

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
August 16, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, August 16, 2021** 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:

Craig Ploetner  
Jyoti Sharma  
Joy Siegel  
Steve Togher  
Wolfgang Tsoutsouris  
Amy Lawrence  
Jessica Glatt, Vice Chairwoman  
Joseph Steinberg, Chairman

Also present:

John Drill, Substitute for Board Attorney  
Eric Fishman, Court Reporter  
Eileen Davitt, Zoning Officer/Board Secretary

**MINUTES**

A motion to approve the minutes of June 7, 2021, was made by Craig Ploetner, seconded by Steve Togher, and carried with a unanimous voice vote.

A motion to approve the minutes of June 21, 2021, was made by Wolfgang Tsoutsouris, seconded by Joy Siegel, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3791-21, Cori and Jason Wilf, 30 Montview Avenue, Short Hills**

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

Craig Ploetner – yes  
Jyoti Sharma – yes  
Joy Siegel – yes  
Wolfgang Tsoutsouris – yes

the following memorializing resolution was adopted:

**CORI & JASON WILF  
BLOCK 1502, LOT 30**

**CAL. NO. 3791-21  
AUGUST 16, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the Applicants, Cori and Jason Wilf (hereinafter the “Applicants”), in Calendar No. 3791-21 to permit a one-story garage addition, on property located at 30 Montview Avenue, Short Hills, New Jersey, and designated as Lot 30, Block 1502, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on April 19, 2021, June 21, 2021, and July 19, 2021 as to Calendar No. 3791-21 to permit the construction of a new pool with a motorized cover to replace an existing pool, the construction of a pool house, and an expansion of the existing garage, dining room, living room, and kitchen, on property located at 30 Montview Avenue, Short Hills, New Jersey, and designated as Lot 30, Block 1502, on the tax map of the Township of Millburn; and

**WHEREAS** the application was amended through the course of the public hearings to eliminate all proposed development other than a one-story garage addition; and

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

1. At the April 19, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared with John James, the Applicants’ Architect, Rich Keller, the Applicants’ Engineer and Planner, and Brian Hirsch, the Applicants’ Landscape Architect, each testifying under oath in support of the Application. Gary F. Forshner, Esq. appeared as counsel for the Applicants. There was no public opposition to the application.

2. The subject property, containing a single family residence and an attached three car garage, is located in the R-3 Zone. The subject property contains two (2) existing non-conforming conditions: (a) an existing side yard setback of 15.61 feet for a building over 18 feet in height where the required minimum side yard setback is 25 feet for a building over 18 feet in height; and (b) an existing combined side yard setback of 42.29 feet where a minimum combined side yard setback of 45.23 feet (35% of lot width) is required.

3. The Applicants’ original proposal required variance relief to permit a building coverage of 14.97% where 13% building coverage is the maximum permitted; a front yard setback of 73.11 feet where 81.5 feet is the required minimum front yard setback; and a

combined side yard setback of 32.73% where the minimum required combined side yard setback is 35%.

4. Due to comments and concerns expressed by the Board throughout the application hearings, the Applicants withdrew their original plans and submitted modified plans that eliminated the need for variance relief from the previously requested building coverage variance and front yard setback variance. The revised application for a one-story garage addition without encroaching on the required front yard setback proposed a combined side yard setback of 32.73% of lot width where the minimum required combined side yard setback in the R-3 Zone is 35%. Therefore, variance relief is required.

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

A. Aerial Photographs of the subject neighborhood, taken on March 21, 2021, introduced into evidence as **Exhibit A-1**, on April 19, 2021;

B. Photographs of the subject neighborhood, taken during the Summer of 2020, consisting of four (4) sheets, introduced into evidence as **Exhibit A-2**, on April 19, 2021; Planting Diagram, prepared on June 9, 2021, introduced into evidence as **Exhibit A-3**, on June 21, 2021;

C. E-mail from Tom Doty, introduced into evidence as **Exhibit A-4**, on June 21, 2021;

D. Annotated Site and Neighborhood photos, taken on March 21, 2021, revised on June 15, 2021, consisting of seven (7) sheets, entered into evidence as **Exhibit A-5**, on June 21, 2021;

E. Aerial photograph depicting setbacks of neighboring properties, taken on March 21, 2021, revised on June 15, 2021, entered into evidence as **Exhibit A-6**, on June 21, 2021;

F. Letter from Gary S. Forshner, Esq., dated July 8, 2021, consisting of two (2) pages enclosing revised architectural plans with a revision date of July 8, 2021, entered into evidence as **Exhibit A-7**, on July 19, 2021; and

G. Revised Variance Plan, dated July 8, 2021, prepared by Casey & Keller Engineering, consisting of one (1) sheet, entered into evidence as **Exhibit A-8**, on July 19, 2021.

6. Rich Keller, the Applicant's Engineer and Planner, testified that the proposed garage expansion would allow enhanced functionality for three cars. Mr. Keller further stated that the property's shape, which measures 133.5 feet wide at the front but gradually diminishes to 96 feet wide at the rear creates a hardship for the subject property. Mr. Keller believed that the existing footprint and layout of the subject residence also created a hardship, noting that the

proposed one-story garage addition will not exacerbate the existing combined side yard setback for the home on the property.

7. Mr. Keller concluded by testifying that the Application should receive variance relief pursuant to N.J.S.A. 40:55D-70c(1) and c(2), due to the subject property's existing lot shape, the location of the existing residence and structures on the subject property, and because the Application would support the Municipal Land Use Law's purposes of furthering the general welfare by providing improved aesthetics through modifying the existing residence, preserving adequate air, light, and open space, especially given that the proposed garage addition will be screened from adjacent neighbors by existing vegetation. Mr. James similarly testified that the proposed construction would keep the overall scale and appearance of the subject residence similar to its existing condition and to the overall scale and appearance of other residences in the subject neighborhood. The Applicants' Landscape Architect, Brian Hirsch, similarly testified that the subject property had a great deal of existing mature plant material.

8. 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[.]

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

10. The Board finds that the Applicants have satisfied both the statutory criteria of N.J.S.A. 40:55D-70c(1) and c(2), and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed garage construction consistent with the revised plans submitted by Mr. Keller and Mr. James, each with a revision date of July 8, 2021. The need for 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. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants. Although the proposed construction requires variance relief to permit a 32.73% combined side yard setback where 35% is the required minimum combined side yard setback, the deviation from the requirements are modest in light of the inability to relocate the proposed garage addition elsewhere on the property without requiring the same or additional variance relief. In fact, the revised application eliminated the need for previously requested front yard setback

variance relief, bringing the proposed construction more into conformance with the Township's Ordinances. The proposed garage addition does not further encroach upon the existing combined side yard setback condition at the property. The Board concludes that the proposed construction preserves the character of the subject neighborhood given that it will not be visible to neighboring properties, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1). Therefore, 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 zoning ordinance.

11. The Board further finds that the Applicants have satisfied the statutory criteria as variance relief can be justified under N.J.S.A. 40:55D-70c(2) as numerous purposes of the MLUL under N.J.S.A. 40:55D-2 are advanced by the application – namely, subsections a (promoting the general welfare), c (providing adequate light, air and open space), and i (promoting a desirable visual environment) for the reasons set forth above and contained in the application materials. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested herein under N.J.S.A. 40:55D-70c(1) and c(2) can be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 16th day of August, 2021 that the variance relief requested by the Applicants to permit an expansion of the existing garage, resulting in a combined side yard setback of 32.73% where the minimum required combined side yard setback is 35%, on property located at 30 Montview Avenue, Short Hills, granted by this Board at its meeting of July 19, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

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

2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and their professionals at the public hearings, as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals. These include the contents of the revised plans presented by Mr. Keller and Mr. James, each bearing a revision date of July 8, 2021, as set forth above.

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 16th day of August, 2021.

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**Cal#3802-21, Jikang Zhou, 12 Ridge Terrace, Short Hills**

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

- Jyoti Sharma – yes
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Amy Lawrence – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**JIKANG ZHOU  
BLOCK 1811, LOT 7**

**CAL. NO. 3802-21  
AUGUST 16, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Jikang Zhou (hereinafter the “Applicant”), in Calendar No. 3802-21 to permit an existing shed to remain behind an existing residence along the westerly property line of property located at 12 Ridge Terrace, Short Hills, New Jersey, known and designated as Lot 7, Block 1811, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on July 19, 2021, as to Calendar No. 3802-21 to permit an existing shed to remain behind an existing residence along the westerly property line of property located at 12 Ridge Terrace, Short Hills, New Jersey, known and designated as Lot 7, Block 1811, 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 July 19, 2021 hearing, the Application and service of notice were found to be in order. The Applicant appeared without counsel and provided sworn testimony in support of the Application. No members of the public testified in opposition to the Application.

2. The Applicant, and his wife, Christine Kong, are the owners of the subject property, containing a single family residence located in the Township's R-6 Residential Zone (the "R-6 Zone"). The Applicant's property is irregularly shaped with an "L" configuration. There is an existing shed on the property that is 6 feet tall and measures 10 feet by 8 feet, installed along the westerly property line of the subject property.

3. The Township Zoning Ordinance (the "Zoning Ordinance") requires an accessory structure in the R-6 Zone to have a minimum 12 foot setback from any side lot line. The existing shed is set back 0 feet from the westerly property line of the subject property. Therefore, variance relief is required.

4. The Applicant testified that he installed the existing shed along the westerly property line of the subject property sometime during the month of September, 2020. Located across from the existing shed on the adjacent property is a picket fence, garage and retaining wall. There are mature trees on the adjacent property next to the neighbor's garage. The Applicant stated that the existing shed was installed on a layer of stone, and that if the existing shed were to be moved to a conforming location on his property, it would impact the utility of the Applicant's back yard due to the irregular "L" shaped configuration of the property. The Applicant testified that there was no lighting proposed in connection with the Application. The Applicant concluded by stating that it was typical for residences in the subject neighborhood to have a shed located in the side and rear yards of those properties, and that the existing shed was not causing any detriment to the Applicant's neighbor most impacted by the shed.

5. Steve Togher, 15 Ferncliff Terrace, Short Hills, a member of the Zoning Board of Adjustment of the Township of Millburn who recused himself from the subject application since he resides within 200 feet of the subject property, testified that he was the Applicant's neighbor to the rear of the Applicant's property and that he was in support of the Application. Mr. Togher testified that the existing shed was behind the Applicant's neighbor's garage and out of view of that neighbor's residence, that the existing shed could not be seen from Mr. Togher's property.

6. N.J.S.A. 40:55D-70c(1) states:

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

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

substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone Plan and Zoning Ordinance.” See Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

8. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested variance relief as to the requested accessory structure side yard setback, and concludes that it is appropriate to grant the variance relief requested by the Applicant to allow the existing shed to remain in its current, non-conforming location. As set forth above, the need for the variance relief requested by the Applicant is related to several already-existing conditions affecting the property, the existing dwelling and other site improvements, as well as the irregular “L” shape of the property. The Board finds these conditions to be exceptional circumstances affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant. Although the current shed location requires variance relief, placing the shed in a conforming location on the property would severely impact the utility of the Applicant’s back yard. The existing shed is not visible from any public right of way, and is concealed from the home on the neighboring property most impacted by the shed by existing trees, vegetation, and an existing fence.

9. The Board concludes that the appearance of the existing shed conforms to the character of the subject neighborhood, and that any negative impact from the existing shed is negligible and not a substantial detriment. For the reasons set forth above, the positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1), including that the granting of the variance relief requested relating to the existing shed can be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township Zone Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 16th day of August, 2021 that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70c(1), to allow for an existing shed to remain in its current location in violation of the applicable accessory structure side yard setback requirement, where 12 feet is the required minimum accessory structure setback in the R-6 Zone and a zero (0) foot setback is proposed, approved by this Board at its meeting of July 19, 2021, for the property at 12 Ridge Terrace, Short Hills, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicant shall be bound to comply with the Application submissions and the representations made before this Board by the Applicant at the public hearing, and as further 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 approval set forth herein. Such representations are hereby made conditions of such approval.
3. The Applicant shall be responsible for ongoing maintenance for the existing shed.

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 16th day of August, 2021.

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**Cal#3804-21, Sherrie Potash, 32 Great Hills Terrace, Short Hills**

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

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

the following memorializing resolution was adopted:

**SHERRIE POTASH  
BLOCK 4101, LOT 26**

**CAL. NO. 3804-21  
AUGUST 16, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Sherrie Potash (hereinafter the “Applicant”), in Calendar No. 3804-21 to permit the construction of a swimming pool, patio, fence, and retaining wall on property located at 32 Great Hills Terrace, Short Hills, New Jersey, and designated as Lot 26, Block 4101, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on July 19, 2021 as to Calendar No. 3804-21 to permit the construction of a swimming pool, patio, fence, and retaining wall on property located at 32 Great Hills Terrace, Short Hills, New Jersey, known and designated as Lot 26, Block 4101, 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 July 19, 2021 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel, together with Lawrence Potash, and the Applicant's Licensed Landscape Architect, Jonathan Bob, and testified under oath in support of the application. There was no public opposition to the application.

2. The Applicant is an owner of the subject property, which is a through lot located at the intersection of Tall Pine Lane and Great Hills Terrace, located in the Township's R-4 Zone District. The property has two (2) front yards and no rear yard as defined by the Township Zoning Ordinance due to the location of the property and its status as a through lot. The Applicant proposes to construct a 32 foot by 15 foot swimming pool, a paved patio, a six foot tall fence, and a retaining wall 2.5 feet in height on the property.

3. The subject property contains a single family residence and a detached two car garage. Beyond its condition as an undersized lot for the R-4 Zone District, the subject property also contains three (3) additional pre-existing nonconforming conditions pursuant to the Township Zoning Ordinance for the R-4 Zone: (a) a minimum lot width of 100 feet is required, and the subject property has an existing lot width of 75 feet; (b) a minimum lot area of 20,000 square feet is required, and the subject property has an existing lot area of 13,994 square feet; and (c) a maximum height of two feet for a front yard retaining wall is required, and the subject property has an existing front yard retaining wall that is 3.5 feet in height.

4. The Township Zoning Ordinance requirements for the R-4 Zone require all accessory structures to be located in the rear yard; require a minimum 36 foot side yard setback for accessory structures associated with a pool; prohibit front yard fences; and prohibit front yard wall heights in excess of two feet associated with a pool. The proposed construction would result in required variance relief to permit accessory structures to be located in the front yard; a 10-foot side yard setback for the accessory structures; a 6-foot high fence in the front yard; and a front yard retaining wall of 2.5 feet in height. Therefore, variance relief is required.

5. The Applicant testified that the subject property is a through lot due to a recently created right-of-way extending behind the subject property. The Applicant further stated that an existing four foot to six foot retaining wall on the adjacent property to the rear would remain and while not impacted by the proposed construction, prevents any vehicular access to the subject property. The Applicant further stated that all accessory structures, except for the proposed pool filter equipment, will meet the applicable minimum setback requirements, and that the proposed location of the pool filter was within the minimum setback area due to the location of an existing generator and air conditioning units. The Applicant additionally stated that the existing 3.5 foot retaining wall on the subject property would be reduced in height to 2.5 feet as a result of the application. The Applicant concluded by stating that there was no visibility of the proposed construction from the back lot line or from any public right of way.

6. Due to comments and concerns expressed by the Board at the July 19, 2021 application hearing, the Applicant agreed to install evergreen plantings at least 4 foot high above the root ball around the proposed pool filter equipment and the existing generator and air conditioning units.

Inderpreet Batra, the owner of adjacent property identified on the Township Tax Map as Lot 65, Block 4101, testified that the application would not impact his property, and that there was an existing fence along his rear property line, with four feet to eight feet of space between that fence and the existing retaining wall adjacent to the subject property.

7. N.J.S.A. 40:55D-70(c)(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.” See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

9. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested by the Applicant to permit the proposed construction. The need for 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. The subject property is a through lot with two front yards and no rear yard as defined by the Township Zoning Ordinance, and there is no location on the subject property where the proposed construction can be located that would not result in the same or additional variance relief, or would not severely impair the utility of the proposed construction. There are also existing trees to provide screening at the rear of the property. The Board finds these conditions, as well as the subject property’s status as an undersized lot both in lot area and lot width, to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant. Although the proposed construction requires variance relief to permit an accessory structure located in the front yard where accessory structures are prohibited in front yards; a 10 foot side yard setback for accessory structures associated with a pool where 36 feet is required; a 6-foot high fence in the front yard where fences are prohibited in front yards; and a front yard retaining wall of 2.5 feet in height where the maximum allowable height for a front yard retaining wall is 2 feet, the deviation from the requirements are modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring the same or additional variance relief. The proposed improvements will not be visible from the neighboring properties to the rear, and will be adequately screened from view from other neighboring properties and the surrounding streets by both new and existing plantings.

10. The Board concludes that any negative impact on the surrounding neighbors from the proposed minor deviations is negligible and far from constituting a substantial detriment, especially given the similarity between the proposed construction and existing structures in the subject neighborhood. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested herein under N.J.S.A. 40:55D-70c(1) can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township Master Plan and Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** on this 16th day of August, 2021 that the variance relief requested by the Applicant to construct a pool, paved patio, fence, and retaining wall, resulting in an accessory structure located in the front yard where accessory structures are prohibited in front yards; a 10 foot side yard setback for accessory structures associated with a pool where 36 feet is required; a six foot high fence in the front yard where fences are prohibited in front yards; and a front yard retaining wall of 2.5 feet in height where the maximum allowable height for a front yard retaining wall is 2 feet, on property located at 32 Great Hills Terrace, Short Hills, granted by this Board at its meeting of July 19, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicant shall provide screening for the proposed pool filter equipment and existing generator and air conditioning units by installing evergreen plantings at least four feet high above the root ball.
2. The Applicant shall insure that all new plantings be maintained in order to screen the view of the proposed pool filter equipment and existing generator and air conditioning units from the street and surrounding properties.
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 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 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 16th day of August, 2021.

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**Cal#3807-21, Robert Iommazzo, 75 Wellington Avenue, Short Hills**

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

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

the following memorializing resolution was adopted:

**DANA & ROBERT IOMMAZZO  
BLOCK 1809, LOT 6**

**CAL. NO. 3807-21  
AUGUST 16, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Dana and Robert Iommazzo (hereinafter the “Applicants”), in Calendar No. 3807-21 to permit the construction of a second floor master bathroom and walk-in closet, and a separate second floor hall bathroom, on property located at 75 Wellington Avenue, Short Hills, New Jersey, and designated as Lot 6, Block 1809, on the tax map of the Township of Millburn.

**RESOLUTION**

**WHEREAS** the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held a public hearing according to law on July 19, 2021 as to Calendar No. 3807-21 to permit the construction of a second floor master bathroom and walk-in closet, and a separate second floor hall bathroom, on property located at 75 Wellington Avenue, Short Hills, New Jersey, and designated as Lot 6, Block 1809, 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 July 19, 2021 hearing, the Application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, John James, 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 is a corner lot located at the intersection of Wellington Avenue and Woodland Road, in the R-6 zone district. The home on the property consists of three bedrooms with only one bathroom. The Applicants propose to construct a second floor master bathroom and walk-in closet, and a separate second floor hall bathroom. The proposed construction will occur over a portion of the existing first floor of the residence on the property.

3. The subject property contains a single family residence and a connected garage. Beyond its condition as an undersized lot for the R-6 zone, the subject property also contains nine (9) additional non-conforming pre-existing conditions pursuant to the Township Ordinances: (a) a minimum lot area of 6,000 square feet is required, and the subject property has an existing lot area of 5,663 square feet; (b) a minimum lot width of 60 feet is required, and the subject property has an existing lot width of 57.31 feet; (c) a minimum front yard corner lot setback of 40 feet is required, and the subject property has an existing front yard corner lot setback of 30.08 feet; (d) a minimum side setback of 12 feet for a building over 32 feet in height is required, and the subject property has an existing minimum side yard setback of 11.12 feet for a building over 32 feet in height; (e) a minimum rear yard unoccupied area of 1,415.8 square feet (25% of lot area) is required, and the subject property has an existing rear yard unoccupied area of 569 square feet (10% of lot area); (f) a minimum rear yard setback of 19.2 feet (20% of lot depth) is required, and the subject property has an existing rear yard setback of 8.5 feet (8.9% of lot depth); (g) a maximum building coverage of 23% is allowed, and the subject property has an existing building coverage of 24.3%; (h) a maximum lot coverage of 45% is allowed, and the subject property has an existing lot coverage of 46%; and (i) a maximum Floor Area Ratio (“FAR”) of 36% is allowed, and the subject property has an existing FAR of 36.5%. The proposed construction would result in a FAR of 39.3% where 36% is the maximum allowable FAR. Therefore, variance relief for the 3.3% deviation (comprising 187 square feet) is required.

4. The Applicants propose to create a master bathroom, a walk-in closet, and a separate hall bathroom, on the second floor of the residence of the subject property. The proposed second floor addition is over the footprint of the existing house and is to be located at the rear of the home. The Applicants desire to update their home to reflect the amenities found in other homes in the subject neighborhood. The Applicants’ Architect stated that the existing undersized nature of the subject property is what caused the need for FAR variance relief, and that even with the proposed construction, the subject residence would still be well within the size of other residences along Wellington Avenue and in the subject neighborhood. According to the Applicants’ Architect, the Applicants desire to increase the functionality of their residence while remaining within the home’s existing building footprint.

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

6. The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(d)(4) for FAR variance relief, and concludes that it is appropriate to grant this variance relief requested by the Applicants to permit the proposed construction. The Board is satisfied that the proposed construction is modest in size, similar to other additions in the subject neighborhood, and will bring the existing residence (with only one bathroom) more into conformity with residences in the subject neighborhood. Although the proposed construction requires FAR variance relief as set forth above, the proposed deviation from the requirements are modest in light of the inability to perform any modifications to the home on the property without requiring FAR variance relief, and without undermining the intent and purpose of the Township Zoning Ordinance. In fact, the FAR calculation includes space devoted to the uninhabitable attached garage at the property. The proposed construction will result in an increase from the existing FAR of 2.8%, which is only an increase of 158 square feet. The proposed construction will only result in a 3.3% deviation from the FAR requirements of the R-6 zone, which is only a deviation of 187 square feet, which is accommodated at the property and will not negatively impact neighboring properties.

7. Additionally, the subject property is burdened by its existing status as an undersized lot for the R-6 zone located on a corner lot. The subject property will accommodate any perceived problems associated with the proposed FAR larger than that permitted by the Zoning Ordinance of the Township, so to establish “special reasons” pursuant to N.J.S.A. 40:55D-2 and relief pursuant to N.J.S.A. 40:55D-70(d)(4). The proposed construction will not expand the existing building footprint, and the residence on the subject property will remain similar in size to other residences in the subject neighborhood. The scale and design of the proposed addition is also in keeping with that of neighboring homes and properties. The Board further concludes, for all the reasons set forth above, that the granting of FAR variance relief to permit the proposed addition can be made 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 16th day of August, 2021 that the variance relief requested by the Applicants to construct a second floor master bathroom and walk-in closet, and a separate second floor hall bathroom, resulting in a FAR of 39.3% where 36% is the maximum allowable FAR, on property located at 75 Wellington Avenue, Short Hills, granted by this Board at its meeting of July 19, 2021, 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 at the public hearing, as set forth in the Board’s findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.

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

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

#### **CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 16th day of August, 2021.

#### **APPLICATIONS**

#### **CAL#3810-21, MBK HOLDINGS LLC, 688-700 MORRIS TURNPIKE**

Greg Meese, Attorney for the applicant, stated his appearance. The owner of the site, Mark Bigos, the applicant, Evan Mayer; and the applicant's engineer, Rich Keller, were brought forward to answer questions from the public.

Jay Morreale, of 1 Claremont Drive, stated his appearance. He asked Rich Keller if it is true, that the site is not compliant with the B-2 setback requirement. Mr. Keller confirmed that this is true. The requirement is 50 feet and the applicant is slightly below that. This is an existing non-conforming condition that remains unchanged.

Mr. Morreale questioned the parking at Jersey Mike's in the Boomtown location. Based on his analysis, Mr. Keller stated that the site's parking would not have a negative impact on the residential areas surrounding the site just as in Boomtown.

Mr. Morreale asked Mr. Bigos how long he has owned the property and if he does any inspections of the property. Mr. Bigos has owned the property since 2008 and performs inspections 4 times per week.

Mr. Morreale asked Evan Mayer how many franchises he owns and how often he visits them. Mr. Mayer owns five locations and visits them weekly.

Jean Pasternack, of 342 Hobart Avenue, asked Rich Keller if he feels there are any conflicts with this application, to which Mr. Keller responded no.

Peter G. Steck, P. P., appeared and was sworn. His credentials were presented and accepted by the Board.

After summarizing the condition of the site, Mr. Steck concluded that this application will inherently cause odor and noise disturbances to the residential area to the rear of the site. He believes the applicant has not addressed the issue and impacts that will occur from a food use

within the 35 foot setback. In his opinion, a five foot fence is not enough of a buffer to lessen these impacts.

Steve Togher asked Mr. Steck what can be put in place of the 5 foot fence that can serve as an efficient buffer to minimize impacts of the site. According to Mr. Steck, the only solution would be a 20 foot highway barrier, which is not an option for nearby residents. The area of this barrier should be designated for plantings.

Joseph Steinberg opened the meeting for questions from the public.

Jared Coletta asked Peter Steck how common it is for there to be a 1 to 35 parking ratio in a commercial/business zone. Mr. Steck's response was that it depends on the use. Municipalities have different parking standards for fast food uses because they are known to have a greater demand of parking. Mr. Coletta also asked if third party deliveries would reduce the parking volume if they have multiple deliveries, to which Mr. Steck responded this is most likely true.

Joseph Steinberg opened the meeting for public comments.

Jay Morreale, 1 Claremont Drive, Short Hills, appeared and was sworn.

Entered as Exhibit O-1: PowerPoint with 17 slides, "Annotated Photos, Images and Videos. 688-700 Morris Tpke. Proposed Jersey Mike's Application. All photos taken July 20<sup>th</sup> through August 15<sup>th</sup>, 2021. By Jay Morreale (except where noted)".

Altug Sahin, 3 Canterbury Lane, Short Hills, appeared and was sworn. Mr. Sahin stated that he lives behind the site in question, approximately 44 feet away. He expressed his concerns regarding this application and feels that it should be denied, indicating that it will have a negative impact on the area.

David Honeysett, 92 Meadowbrook Road, Short Hills, appeared and was sworn. He stated that he lives approximately two blocks from the subject site. Based on his experience in the food industry, he feels this application is not suitable for its location. This site is not well suited for a use, such as the proposed.

Michael Sheppard, 7 Canterbury Lane, Short Hills, appeared and was sworn. He stated that his backyard is adjacent to the rear of the subject site. He is against this application and feels it should be denied.

Patricia Morreale, 1 Claremont Drive, Short Hills, appeared and was sworn. She stated that she is concerned with the negative impact this application will have on the neighboring residential properties and feels it should be denied.

Ted Zhu, 3 Claremont Drive, Short Hills, appeared and was sworn. He stated that this application will degrade the quality of life for himself and his neighbors.

Arleen Gonella, 2 Bishops Lane, Short Hills, appeared and was sworn. She feels this application would adversely impact the neighborhood.

Davood Taree, 9 Canterbury Lane, appeared and was sworn in. His backyard is adjacent to the rear yard of the applicant site. He believes this application will be a disturbance for him and his neighbors. He feels this application should be denied.

\*Craig Ploetner left the meeting at this time.

Amit Mahale, 16 Claremont Drive, Short Hills, appeared and was sworn in. He feels this application is detrimental to the surrounding neighborhood.

Jean Pasternak, 342 Hobart Avenue, Short Hills, appeared and was sworn in. She is concerned by the possible increase in traffic this application may result in. Ms. Pasternak feels this application should be denied.

Greg Meese, Attorney for the applicant, asked Rich Keller if the site's non-conforming conditions can ever go away, whether the Board approves or denies this application. Mr. Keller stated that the buffer requirement applies to all commercial uses next to a residential zone. These conditions cannot just go away.

Greg Meese asked Rich Keller if Mr. Steck's statement that there is more parking in the rear of the site than the front is accurate. Mr. Keller indicated this is not accurate. There are 19 parking spaces behind the building, 4 spaces on the sides of the building, and 20 spaces in front of the building.

Anne Marie Shepard, 7 Canterbury Lane, asked Rich Keller if the distance between the end of the house and the Panera property is similar to the end of the houses and the property in question. Mr. Keller indicated that they are in fact similar. The back of the Panera building is about 62 feet from the closest residence. The back of the proposed building is about 60 feet from the back of Ms. Shepard's dwelling.

Jean Pasternak, 342 Hobart Avenue, asked if Rich Keller can clarify what he meant by a "good neighbor" and "good landlord". Mr. Keller referred to the landlord of the building, Mr. Bigos. He indicated that Mr. Bigos has taken initiative to improve the building's façade and redo the sidewalk. Hence, he believes Mr. Bigos takes care of the building and can be considered a good neighbor and landlord.

Joseph Steinberg closed the public portion of the meeting.

Joseph Steinberg asked for Board comments.

Steve Togher stated that he was initially in favor of the application, but that his attitude has changed after listening to testimonies from concerned residents.

Joy Siegel commented that she did not see any negatives with this application when she first reviewed it. This meeting has made her feel that this use is not well suited for the site in question.

Jyoti Sharma agreed with Steve Togher and Joy Siegel. She feels the site does not seem suitable for restaurant use.

Jessica Glatt disagreed with other Board members. She feels this site is suitable for a sub shop, and supports this application.

Jessica Glatt made a motion to approve the application, limited to the conditional use variance. With no second, this motion failed.

Upon a motion to deny made by Steve Togher, seconded 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 – no  
Amy Lawrence – yes  
Joseph Steinberg – yes

Cal#3810-21, MBK Holdings LLC, 688-700 Morris Turnpike, D-3 variance relief was **DENIED**.

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

Jyoti Sharma – yes  
Joy Siegel – yes  
Steve Togher – yes  
Wolfgang Tsoutsouris – yes  
Jessica Glatt – no  
Amy Lawrence – yes  
Joseph Steinberg – yes

Cal#3810-21, MBK Holdings LLC, 688-700 Morris Turnpike, C variance reliefs and site plan approval were **DENIED**.

**CAL#3814-21, PETER VAN SANT, 322 TAYLOR ROAD SOUTH, SHORT HILLS**

The applicant, Peter Van Sant, stated his appearance and was sworn in. The applicant was seeking a variance to install a standby generator on his property less than 12 feet from the property line. Mr. Van Sant is proposing to install the generator 8 feet from the property line.

Joseph Steinberg asked the applicant if they are planning to put any shrubs or other plantings around the generator. Mr. Van Sant agreed to landscape around the generator to make it well screened.

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

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

CAL#3814-21, Peter Van Sant, 322 Taylor Road South, Short Hills, side yard setback variance was **APPROVED** with the condition that the new generator will be shielded with plantings from the street and from the side.

**CAL#3817-21, HOWARD LEE, 402 MILLBURN AVENUE, MILLBURN**

The applicant and his wife, Howard Lee and Ruby Leung, both stated their appearance and were sworn in. The applicant is seeking variance relief for a patio with a 4.2 setback on the right side and a 6.7 foot setback on the left side.

Steve Togher said he visited the site and acknowledged the narrow lot being a hardship for the applicant.

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

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

Cal#3817-21, Howard Lee, 402 Millburn Avenue, Millburn, side yard setback variance was **APPROVED**.

**CAL#3792-21, SCOTT DOREMAN, 19 RANDALL DRIVE, SHORT HILLS**

This matter was carried to September 20, 2021.

**CAL#3767-20, BOCCONE SOUTH, 517 MILLBURN AVENUE, SHORT HILLS**

This matter was carried to September 20, 2021.

**CAL#3815-21, MARK BOIDMAN, 6 STEWART ROAD, SHORT HILLS**

This matter was carried to November 1, 2021.

**CAL#3818-21, AIMA/SHARMA, 19 OAK HILL ROAD, SHORT HILLS**

This matter was carried to November 1, 2021.

**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 Jessica Glatt, and carried with a unanimous voice vote. (11:00 PM)

Eileen Davitt  
Board Secretary

Motion: JG  
Second: WT  
Date Adopted: 10/18/21