.9 square foot patio on the property at the rear of the existing dwelling, which faces Westview Road. The patio would require variance relief to permit the Applicant to maintain the proposed 70.8 foot accessory structure corner lot front yard setback from Westview Road because a 9.2 foot deep portion of the proposed patio closest to the dwelling is within the 80 foot accessory corner lot setback. There is an existing patio on the property which has pre-existing nonconforming front yard setbacks of 62.9 feet from Mohawk Road and 72.8 feet from Westview Road. The existing patio would be demolished and replaced by the proposed patio which would be concealed from view from Westview Road by the existing dwelling. Because of the placement of the dwelling on the property, a patio with a conforming accessory corner lot setback would not be adjacent to the dwelling. Although a portion of the patio requires variance relief to permit the 70.8 foot accessory corner lot front yard setback from Westview Road, the proposed patio would be concealed from view from Westview Road by the existing dwelling. In addition, landscaping would screen the patio from view from the neighboring property to the east. The proposed patio would not be visible from Mohawk Road because it would have a 103 foot front yard setback from Mohawk Road and the elevation of the street is lower than the elevation of the proposed patio.

6. The Board concludes that variance relief requested by the Applicant may be granted to permit the construction of the proposed patio. The Board is satisfied that the need for variance relief is the result of the corner lot status of the property and the placement of the dwelling on the

property, which limits the placement of a patio with a conforming accessory corner lot setback adjacent to the dwelling. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. Construction of the proposed patio will result in the demolition of an existing patio with pre-existing nonconforming front yard setbacks from both Westview Road and Mohawk Road. The proposed patio will be concealed from view from Westview Road by the existing dwelling. Distance and a change in grade will conceal the patio from view from Mohawk Road. Moreover, the proposed patio will maintain conforming accessory side yard setbacks from the two adjoining lots. As a result, the Board is satisfied that the proposed patio will not result in any negative impact on the nearest neighbors or the streetscape. The Board is also satisfied that the proposed home with the proposed patio will be in keeping with the other homes in the neighborhood. 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 15th day of July, 2019 that variance relief granted by this Board on June 24, 2019 to permit the construction of a patio with a 70.8 foot accessory structure corner lot front yard setback from Westview Road 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 plan prepared by Dubinett Architects, LLC, consisting of one sheet, V-1, dated November 5, 2018 and revised through March 12, 2019.
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 Township Land Development Ordinance shall provide otherwise.
3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant's professional 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.
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 15th day of July, 2019.

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**Cal#3698-19, TCS Short Hills, LLC, 507 Millburn Avenue, Short Hills**

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

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

the following memorializing resolution was approved:

**TCS SHORT HILLS, LLC  
BLOCK 1709, LOT 1**

**CALENDAR NO. 3698-19  
JULY 15, 2019**

Mr. Chairman, I move the adoption of the following Resolution memorializing the granting of an EIS checklist waiver, use and bulk variance relief, and minor site plan approval to the Applicant, TCS Short Hills, LLC, in Calendar Number 3698-19 to permit STEM-related computer science educational instruction use in an existing multi-tenant building located at 507 Millburn Avenue, Short Hills, New Jersey; known and designated as Lot 1, Block1709 on the Tax Map of the Township of Millburn; and

**RESOLUTION**

**WHEREAS**, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the "Board") has held a public hearing according to law on June 24, 2019 in Calendar No. 3698-19, filed by TCS Short Hills, LLC (hereinafter referred to as the "Applicant") for permission to an existing space in a multi-tenant building at 507 Millburn Avenue, Short Hills, New Jersey for a STEM-related computer science educational instruction use; 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. Anthony Cerciello, Esq. represented the Applicant. The owner of the property, San Rufo, Inc., consented to the application. No objectors or interested parties appeared or testified at the hearing.
2. The subject property is located in the B-3 Neighborhood Business Zone District. The proposed STEM-related computer science educational instruction use is not an expressly

permitted use in the B-3 zone district. Therefore, the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the proposed use. In addition, the Township Ordinance requirements for the B-3 zone include: a maximum 75% lot coverage, minimum 10 foot front yard setback, minimum of 19 on-site parking spaces and one loading space. The existing property has a pre-existing nonconforming 96.3% lot coverage, 0.08 foot front yard setback from Campbell Road, nine existing parking spaces and no loading space. As a result, variance relief is also required pursuant to N.J.S.A. 40:55D-70c to permit the Applicant's proposed use with the pre-existing lot coverage, front yard setback, on-site parking and no loading space. The Applicant also requires minor site plan approval.

3. The Board received and considered the following documents in connection with this application:

a. A one sheet Use Variance and Minor Site Plan prepared by Casey & Keller, dated April 25, 2019.

b. A one sheet Existing and Proposed Floor Plan prepared by Zubair A. Kazi, Registered Architect, dated April 30, 2019.

c. An aerial photo prepared by Casey & Keller which was admitted into evidence as A-1.

d. Two photographs consisting of one photograph of the proposed space and one photograph of an existing Coder School location on Long Island, New York which were admitted into evidence as A-2.

e. The following reports from Township Departments and professionals: Township Fire Marshal dated June 21, 2019; Township Forester dated June 14, 2019; Millburn Police Traffic Bureau dated June 22, 2019; and Township Engineer, dated June 24, 2019.

4. Zubair Kazi, Registered Architect, Noreen Kazi, Nisha Bhalla and Richard Keller, Professional Engineer and Professional Planner, testified in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Officer.

5. The Board adopts the following testimony given at the hearing as its findings of fact. Zubair Kazi, Noreen Kazi and Nisha Bhalla are members of the Applicant TCS Short Hills, LLC, which owns and operates The Coder School, dedicated to STEM-based computer science educational instruction programs and activities such as coding and programming for children. The Applicant has opened two Coder School sites on Long Island, New York, one in 2017 and one in 2018. Their goal is to open one new facility per year. The Applicant wishes to expand its instruction program into New Jersey in 2019 and it determined Millburn Township to be an ideal community for their facility as evidenced by Millburn Township student population's interest in computer science and recent achievements in the NASA challenge and Vex Robotics World Championship competition.

6. The Applicant's classes cover a broad range of computer programming languages and offer educational instruction opportunities for children from 7 years of age through high school. The Applicant's program uses a small 2:1 student to coach ratio to teach children in an individualized format. Students are free to bring their own devices, or use the Applicant's on-site equipment. The typical site would accommodate eight students, which would require four coding coaches, as well as one Site Director. All classes have scheduled hourly appointment times, although the Site Director would be available to answer questions from walk-ins, who would be given the opportunity for a free one-on-one session at a scheduled time. Generally, a parent will come into the facility on a student's first class session in order to see the class space, but after the first session, students are dropped off and picked up and parents do not remain on site. The Applicant provides parents with a post-class emailed status report on their child's progress. All coding coaches undergo a background check and the coder spaces in the facility are open with low walls or large window areas so that the Site Director can oversee the coder spaces at all times. Whenever possible, the Applicant also seeks opportunities to collaborate with the local schools' computer science education efforts, including the hosting of competitions among schools, as well as hackathons, which are events where students engage in collaborative computer programming to solve a specific project.

7. The proposed tenant space is ideal for the Applicant's Coder School as it is wide enough to provide coder spaces on both sides of the leased space, and the large storefront window allows coder space activities within the facility to be visible to pedestrians from the street. In addition, the property is within walking distance from Millburn High School and the Glenwood Elementary School, as well as the nearby townhouses of the Enclave and is adjacent to the Glenwood residential neighborhood at the rear of the property.

8. Richard Keller, P.E./P.P. testified that the subject property is a 8,629 square foot lot at the intersection of Millburn Avenue and Campbell Road, which is fully developed with an existing four-tenant building and an on-site parking lot with nine striped parking spaces, eight spaces on the property and the ninth space extending into the Campbell Road right-of-way. The Applicant proposes to lease the 1,184 square foot vacant tenant space at the corner of the building. Mr. Keller testified that all of the bulk variances requested relate to pre-existing nonconforming conditions affecting the property and the improvements on the property, consisting of a 96.3% lot coverage, 0.08 foot setback from Campbell Road, 9 parking spaces and no on-site loading space. Although there is a deficiency in the required on-site parking, the proposed Coder School use would require six parking spaces, which is identical to the parking requirement of the prior use of the vacant space, so the proposed use does not increase the deficit of on-site parking.

9. Mr. Keller testified that the property is particularly suitable for the proposed Coder School because it is approximately 700 feet from Millburn High School and near the Glenwood Elementary School. The property is also in close proximity to several residential areas, including the adjacent Glenwood residential neighborhood at the rear of the property and within walking distance of The Enclave, a townhouse development at the intersection of Millburn Avenue and Short Hills Avenue. The property is also across the street from Municipal

Parking Lot #14, which serves the business uses in the Millburn Avenue/Campbell Road/Short Hills Avenue business district. Because of the limited size of this fully developed lot, it would be impossible for the Applicant to accommodate any additional on-site parking space, or a loading space, without removing a substantial portion of the lawful pre-existing building. However, the existing uses in the building, a dry cleaner, Hy Gorgeous iLash Bar and a beauty salon are relatively low traffic generators with peak parking demand hours that differ from that of the proposed Coder School, which operates in the late afternoon and early evening during the week. In addition, the Applicant is prepared to purchase three business parking permits in Municipal Parking Lot #14 for use by its employees. The existing on-site parking combined with available permits for business parking in Municipal Parking Lot #14 is sufficient to meet the parking needs of the existing and proposed uses on the property. As for a loading zone, the proposed use does not generate deliveries via large trucks, which would require an on-site loading space. Although there is sufficient space in the rear parking lot for a UPS or Federal Express delivery truck to park and make deliveries to the site, in all likelihood, the limited deliveries of supplies necessary for the proposed use by USPS, UPS and Federal Express delivery would most likely occur the same way such deliveries are made to other businesses on Millburn Avenue, by parking on the street.

10. Mr. Keller testified that the proposed use satisfies some of the purposes of zoning as set forth in the Municipal Land Use Law, including specifically: purpose (a), promotion of the general welfare as the proposed use is educational in nature; and purpose (g), promotion of a commercial and educational use to meet the needs of the community. The purpose of the B-3 Zone District is to permit small scale commercial activities serving the needs of residents of the surrounding area. The permitted uses in the B-3 zone district are limited to retail sales and services, offices and financial institutions, and apartments over stores. Although the proposed STEM-related computer science educational instruction use is not currently permitted anywhere in the Township, it is a small-scale commercial use that would serve the needs of the surrounding residences, reinforcing the goals of the B-3 zone district, similar to the Board's recent approval of similar uses. Mr. Keller testified that the Applicant's Coder School is uniquely different from other tutoring uses recently approved by the Board, as the Applicant's advanced programs blend computer coaching, with presentations and teamwork that teach their students life skills for college and beyond. Mr. Keller testified the proposed use promotes the public good and the general welfare by providing a STEM-related computer science coding and programming educational instruction use in close proximity to Millburn High School, the Glenwood School and nearby residential neighborhoods. The storefront location with its coder space visible to pedestrian traffic on Millburn Avenue would add vibrancy to the neighborhood business district. The property is already developed with an existing building and an on-site parking lot, with nine striped parking spaces and without an on-site loading space, as the existing on-site uses and the prior use of this vacant tenant space did not require it. The Applicant's Coder School use does not require a loading space as no large deliveries will be made to the site.

11. Mr. Keller also testified that the proposed use also satisfies the negative criteria under the MLUL. He testified that the proposed use will not result in any detriment to the public good because it is located in the B-3 zone district, which is designed for small-scale commercial uses such as the instructional use proposed by the Applicant, which is now contemplated by the

goals stated in the most recent Master Plan Reexamination Report to monitor and modify the uses permitted in the B-2 zone to ensure the zone district remains economically viable. Mr. Keller testified that the proposed use would not substantially impair the intent and purpose of the zone plan and zoning ordinance. He advised the Board that the Township Committee recently introduced Ordinance No. 2537-19, which is scheduled for public hearing and adoption at the Township Committee meeting on August 13, 2019. The proposed ordinance would amend the Township Zoning Ordinance to permit instructional schools and studio, defined to include classes or instruction in academics, as a permitted principal use in the B-2, B-3, B-4 and CMO zone districts. The Millburn Township Planning Board has already conducted a review of Ordinance No. 2537-19 and determined it is consistent with the Township Master Plan. Mr. Keller testified that if the Township Committee adopts Ordinance No. 2537-19 at its August 13, 2019 meeting, the proposed use would become a permitted use in the B-3 zone.

12. The Board concludes that the proposed use satisfies the positive and negative criteria as required for the granting of use variance relief under the Municipal Land Use Law. The Board is satisfied that the property is particularly suitable for the proposed use, which advances N.J.S.A. 40:55D-2 (a), (g) and (i) because it promotes the public good and general welfare by providing an educational use that serves the needs of the residents of the surrounding area and the local middle school and high school student populations. The Board finds that the proposed use will also promote a more desirable visual environment by filling a vacant storefront on Millburn Avenue with a hip, vibrant new use attractive to the Township's youth. The proposed site is conveniently located within walking distance to the Glenwood Elementary School, Millburn High School, The Enclave and the Glenwood residential neighborhoods, as well as to available permit and public parking in Municipal Parking Lot #14.

13. The Board also finds and concludes that the proposed use also satisfies the negative criteria required by the Municipal Land Use Law. The proposed use is a small-scale commercial use which will be located in a B-3 neighborhood business commercial zone district in an existing four-tenant building fronting on Millburn Avenue. The Board recognizes that the Township Committee is currently considering an amendment to the Township Zoning Ordinance which, if adopted, would make the proposed use a permitted use in the B-2 zone district. The Board acknowledges that the Millburn Township Planning Board has already determined that the proposed amendment to the Township Zoning Ordinance to permit the proposed use as a principal permitted use is consistent with the Township Master Plan. Therefore, the Board further finds and concludes that the proposed use will not result in a substantial detriment to the public good or to the zone plan or zoning ordinance.

14. The Board is also satisfied that the need for variance relief to permit the 96.3% lot coverage, 0.80 foot front yard setback from Campbell Road, nine parking spaces and no loading space are the result of pre-existing nonconforming conditions affecting the property. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. Because the proposed use is not a permitted use, there is no specific parking standard associated with the proposed use. However, the most conservative parking standard under the Township Ordinance for retail businesses would require a total of 6 parking spaces, one for each 200 square feet of building coverage, which is the same parking

requirement for the prior use of the proposed vacant space. As a result, the existing on-site parking lot remains ten parking spaces short of the required 19 on-site parking spaces for the existing and proposed uses on the property. Because the property is fully developed, it would be impossible to provide ten additional parking spaces without removing a substantial part of the building. The Board is satisfied that the existing parking lot with nine parking spaces, combined with the Applicant's purchase of three business parking permits in Municipal Parking Lot #14 will provide sufficient parking to meet the needs of the existing tenants as well as the proposed use based upon their differing parking demands which justifies the grant of variance relief. The Board also finds and concludes that variance relief may be granted to permit the Applicant to maintain no on-site loading space. The site is fully developed with an existing building and a nine-space parking lot. The lot area of the property is inadequate to allow for an on-site loading space. The Board is satisfied that the absence of a loading space is also a pre-existing condition which the Applicant proposes to maintain for the proposed use. The Board is satisfied that the proposed Coder School use is such that there will not be any truck deliveries requiring a dedicated loading space. Therefore, the Board finds and concludes that the granting of variance relief to permit no on-site loading space will not result in a substantial detriment to the public. It would be impossible for the Applicant to meet the zone district requirements for lot coverage, front yard setback, on-site parking and loading space without removing a substantial portion of the lawful pre-existing building and other impervious improvements on the property. Therefore, the Board finds and concludes that the granting of variance relief to permit the maintenance of the pre-existing 96.3% lot coverage, 0.80 foot front yard setback from Campbell Road, nine parking spaces and no loading space will not result in a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance.

15. The Board also finds that the applicant has satisfied the requirements for minor site plan approval.

**NOW, THEREFORE, BE IT RESOLVED**, on this 15th day of July, 2019, that use and bulk variance relief and minor site plan approval requested by the Applicant to permit a STEM-related computer science educational instruction use in 1,184 square feet of space in the existing building located at 507 Millburn Avenue, Millburn with 96.3% lot coverage, 0.08 foot front yard setback from Campbell Road, nine parking spaces and no loading space approved by this Board on June 24, 2019 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. The use approved is that of a STEM-based computer science educational instruction use as described in the testimony at the hearing, and depicted on the one sheet Use Variance and Minor Site Plan prepared by Casey & Keller, dated April 25, 2019 and the one sheet Existing and Proposed Floor Plan prepared by Zubair A. Kazi, Registered Architect, dated April 30, 2019.

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 Township Land Development Ordinance shall provide otherwise.

3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall comply with the requirements set forth in the June 21, 2019 Report of the Township Fire Marshal and submit proof of same to the Board Secretary.

4. Prior to the issuance of a Certificate of Occupancy, the Applicant shall purchase three business parking permits for use in Municipal Parking Lot #14 for its employees' use. The Applicant shall annually purchase business parking permits for its employees so long as the business is located at the property.

5. 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.

6. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals 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.

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

#### **CERTIFICATION**

I, Eileen Davitt, Clerk of the Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and exact copy of a resolution adopted at the meeting of the Board of Adjustment of the Township of Millburn held on the 15th day of July, 2019.

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#### **APPLICATIONS**

#### **CAL#3686-19, FIDELCO ROI, LLC, 251/257 ESSEX STREET, MILLBURN**

Thomas Sateary, Attorney for the applicant, stated his appearance. He asked that, due to the absence of two members tonight and the voting ineligibility of two other members who were not in attendance at the May 20, 2019 meeting, that the matter be carried in order to allow absent members the opportunity to read the transcript from the May 20, 2019 hearing.

The matter was carried to August 19, 2019.

#### **CAL#3688-19, JESSICA SHEN, 18 MOUNTAINVIEW ROAD, MILLBURN**

\*Wolfgang Tsoutsouris recused and left the meeting room.

Jessica Shen appeared and was sworn. She would like to re-locate a portico on the dwelling. Proposal is in violation of:

606.2e1d – Front yard setback

Entered as A-1: 3 photos of the existing conditions on the property

Ms. Shen described her proposal. She stated that she received Board approval to construct a portico on the dwelling. However, once the construction began, she opted to re-locate the portico without realizing that she needed to submit an updated plan.

When the building inspector came out, he failed the work since it was not done according to the plan that was approved for permits. At that time, the applicant revised and resubmitted the updated plans and was then informed by the Zoning Officer that the re-location of the portico and construction of a new stoop would require variance relief.

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

Mary McNett – yes  
Jyoti Sharma – yes  
Joy Siegel – no  
Steve Togher – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3688-19, Jessica Shen, 18 Mountainview Road, was **APPROVED**.

\*Wolfgang Tsoutsouris returned to the meeting room.

**CAL#3694-19, VICTOR & GRETTA LANDER, 10 WYNDHAM ROAD, SHORT HILLS**

Victor Lander appeared and was sworn. The applicants would like to construct a small addition to their dwelling. Proposal is in violation of:

606.2e1e2b – Side yard setback  
606.2e2d – Floor area ratio

Mr. Lander explained his proposal. They would like to raise the roof-line slightly on the 2<sup>nd</sup> floor in order to allow better circulation in the bathroom and master bedroom area. It will require side yard setback variance relief as it will encroach into the required side yard setback on the 2<sup>nd</sup> floor. They are also proposing to infill the overhang area of the sunroom which requires side yard setback variance relief as well as floor area ratio variance relief.

Victor Raczkowski, 11 Wyndham Road, asked if drainage will be addressed as part of this plan. Mr. Lander indicated that the drainage will be properly handled.

Victor and Julia Raczkowski, 11 Wyndham Road, appeared and were sworn. They stated that they do not support the relief that has been proposed by the Landers. They feel that the changes proposed will have a disproportionate effect on their property.

Entered as O-1: tax map with Raczkowski property highlighted  
Entered as O-2: 8 photos of existing conditions

Mr. Raczkowski stated that the Lander property is a small lot and the encroachment of the Lander's proposal will negatively impact the value of their property.

Joseph Steinberg stated that he did not see any evergreens on the property, as testified to by the applicant. He stated that the property is already substantially over the allowable floor area ratio. Given the proximity of the dwellings to each other, he believes that the granting of these variances would be obtrusive and would be a substantial detriment to the public good.

Other Board members felt the proposed construction on the left-side of the dwelling would not negatively impact the surrounding properties and were supportive of increasing the roof-line.

The applicants requested that the Board vote only on the request for side yard setback variance relief on the left side of the dwelling.

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

Mary McNett – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – no  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Joseph Steinberg – no

Cal#3694-19, Victor & Gretta Lander, 10 Wyndham Road, “c” variance relief for side yard setback (left side) was **APPROVED**.

The matter was carried to September 16, 2019 in order to address the request for “d” variance relief for floor area ratio and side yard setback.

**CAL#3703-19, 66 MINNISINK, LLC, 66-68 MINNISINK ROAD, SHORT HILLS**

Mark Dahn, Attorney for the applicant, stated his appearance. The applicant would like to construct an addition and install a fence. Proposal is in violation of:

- 609.6 – Front yard fences are not permitted; 6 foot maximum fence height
- 606.2e1e2a – Side yard setback
- 606.2e2g – Rear yard unoccupied
- 606.2e2h – Rear yard setback
- 608.5a – Steep slope disturbance

John James, Architect; Richard Keller, P. E., P. P. and Brian Hirsch, Landscape Architect, appeared and were sworn. John James' credentials were presented and accepted by the Board. He gave a brief description of the applicant's proposal.

Brian Hirsch's credentials were presented and accepted by the Board. He described the proposed changes to the property. A front yard entry gate/fence is proposed to be installed in the front yard area, approximately 24 feet off the front property line. The gate has been set back from the front lot line so that cars waiting for entry into the property will be able to wait on the property rather than on the street. A pool compliant fence is also proposed and a portion extends into the front yard area.

Richard Keller's credentials were presented and accepted by the Board. He gave a brief description of the applicant's proposal and the variance relief being requested.

Entered as A-1: aerial photo of subject area

Mr. Keller stated that the applicant received variance relief in 2017 in order to construct a pool, pool house and greenhouse, as well as to renovate the existing carriage house. In the process of preparing the carriage house for renovation, it was determined that there were some structural issues necessitating the replacement of the entire foundation under the carriage house. The applicant proposes to lift the carriage house in order to build a new foundation with full basement, and move the carriage house approximately eight feet to the north. The proposed setback of 16.93 feet that results is an improvement over the existing 9.94 foot setback. However, the applicant still requires variance relief for the required 25 foot 2<sup>nd</sup> story setback.

The applicant also proposes to construct 2 additions to the carriage house in order to accommodate an indoor therapy pool and a conservatory. The proposal will require variance relief to permit an 8.25% rear yard setback, where 20% is required and rear yard unoccupied variance relief to permit 5.38%, where 25% is required. The proposal also results in the disturbance of 1,675 SF of steep slopes, where the ordinance permits only 1,000 SF of disturbance.

Mr. Keller testified that the irregular lot shape and the rear yard placement of the dwelling on the property triggers the need for variance relief for the proposed construction. He added that the additions are modest and will not result in a negative impact to neighboring properties.

Upon a motion made by Mary McNett, seconded by Jyoti Sharma, and with a roll-call vote as follows:

Mary McNett – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3703-19, 66 Minnisink, LLC, 66-68 Minnisink Road, was **APPROVED**.

**CAL#3702-19, YEHOShUA BENJAMIN, 23 WOODFIELD DRIVE, SHORT HILLS**

Yehoshua Benjamin and Chris Blake, Architect, appeared and were sworn. The applicant would like to construct an addition. Proposal is in violation of:

606.2e1e2a – Side yard setback  
607.3e – Front yard parking area

Chris Blake's credentials were presented and accepted by the Board. He indicated that the applicant is proposing a 2<sup>nd</sup> floor addition over the existing garage as well as a small 2-story addition on the rear of the garage. The proposed 2<sup>nd</sup> floor addition over the garage requires variance relief in order to permit a side yard setback of 20.4 feet at the closest point, where the ordinance requires a 25 foot setback. Mr. Blake indicated that the applicant considered stepping the 2<sup>nd</sup> floor addition back to meet the 25 foot setback requirement but it resulted in an addition that was not in keeping with the existing character of the dwelling. The applicant agreed to revise the ridgeline of the addition so that the proposed 2<sup>nd</sup> story ridgeline would not extend above the ridgeline of the existing dwelling. The applicant's property is steeply sloped up from the street and the property to the right is even steeper. There is a retaining wall that separates the two properties. The proposed 2<sup>nd</sup> floor will still be lower than the 1<sup>st</sup> floor of the home on the neighboring lot and there is a landscape buffer between the two properties.

The applicant was also seeking variance relief to allow a parking space in the front yard area. However, based on comments from several Board members, the applicant indicated that he was revising his plan to eliminate the front yard parking area thereby eliminating that variance.

Overall, Board members felt the proposal would be an aesthetic improvement to the front façade of the dwelling. It will not result in a substantial negative impact on the adjacent neighbors due to their respective elevations.

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

Mary McNett – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – yes  
Joseph Steinberg – yes

Cal#3702-19, Yehoshua Benjamin, 23 Woodfield Drive, Short Hills, was **APPROVED** with the condition that the applicant submit revised plans depicting the elimination of the front yard parking area and the revised 2<sup>nd</sup> floor roofline.

**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 Wolfgang Tsoutsouris, and carried with a unanimous voice vote. (10:40 PM)

Eileen Davitt  
Board Secretary

Motion: MM  
Second: JSi  
Date Adopted: 8/19/19