

Township of Millburn
Minutes of the Zoning Board of Adjustment
July 18, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, July 18, 2022** at 7:00 PM via Zoom webinar.

Board Secretary, Eileen Davitt opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Amy Lawrence
Joseph Steinberg
Steve Togher
Wolfgang Tsoutsouris
Chandru Harjani
Ashley Avigdor
Jessica Glatt, Vice Chair
Craig Ploetner, Chair

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of June 6, 2022, was made by Steve Togher, seconded by Wolfgang Tsoutsouris, and carried with a unanimous voice vote.

MEMORIALIZATIONS

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

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

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

the following memorializing resolution was adopted:

**KAPIL DHINGRA & RUCHIKA ARORA
BLOCK 3605, LOT 11**

**CAL. NO. 3867-22
JULY 18, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Kapil Dhingra and Ruchika Arora (hereinafter the “Applicants”), in Calendar No. 3867-22 to permit the construction of a one-story addition to the front of a dwelling to allow for the expansion of an existing garage, on property located at 95 Falmouth Street, Millburn, New Jersey, and designated as Lot 11, Block 3605, on the Official Tax Map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on June 6, 2022 as to Calendar No. 3867-22 to permit the construction of a one-story addition to the front of a dwelling to allow for the expansion of an existing garage, on property located at 95 Falmouth Street, Millburn, New Jersey, and designated as Lot 11, Block 3605, on the Official Tax Map of the Township of Millburn; and

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

1. At the June 6, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Dan Dubinett, provided sworn testimony in support of the application.

2. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township’s R-4 Zone District (the “R-4 Zone”). The subject property is a corner lot pursuant to the Township Zoning Ordinance. The Applicants propose to construct a one-story addition to the front of a dwelling to allow for the expansion of an existing garage.

3. The subject property contains an existing garage facing a public street, a preexisting nonconforming condition pursuant to the Township Zoning Ordinance.

4. The proposed construction to expand the garage facing Falmouth Street is not permitted and would result in a front yard setback of 36.25 feet for a corner lot, where 40 feet is the minimum required front yard setback for a corner lot in the R-4 Zone. Therefore, variance relief is required.

5. Dan Dubinett, the Applicants’ Architect, testified that the subject property is both an irregular shaped lot and a corner lot, and that the property’s unique configuration, combined with the challenging topography on the subject property and the existing nonconforming garage,

create an undue hardship upon the Applicants. Mr. Dubinett stated that the subject property appears to have one continuous front yard due to its corner location and curvature. Mr. Dubinett stated that the proposed construction (which also consists of an additional minor addition to the rear of the dwelling, as well as a new covered porch in the rear) will not present a noticeable visual change to the dwelling or the neighborhood.

6. Martin Woros, 52 Slayton Drive, Millburn, was sworn in as a witness and expressed his concerns over the construction of the additions and the porch. He was concerned that the increase in impervious coverage would create issues with stormwater runoff. In response to these concerns, the Applicants through Mr. Dubinett's agreed to address any stormwater management issues directly associated with the proposed project.

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

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

9. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements, as set forth above and contained in the application materials. Specifically, the subject property's irregular shape and status as a corner lot pursuant to the Township Zoning Ordinance, as well as the aforementioned existing nonconforming conditions on the subject property, including the location of the existing attached garage, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

10. Although the proposed construction requires variance relief as set forth above, the deviation from the aforementioned requirements are relatively modest and can be achieved without undermining the intent or purpose of the Township Zoning Ordinance or the Master Plan. The Board further finds that the deviation of 3.75 feet from the R-4 Zone's requirement is

de minimis and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinances.

11. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The Board finds significant that the house is at a lower elevation than the adjacent roadway so to minimize any adverse impacts from the street. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 18th day of July, 2022, that the variance relief requested by the Applicants to permit the construction of a one-story addition to the front of a dwelling to allow for the expansion of an existing garage, resulting in a front yard setback of 36.25 feet for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, on property located at 95 Falmouth Street, Millburn, granted by this Board at its meeting of June 6, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants, the Applicants' Professional and at the public hearing, including as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 18th day of July, 2022.

Cal#3870-22, Indrani Banerjee, 100 Canoe Brook Road, Short Hills.

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

Amy Lawrence – yes
Joseph Steinberg – yes
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes

the following memorializing resolution was adopted:

**INDRANI & DEBJIT BANERJEE
BLOCK 5102, LOT 14**

**CAL. NO. 3870-22
JULY 18, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the applicants, Indrani and Debjit Banerjee (hereinafter the “Applicants”), in Calendar No. 3870-22 to permit the construction of a one-story addition to the rear of an existing dwelling, a new deck, and portico, along with a second-floor addition to the dwelling and relocation of the driveway, on property located at 100 Canoe Brook Road, Millburn, New Jersey, and designated as Lot 14, Block 5102, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on June 6, 2022 as to Calendar No. 3870-22 to permit the construction of a one-story addition to the rear of an existing dwelling, a new deck, and portico, along with a second-floor addition to the dwelling and relocation of the driveway, on property located at 100 Canoe Brook Road, Millburn, New Jersey, and designated as Lot 14, Block 5102, on the tax map of the Township of Millburn; and

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

1. At the June 6, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel. Tim Klesse, the Applicants’ Architect, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which contains a single family residence located in the Township’s R-5 Zone District (the “R-5 Zone”).

3. The Applicants propose to expand the existing residence with a one-story addition to the rear of the existing dwelling, a new deck, and a portico, along with a second-floor addition to the dwelling and relocation of the driveway to make the use of the existing residence more efficient.

4. The proposed construction will result in a combined side-yard setback of 29.3% where 35% is the required minimum (existing), as well as impervious building coverage of 19.8% (2,903 square feet), where the maximum impervious building coverage of 18% (2,633 square feet) is permitted, or a deviation of 1.8% (270 square feet). Therefore, variance relief is required.

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

A. A photo array, including an aerial photo of the neighborhood, as well as photographs of the subject property, introduced into evidence as Exhibit A-1, on June 6, 2022;

6. Tim Klesse, the Applicants' Architect, testified that the proposed construction will result in a new garage, portico, dormers, master bath, a new deck and family room spaces, as well as the enclosure of the existing deck. Mr. Klesse testified that the Applicants propose 30 additional Green Giant Arborvitae, 15 of which will be planted along the rear property line, and 15 of which will be planted along the eastern property line, each of which will be 8 feet tall above the root ball at the time of planting.

7. Mr. Klesse testified that the while the subject property lot area is conforming, the front façade of the existing dwelling is out of character with the neighborhood. He stated that the proposal is not a hardship, as the Applicants could likely accommodate their needs without variance relief; however, the proposal will increase the efficiency of the existing dwelling, while the proposed improvements will not create an imposing structure.

8. In response to comments from the Board, Mr. Klesse testified that, due to the oversized lot, with some minor reconfiguring, the proposed deviation in impervious building coverage can be reduced by 140 square feet, to a deviation of 130 square feet, or 1%, and stipulated to submitting revised plans reflecting same.

9. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances where a deviation from the Zoning Ordinances would advance the purpose of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL"), and the benefits of the deviation would substantially outweigh any detriment.

10. N.J.S.A. 40:55D-70 further states "[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without

substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and Zoning Ordinance” (the so-called “negative criteria”).

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

12. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The subject property can accommodate the negligible impact of the application’s proposed construction. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(2). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 18th day of July, 2022 that the variance relief requested by the Applicants to permit the construction of a one-story addition to the rear of the existing dwelling, a new deck, and portico, along with a second-floor addition to the dwelling and relocation of the driveway, resulting a combined side yard setback of 29.3% where 35% is permitted, and an impervious building coverage of 19%, where a maximum impervious building coverage of 18% is permitted, on property located at 100 Canoe Brook Road, Millburn, New Jersey, and designated as Lot 14, Block 5102, on the tax map of the Township of Millburn, New Jersey, granted by this Board at its meeting of June 6, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall submit revised plans to the Board, reducing the proposed impervious building coverage by 140 square feet, to a deviation of 130 square feet, as testified to at the hearing.
2. The Applicants shall plant 30 additional Green Giant Arborvitae, 15 of which will be planted along the rear property line, and 15 of which will be planted along the eastern property line, each of which will be 8 feet tall above the root ball at the time of planting.
3. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
4. The Applicants shall be bound to comply with the representations made before this Board by the Applicants, their professional expert witness and at the public hearing,

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 18th day of July, 2022.

Cal#3873-22, Gaston & Kristen Haupert, 47 Cedar Street, Millburn.

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

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

the following memorializing resolution was adopted:

**GASTON & KRISTEN HAUPERT
BLOCK 206, LOT 5**

**CAL. NO. 3873-22
JULY 18, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the applicants, Gaston and Kristen Haupert (hereinafter the “Applicants”), in Calendar No. 3873-22 to permit the reconstruction of an existing roof to increase the slope of same to restore the original character of the home, on property located at 47 Cedar Street, Millburn, New Jersey, and designated as Lot 5, Block 206, on the Official Tax Map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on June 6, 2022 as to Calendar No. 3873-22 to permit the reconstruction of an existing roof to increase the slope of same to restore the original character of the home, on property located at 47 Cedar Street, Millburn, New Jersey, and designated as Lot 5, Block 206, on the Official Tax Map of the Township of Millburn; and

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

1. At the June 6, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel. S. Prisco Tarquinio, the Applicants’ Architect, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township’s R-5 Wyoming Historic District (the “R-5 Zone”). The Applicants propose to reconstruct the existing roof on the dwelling to increase the slope of same to restore the original character of the home.

3. The subject property contains two (2) existing nonconforming conditions pursuant to the R-5 Zone: (a) a minimum side yard setback of 12 feet for a building up to 18 feet in height is required, and the subject property has an existing side yard setback of 2.7 feet for a building up to 18 feet in height; and (b) a minimum combined side yard setback of 35% (26.25 feet) of lot width is required, and the subject property has an existing combined side yard setback of 31.3% (23.5 feet).

4. The proposed construction will result in a change in the roof slope over the existing family room from 2.5/12 to 8/12. Since the existing family roof is within the side yard setback, variance relief is required.

5. S. Prisco Tarquinio, the Applicants’ Architect, testified that the Applicants have already appeared before the Historic Preservation Committee, which granted a Certificate of Appropriateness for the proposal, as the new roof pitch over the family room would provide more balance and provide a more proportioned composition of the home.

6. The Applicants seek to install a new second floor dormer addition, re-frame the family room roof with a new pitch to better match the original house, creating a hip roof rather than the existing shed-type roof, and add a new three-season room and deck at the rear of the house. Only the dormer addition will be visible from the street.

7. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances where a deviation from the Zoning Ordinances would advance the purposes of the Municipal

Land Use Law, N.J.S.A. 40:55D-1, *et seq.* (the “MLUL”), and the benefits of the deviation would substantially outweigh any detriment.

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

9. The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(2) for the requested variance relief. The application advances multiple goals of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”) specifically, goal (c) – to provide adequate light, air and open space; and, goal (i) – to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The Board finds that the application’s proposed construction is modest and consistent with the character of the subject neighborhood, while improving overall functionality of the Applicants’ property and retaining the original character of the home with a better street presence. The Board finds these goals and objectives are furthered by the application’s proposed construction which received approval from the Historic Preservation Commission.

10. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The subject property can accommodate the negligible impact of the application’s proposed construction. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(2). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 18th day of July, 2022 that the variance relief requested by the Applicants to reconstruct the existing roof to increase the slope of same and restore the original character of the home, on property located at 47 Cedar Street, Millburn, New Jersey, granted by this Board at its meeting of June 6, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 18th day of July, 2022.

Cal#3876-22, Driola LLC, 150 Essex Street, Millburn.

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

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

the following memorializing resolution was adopted:

**DRIOLA LLC
BLOCK 702, LOT 20**

**CAL. NO. 3876-22
JULY 18, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of use variance relief requested by the Applicant, Driola LLC, (d/b/a La Pergola) (hereinafter the “Applicant”), in Calendar No. 3876-22, to permit the use of outdoor patio space on an adjoining property for outdoor dining at an existing restaurant, on property located at 150 Essex Street, Millburn, New Jersey, known and designated as Lot 20, Block 702, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on June 6, 2022, as to Calendar No. 3876-22 to permit the use of outdoor patio space on an adjoining property for outdoor dining at an existing

restaurant, on property located at 150 Essex Street, Millburn, New Jersey, known and designated as Lot 20, Block 702, on the tax map of the Township of Millburn; and

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

1. At the June 6, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared together with counsel, Anthony Cerciello, Esq., and Richard Keller, the Applicant's Engineer and Planner, and all provided sworn testimony in support of the application.

2. The subject property is located in the Township's B-4 Central Business Zone District (the "B-4 Zone"), with frontage on Essex Street and Lackawanna Place. The corner lot is on the southwesterly corner of the intersection of those two streets. The subject property consists of 20,613 square feet, and is fully improved, with three commercial rental spaces and a parking lot for 19 automobiles with access to Lackawanna Place. The existing restaurant La Pergola, located at 120 Essex Street, occupies 2,384 square feet of an existing commercial building, with an additional 2,300 square feet in the basement, which is used for storage, a small office and food preparation. There are a total of 80 seats in the restaurant.¹

3. The Applicant was originally granted permission to clean up debris from the subject outdoor patio space for use as temporary outdoor dining pursuant to certain State directives authorizing same during the COVID-19 pandemic, directives that have since been rescinded.

4. The Applicant proposes the permanent use of the existing outdoor seating area, weather permitting, with a total of 62 seats, with a maximum total number of seats serviced by the La Pergola restaurant at any one time to remain at 80 seats, with the maximum permitted number of employees and seats at the restaurant and outdoor seating area consistent with that permitted in a certain September 15, 2010 Planning Board resolution approving the operation of the restaurant.

5. The proposed development would result in outdoor dining use where outdoor dining is not permitted in the B-4 Zone or as a second principal use on a lot, and additional directional signs to navigate patrons to the outdoor dining, where said signage is not permitted.

6. The Applicant's proposed use of the outdoor dining area requires a use variance pursuant to N.J.S.A. 40:55D-70d(1) and a bulk variance pursuant to N.J.S.A 40:55D-70c(2) for wayfinding signs on the subject property. The subject property previously received minor site plan and variance approval granted by the Township Planning Board on or about September 15, 2010.

7. Richard Keller, the Applicant's engineer and planner, testified as follows:

¹ The Applicant's restaurant space is located at 120 Essex Street, Millburn, while the proposed permanent outdoor seating area is located behind 150 Essex Street, the adjoining property.

- a. Outdoor dining hours will continue to be:
 - i. Lunch from 11:30 a.m. to 3:00 p.m.;
 - ii. Dinner from 5:00 p.m. to 10:00 p.m.; and
 - iii. Dinner on Sundays from 4:00 p.m. to 9:00 p.m.
- b. There will be a maximum of 13 employees on Saturday and Sunday;
- c. Outdoor dining will be located in the garden area behind the Fidelity Building, located at 150 Essex Street;
- d. Access to the garden/dining area will be via public easement;
- e. Esplanade, another restaurant in the neighborhood, has direct access to Millburn Avenue;
- f. The existing sound system will continue to play music, which typically consists of quiet chamber music;
- g. Wayfinding signs will be located at the beginning of the public access easement; and
- h. The application does not require site plan approval, an Environmental Impact Statement, or a parking variance.

8. Mr. Keller stated that the subject property was particularly suited for the application's proposed use despite the B-4 Zone's exclusion of outdoor dining as a second principal use. Mr. Keller stated that the existing conditions of the subject property adjacent to the La Pergola restaurant make it an appropriate location for the Applicant's proposal, as no expansion of the existing restaurant building is required, and that the proposed outdoor dining use would result in the existing building looking visually the same as it did before the application. Mr. Keller also stated that the application provides an aesthetically pleasant outdoor dining space with adequate on-site parking for patrons, and that the subject property could accommodate the application's proposed use.

9. Mr. Keller stated that the application promotes goals (a), (c), (g) and (i) of the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* (the "MLUL"). Mr. Keller elaborated that MLUL goal (a) is promoted because the application will promote the public health and general welfare; goal (c) is promoted as the proposal will provide adequate light, air and open space; goal (g) is promoted because the subject property contained sufficient space for the application's proposed outdoor dining use; and, goal (i) is promoted as the proposal will provide a desirable visual environment through creative development techniques and good civic design and

arrangement, all of which would not cause a substantial detriment to the Township Zoning Ordinance or Master Plan.

10. Mr. Keller also stated that the application would provide outdoor dining in a quiet and serene area, seven days a week, which is not provided anywhere else in the Township. He stated that the site is particularly suited given the proximity to the back door of the restaurant, which provides access through the restaurant or through the public easement in the backyard space, as well as the proximity of the restaurant and outdoor dining to a public parking deck and the train station. Mr. Keller stated that there will never be more than 80 diners at the restaurant, as that is the maximum number of diners that the kitchen will accommodate.

11. Mr. Keller testified that the seating area contains 1,580 square feet, with an additional 1,000 square feet of landscaping. He stated that the outdoor dining serves the public need as people want to eat outside, especially given the pandemic and its aftermath. Mr. Keller stated that not only has the Applicant cleaned the patio from overgrowth and debris, but the Applicant has leased bathrooms from the Fidelity Building for its patrons, promoting a clean and safe environment abutting a public easement. There are no residential neighbors in close proximity to the outdoor patio area.

12. With regard to the proposed subsection “c” variance relief, Mr. Keller testified that same is subsumed into the required “d” use variance relief. He testified that, nevertheless, the proposed wayfinding signs provide patrons with a safe and appropriately directed path to their destination.

13. Mr. Keller testified that there is no new impervious coverage, and therefore no adverse drainage impacts caused by the application. No additional outdoor lighting or a tent is proposed.

14. Mr. Keller testified that the Township’s Zone Plan supports downtown vibrancy, and the application maintains and enhances the economic viability of the downtown by energizing commercial space at night.

15. Mr. Keller confirmed that all of the conditions and representations of the aforementioned September 15, 2010 Planning Board Resolution shall continue to apply to this Application.

16. Jon Skolnick, Esq., an attorney representing J. Tabib, LLC, the owner of properties commonly known as 319 and 327 1/2 Millburn Avenue, questioned Mr. Keller as to the alleged removal of public access to the garden area, and whether or not the proposal would create a vermin problem, or inhibit neighboring property owners from adding residential dwellings above existing, abutting commercial properties.

17. Jafar Tabib, the principal of J. Tabib, LLC, provided sworn testimony in opposition to the application. He claimed (without supporting documentation) that the garden area is supposed to be a dedicated public area; that the application requires additional parking;

that he will lose access to the rear door of his building (a fire exit); and that the Applicant's proposal may impact his attempt to expand his building and erect residential space on top of same.

18. Don Richards, 93 Winged Foot Drive, Livingston, New Jersey, provided sworn testimony in support of the Application.

19. Heather Jenquine, 201 Sagamore Road, Millburn, New Jersey, the Chair of the Millburn Chamber of Commerce, provided sworn testimony in support of the Application, testifying that the Applicant is a great asset to the downtown area.

20. Mary Jo Reich, 14 Talbot Court, Short Hills, New Jersey, provided sworn testimony in support of the Application. She testified that the outdoor patio area is beautiful, accessible, and warm. She stated that it would be tragic if the use of this outdoor area is discontinued, and that it is nice to have the choice of either indoor or outdoor dining.

21. Belle Bennett Cole, of Palm Beach Gardens, Florida, the principal of the owner of the subject property, provided sworn testimony in support of the Application.

22. Anthony Fonseca, 11 Janet Lane, Springfield, New Jersey, provided sworn testimony in support of the Application. He noted that the Applicant planted all of the flowers and shrubbery surrounding the outdoor patio space at its own expense.

23. N.J.S.A. 40:55D-70d(1) allows for departures from zoning regulations to permit a use or principal structure in a district restricted against such use or principle structure in certain circumstances involving "non-inherently beneficial uses" wherein an applicant must demonstrate: 1) that the proposed use promotes the general welfare because the property is particularly suitable for the proposed use; and 2) that the applicant can satisfy their enhanced burden of proof to demonstrate that the granting of the variance relief requested is not inconsistent with the intent and purpose of the municipality's master plan and zoning ordinances, and must further reconcile the proposed use with the municipality's continued omission of the proposed use from those uses permitted in the zone, thereby providing a more substantive basis that the variance relief will not substantially impair the intent and purpose of the municipality's Master Plan and Zoning Ordinance. See Medici v. B.P.R. Co., 107 N.J. 1 (1987).

24. N.J.S.A. 40:55D-70c(2) allows the Board to grant variance relief in circumstances where a deviation from the Zoning Ordinances would advance the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL"), and the benefits of the deviation would substantially outweigh any detriment.

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

purpose of the zone plan and zoning ordinance.” See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

26. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70d(1) for the requested use variance relief, and that it is appropriate to grant this variance relief to permit the proposed outdoor dining and as a second principal use at the subject property. The application’s proposed use promotes the general welfare because the property is particularly suitable for the proposed use given its proximity to the La Pergola restaurant, its successful use during the State of Emergency, and that the existing building and parking lot on the property will not require any additional enlargement or exterior modification. The proposal provides accessible and desired outdoor dining services to patrons including Township residents, all without negatively impacting any nearby residential uses. The proposed signage will be appropriate and will promote public safety and efficient pedestrian circulation. Additionally, the granting of the use variance relief requested is not inconsistent with the intent and purpose of the Township’s Master Plan and Zoning Ordinance, as the application’s proposed construction would further multiple aforementioned goals of the Township’s Master Plan and its stated intent for the B-4 Zone, as testified to by Mr. Keller.

27. The Board also finds that the Applicant has reconciled the application’s proposed use with the Township’s continued omission of the proposed use in the B-4 Zone by demonstrating that the proposal is beneficial by improving the quality of the downtown, which is a great benefit to the community and invites people to the downtown to dine in a beautiful outdoor space and open seating area, with no residences in the immediate area, and that the proposed use is expected to generate and encourage pedestrian and economic activity in the B-4 Zone. The Board further finds that the Township’s Master Plan supports promoting the character and economic vitality of the Township’s downtown area, which would be furthered by the proposal. The application will result in the use of a revitalized and beautiful outdoor space that was previously overrun with weeds and unsightly. Therefore, for all the reasons stated above, the use variance relief requested can be granted without any substantial impairment to the Township Zoning Ordinance or Master Plan.

NOW, THEREFORE, BE IT RESOLVED on this 18th day of July, 2022, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70d(1) and N.J.S.A. 40:55D-70c(2), to permit the permanent use of the subject outdoor dining area, which use is not a permitted use, as well as additional wayfinding signs, which require bulk variance relief, for the property located at 150 Essex Street, Millburn, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. No more than 80 diners shall be seated concurrently at the restaurant premises, including both indoor and outdoor seating.
2. All representations and conditions of the September 15, 2010 Planning Board resolution shall continue and be effective toward this approval.

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 18th day of July, 2022.

APPLICATIONS

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

Frank Ferraro, attorney for the applicant, stated his appearance. The applicant is seeking the approval to upgrade telecommunication antenna on the rooftop of the subject property. There are currently 5 antenna on the rooftops which have been active since 1998. There are currently no resolutions on file that ever granted approval for this use. There have been permits issued over the years for upgrades.

Joshua Cottrell, P.E., appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Cottrell presented plans dated 2/22/22 and referred to the roof plan, sheet A-01 of the submitted plans. He stated that there are currently 5 antenna on the roof top and 2 equipment cabinets on the western portion of the roof. There are also other carriers on the roof top. The proposal is to remove 2 of the existing antenna, relocate 3, and add an additional 6 for a total of 9 antenna. He referred to sheet A-04 of the submitted plans which shows the existing antenna in an elevation view. There is no disturbance at grade, no additional impervious and no additional site visits.

Rob Simon asked if there will be any sound impacts from the new equipment. Mr. Cottrell stated the new equipment would not generate sounds as there are no generators

associated with this upgrade. Wolfgang Tsoutsouris asked if height is the only issue with the antenna. Mr. Cottrell clarified that the cabinets are also above the 60' allowable height.

Franco Boschutte, Radio Frequency Engineer, appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Boschutte explained that the application will allow for a larger coverage footprint and that the area of deficient coverage is being addressed by this application. The site will be in compliance with all FCC requirements.

Rob Simon asked whether lower antennas would impact coverage. Mr. Boschutte claimed that lowering the antennas any closer to the roof edge would result in negative coverage.

Timothy Kronk, P.P., appeared and was sworn. His credentials were presented and accepted by the Board. He indicated that he prepared the plans and visited the site, as well as reviewed the Master Plan and the Zoning Ordinance. Mr. Kronk gave testimony relative to the "d" variance relief being requested by the applicant. He explained that for such relief, suitability of the site must be shown. According to Mr. Kronk, this location and height will sufficiently address coverage deficiencies and have no negative impacts as an unmanned facility. He also believes it would have no impact on traffic and parking. It is his professional opinion that this application has no substantial detriment associated with this use as well as no negative impact to the zoning plan and zoning ordinance.

Steve Togher asked Mr. Krank if he accessed the rooftop of the Upton to determine potential impacts to the residents living there. Mr. Krank did not make any observations from the Upton rooftop. He made his observations from the public right-of-way.

Rob Simon reminded Board members that the Federal and State Law each encourage the co-location of wireless telecommunication facilities and associated cabinets. Board members discussed a preference of colors for the proposed antennas and agreed that a light beige color would be preferred.

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

Amy Lawrence – yes
Joseph Steinberg – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3862-22, T-Mobile Northeast, 150 JFK Parkway, Short Hills, was **APPROVED**.

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

*Jessica Glatt recused and left the meeting room.

Christine Miseo, architect for applicant, appeared and remains sworn. Ms. Miseo spoke to the updated proposal. The applicant reduced the size of the addition. Ms. Miseo compared the original plans to the newly proposed plans.

The floor area ratio was reduced from 53.3% to 43.7%. The applicants have also eliminated the need for variance relief for:

- L-side setback above 18'
- Combined side yard setback
- Rear yard unoccupied

The applicant is seeking variance relief for building coverage. The applicants proposed 25.3% building coverage where 23% is permitted. The re-noticed letter included the need for the building coverage variance relief, which was omitted erroneously at the first hearing.

Entered as Exhibit A-2: 200 foot radius map with neighboring FAR calculations

Ms. Miseo referenced the floor plans and stated that the applicants have eliminated the 6 foot addition to the kitchen and will utilize the original kitchen/dining room area. This resulted in a rear yard unoccupied conformity. The second floor will also be reworked, with the bathrooms being made smaller. From the front, the house looks almost identical to the original form. Ms. Miseo compared the proposed floor area ratio with floor areas of the surrounding houses. The proposed shed dormer will accommodate a third floor play area in the rear of the dwelling. There are no bathrooms or bedrooms on the third floor.

Wolfgang Tsoutsouris feels that the changes are modest and ease up some of the conditions. Overall, he supports this application. Steve Togher indicated that the FAR is 43.7% where 36% is permitted. He cannot vote affirmatively on such a large deviation. Craig Ploetner does not believe the excess square footage can be accommodated without substantial detriment. Amy Lawrence appreciates the reductions made in the revised proposal, but feels the FAR is still extreme. Chandru Harjani and Joe Steinberg are inclined to support this application.

This matter was carried to August 15, 2022, via Zoom Webinar.

*Jessica Glatt returned to the meeting room.

CAL#3874-22, ALEX & INDRAJA KISEL, 52 WALNUT AVENUE, MILLBURN

Alex and Indraja Kisel appeared and were sworn. The applicants would like to construct an addition. Proposal is in violation of:

606.2e1f – combined side yard setback
606.2e2b – lot overage
606.2e3a – accessory structure setback
609.1c – maximum accessory coverage

Tim Klesse appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Klesse spoke to the application and stated that the applicants propose to construct an addition above the existing right side of the dwelling.

Entered as Exhibit A-1: series of photos

Mr. Klesse gave a brief description of the proposal. The applicants are proposing to enclose the front portico, add over a 1-story family room in the rear to accommodate a Master suite on the second floor. They have contained the addition to the rear of the dwelling.

Steve Togher asked if a variance is required for the proposed wall. Mr. Klesse stated this element did not require a variance.

Elaine Weiland believes the rear property is a steep slope. Ms. Weiland questioned the first floor FAR indicated in the plans. She believes it is understated and that it requires a variance.

Elaine Weiland, 54 Walnut Avenue, appeared and was sworn. Ms. Weiland lives next door to the applicant. She expressed her concern with the second story addition. She feels it will create an alleyway between the two houses.

Leonard Weiland, 54 Walnut Avenue, appeared and was sworn.

Entered as Exhibit O-1: series of 5 photos by objector (Weiland) 7/16/22

Ms. Weiland feels approval of this variance will cause massing of the house and will have a negative effect on her property.

Tim Klesse stated that this addition allows the applicant to modify the dwelling while remaining respectful of the area characteristics.

Wolfgang Tsoutsouris feels this project results in a lot of massing and is out of scale with the neighborhood. Jessica Glatt appreciates what the applicant is trying to do but was slightly concerned with the potential massing. She indicated that she would be interested in hearing the opinions of her fellow Board members. Joe Steinberg believes the neighbors' testimony is not compelling. He is in favor of this application. Amy Lawrence has more of an issue with the lot coverage variance request. Steve Togher is in favor and feels these are standard improvements. Craig Ploetner was in agreement with Steve Togher.

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

Amy Lawrence – no
Joseph Steinberg – yes
Steve Togher – yes
Wolfgang Tsoutsouris – no
Chandru Harjani – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3874-22, Alex & Indraja Kisel, 52 Walnut Avenue, Millburn, was **APPROVED**.

CAL#3875-22, STEFAN & SHELLY HERMANN, 55 WHITNEY ROAD, SHORT HILLS

Danial Dubinett, architect, appeared and was sworn. His credentials were presented and accepted by the Board. The applicants would like to construct a small expansion of the second floor to allow for a closet area. Proposal is in violation of:

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

Entered as Exhibit A-1: sheet V-1 (marked up)
Entered as Exhibit A-2: photos of subject site (6 photos taken 7/18/22)

Mr. Dubinett stated that there is mature foliage between the two homes which have a distance of 16 feet between them. There will be no negative impact on the adjoining properties.

Overall, Board members felt the variances being requested were minimal and were largely the result of pre-existing conditions on the property. They felt there would be no negative impacts to adjoining properties or the surrounding streetscape.

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

Amy Lawrence – yes
Joseph Steinberg – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3875-22, Stefan & Shelly Hermann, 55 Whitney Road, Short Hills, was **APPROVED**.

CAL#3879-22, DISH WIRELESS LLC, 30 BLEEKER STREET, MILLBURN

Christopher Quinn, attorney for the applicant, stated his appearance. The applicant is a new licensed FCC wireless carrier. They propose to install antennas in a zone where such a use is not permitted. The height will be 75 feet, exceeding the allowable height of 30 feet.

Ekta Shah, P.E., appeared and was sworn. Her credentials were presented and accepted by the Board. Ms. Shah gave a brief description of the proposal. The subject site currently has a 100 foot monopole. DISH Wireless is proposing to install three antennas at 75 feet in height. There would be no change to the existing monopole. The monopole was built to accommodate additional carriers. No lighting or signage is included in the proposal. Ms. Shah stated that maintenance visits would be done every 4-6 weeks. The goal of this application is to provide additional service to the surrounding area, and this site is most suited to achieve maximum coverage.

Rob Simon indicated that the Federal and State Law each encourage the co-location of wireless telecommunication facilities and associated cabinets. Craig Ploetner believes this application is uniquely suited for the use. Steve Togher and Chandru Harjani agree that this application provides a vital service.

Overall, Board members felt this site is uniquely suited for this use and the applicant is providing a vital service to the area.

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

Amy Lawrence – yes
Joseph Steinberg – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Chandru Harjani – yes
Jessica Glatt – yes
Craig Ploetner – yes

Cal#3879-22, DISH Wireless LLC, 30 Bleeker Street, Millburn, was **APPROVED**.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Steve Togher, seconded by Wolfgang Tsoutsouris, and carried with a unanimous voice vote. (10:15 PM)

Eileen Davitt
Board Secretary

Motion: WT
Second: ST
Date Adopted: 8/15/22