

Township of Millburn
Minutes of the Zoning Board of Adjustment
August 17, 2020

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, August 17, 2020** at 7:00 PM via Zoom webinar.

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

The following members were present for the meeting:

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

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of July 20, 2020, as corrected, was made by Mary McNett, seconded by Jessica Glatt, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3743-20, Christopher & Margaret Craig, 15 Rippling Brook Drive, Short Hills

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

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

the following memorializing resolution was adopted:

Mr. Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants to permit the construction of additions to the dwelling on property located at 15 Rippling Brook Drive, Short Hills, New Jersey, known and designated as Block 4602, Lot 4 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the Board) has held a public hearing according to law on June 15, 2020 and July 20, 2020 on the application filed by Christopher and Margaret Craig to permit the construction of additions to the dwelling on property located at 15 Rippling Brook Drive, Short Hills, New Jersey, known and designated as Block 4602, Lot 4 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. Michael Iben and Dong Chen of 17 Rippling Brook Drive, Short Hills appeared and testified as interested parties.
2. The Applicants are the owners of the subject property, which is located in the R-4 zone. The R-4 zone district requirements are as follows: minimum 22 foot second story side yard setback and minimum 35% combined side yard setback. The Applicants' proposal would result in a 9.74 foot second story side yard setback on the west side of the dwelling and 25.3% combined side yard setback. Therefore, variance relief is required.
3. Initially, the Applicants also sought variance relief to permit a 14.3% building coverage and a 15.6 foot second story side yard setback on the east side of the dwelling. During the course of the hearing, the Applicants revised their plans to eliminate the need for both variances by proposing the removal of an existing shed on the property and converting the proposed two-story addition on the east side of the dwelling to a one-story addition.
4. The Board received and considered the following documents:
 - A. Plans prepared by Rosen Kelly Conway Architecture & Design consisting of twelve sheets, V-1 through V-12, dated December 17, 2019 and revised through February 12, 2020;
 - B. A survey of the property prepared by Richard J. Hingos; Inc. dated October 20, 1994;

- C. Plans prepared by Rosen Kelly Conway Architecture & Design consisting of twelve sheets, V-1 through V-12, dated December 17, 2019 and revised through July 8, 2020.
5. The following witnesses testified in support of the application: Applicants Christopher and Margaret Craig, and Tom Conway, Registered Architect. The Board also heard testimony from Michael Iben and Dong Chen, of 17 Rippling Brook Drive Short Hills, New Jersey.
 6. The Applicants purchased the property in a state of disrepair. They made certain renovations to the home in 2012 and installed an in-ground swimming pool. They now wish to modernize this 1960's split level home and bring it up to the standards of the other homes in the neighborhood. The proposed improvements include the enlargement of the living space as the Applicants have elderly parents who visit them for extended periods of time. The home presently has three bedrooms, two full bathrooms and two half-bathrooms. After the construction of the proposed additions, the half-bath on the lower level would be converted to a full bathroom, the main level would continue to provide three bedrooms and two and one-half bathrooms, and the new upper level would provide two new bedrooms and a new full bathroom, as well as unfinished attic storage space. The proposed additions to the dwelling include an expansion of the existing undersized third garage bay so that it would accommodate a vehicle.
 7. The placement of additions to the dwelling are constrained by the split-level construction of the existing dwelling. The Applicants prefer to construct the proposed addition above the existing dwelling rather than a ground level addition that extends farther into the rear yard because their rear yard serves as outdoor living space and a ground level addition would result in a greater deviation from building coverage, which is already a pre-existing nonconforming condition. They also wish to avoid placing the addition to the home closer to the active parking lot at the shared rear property line, which serves an existing house of worship, townhouses and commercial retail uses.
 8. Michael Iben and Dong Chen, of 15 Rippling Brook Drive expressed the concern that aspects of the proposed improvements would impact on their privacy due to the proposed fenestration and the proximity of the Applicant's driveway which would preclude a landscape buffer on the subject property. In response to the neighbors' concerns, the revised plans eliminate the second-floor addition over the third garage bay expansion and they have revised the east, or right side elevation to eliminate all windows except for a single double hung window over the two-car garage. The Applicants also propose the construct of new evergreen trees adjacent to the master bedroom suite buffer the view of the proposed one-story addition.
 9. The Board is satisfied that the variances requested are appropriate and satisfy the criteria for the granting of variance relief. Although the property has a conforming lot area and lot width, the property and the existing split-level dwelling are constrained by pre-existing nonconforming conditions, which include building coverage, a 9.74 foot second

story side yard setback and a 25.3% combined side yard setback. The Board is satisfied that the pre-existing nonconforming conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. Although the proposed additions to the dwelling will maintain the 9.74 foot second story side yard setback and 25.3% combined side yard setback, the home with the proposed additions to the dwelling will result in an aesthetic improvement to the exterior façade of the home which is more in keeping with the other homes in the neighborhood, benefiting the streetscape. The Board is also satisfied that the home with the proposed additions as revised, together with the proposed evergreens, will not have any negative impact on the neighboring properties. Moreover, the Applicants will remove an existing shed on the property with the result that building coverage after the construction of the additions will conform to the zone district requirements. The Board finds and concludes, therefore, that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 17th day of August, 2020 that variance relief granted by this Board on July 20, 2020 to permit the construction of additions to the dwelling, a 9.74 foot second story side yard setback on the west side of the dwelling and 25.3% combined side yard setback, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony of the witnesses at the hearing and the plans prepared by Rosen Kelly Conway Architecture & Design consisting of twelve sheets, V-1 through V-12, dated December 17, 2019 and revised through July 8, 2020.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this Resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.
3. Prior to the issuance of a Certificate of Occupancy, the Applicants shall install two evergreens, 12 feet above the root ball at the time of planting, in the easterly side yard adjacent to the proposed addition to buffer the view of the addition from the neighboring property, and maintain such evergreens in perpetuity. Such maintenance shall include the replacement of any dead, dying or diseased evergreens which serve to buffer the view of the addition.
4. Prior to the issuance of a Certificate of Occupancy, the Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses at the public

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

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

CLERK’S CERTIFICATION

I, Eileen Davitt, Clerk of the Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and exact copy of a resolution adopted at the meeting of the Board of Adjustment of the Township of Millburn held on the 17th day of August, 2020.

Cal#3747-20, Yair Naveh, 5 Canoe Brook Road, Short Hills

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

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

the following memorializing resolution was adopted:

**YAIR NAVEH
BLOCK 5002, LOT 20**

**CALENDAR NO. 3747-20
AUGUST 17, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Yair Naveh, in Calendar No. 3747-20 for permission to construct a covered front porch, covered rear deck and an addition to the dwelling on property located at 5 Canoe Brook Road, Short Hills, New Jersey, known and designated as Lot 20, Block 5002 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on July 20, 2020 in Calendar No. 3747-20 filed by Yair Naveh (hereinafter referred to as the “Applicant”) for permission to construct a covered front porch, covered rear deck and an addition to the existing single family

home located at 5 Canoe Brook Road, Short Hills, New Jersey known and designated as Lot 20, Block 5002 on the tax map of the Township of Millburn; and

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

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

2. The Applicant and his wife are the owners of the subject property which is located in the R-4 zone district. The R-4 zone requirements include the following: maximum 26% floor area ratio, maximum 14% building coverage, minimum 35% combined side yard setback, minimum 22 foot second floor side yard setback, and garages facing and opening onto a public street are prohibited. The proposed covered front porch, covered rear deck and addition to the dwelling would result in a 29.5% floor area ratio, 17.94% building coverage, 30.2% combined side yard setback, 15.6 foot second floor side yard setback and a two-car garage facing and opening onto a public street. Therefore, the Applicant require variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an Applicant must demonstrate that the proposed site will accommodate the problems associated with the proposed floor area larger than that permitted by the zoning ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).

3. Initially, the Applicant proposed an addition to the dwelling which would have resulted in greater deviations from the allowable floor area ratio and second story side yard setback. In response to comments from the Board during the hearing, the Applicant revised the proposed plans to reduce the extent of the deviations.

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

A. Plans prepared by Dubinett Architects, LLC, consisting of three sheets, Sheets V-1 through V-3, dated March 10, 2020;

B. A survey of the property prepared by Hallard Associates, Daniel M. Dunn, dated July 10, 1997 and a marked-up copy of the Dunn survey to depict the originally proposed two-story addition and deck;

C. Twenty-two photographs of the property, colorized versions of the Dubinett plans and renderings of the property with the proposed improvements, which were admitted into evidence as A-1;

D. Revised plans prepared by Dubinett Architects, LLC, consisting of four sheets including a sketch of a reduced second floor, front elevation, right side elevation and a revised table of variances depicting the proposed changes to the original plans.

5. The Applicant, Yair Naveh, his wife Katherine Fischkoff, and Danial Dubinett, Registered Architect, testified in support of the application.

6. The Applicant and his wife wish to upgrade the living spaces on the first floor, provide their three children with equal size bedrooms, and a second full bathroom to create a master bedroom suite. The existing dwelling has four bedrooms and three and one-half bathrooms. After the proposed addition, the dwelling would have four bedrooms and four and one-half bathrooms. In addition, the Applicants propose to enlarge the existing two-car garage which faces and fronts on Canoe Brook Road by expanding the garage an additional four feet 3.5 inches closer to the front property line to provide additional space for vehicles, storage and internal entry to the dwelling. The proposed improvements also include a covered front porch and a covered expansion of the rear deck which would improve the utility of the dwelling and outdoor living space. Initially, the Applicants proposed a covered two-story rear deck. During the course of the hearing, the Applicants reduced the proposed second floor component of the proposed addition by two feet at the front and two feet at the right in the area of the master bedroom suite and eliminated the second floor of the proposed rear deck expansion. The plan revisions reduced the deviation from floor area ratio and second floor side yard setback, but variance relief is still required.

7. The subject property has a 14,578 square foot lot area and 90 foot lot width, in the R-4 zone which requires a minimum 20,000 square foot lot area and a minimum 100 foot lot width. In addition, the existing split-level dwelling has several pre-existing nonconforming conditions, including 17.94% building coverage, 30.2%, or 27.18 foot, combined side yard setback, 13.58 foot and 13.63 foot second floor side yard setbacks, and the two-car garage faces and opens onto a public street. The proposed addition to the dwelling would extend the pre-existing nonconforming second floor side yard setback on the left side of the dwelling, but the home with the proposed addition would be no closer to the side property line than the existing dwelling which currently has a 13.58 foot second floor side yard setback. On the right side of the dwelling, the home with the proposed addition would result in a 15.6 foot second floor setback. Although the proposed 15.6 foot second floor setback requires variance relief, revised plans reduce the extent of the existing deviation from the required second floor side yard setback as the proposed 15.6 foot second floor setback would be less nonconforming than the existing 13.63 foot second floor side yard setback. The pre-existing nonconforming 30.2%, or 27.18 foot, combined side yard setback would remain unchanged after the construction of the proposed addition. If this lot had a conforming lot width, the need for combined side yard setback variance would be eliminated and in all likelihood the need for variance relief for the second story side yard setback would be reduced or eliminated. In response to questions from the Board regarding the existing landscaping on the right side of the dwelling, the Applicant's Architect, Danial Dubinett, testified that the Applicant wishes to preserve the existing landscaping, although it might need to be temporarily removed to allow for the new exterior siding. If that were the case, the Applicant would replace the landscaping once construction is completed.

8. Despite the reduced side yard setbacks and increase in floor area ratio, the proposed addition would not have any negative impact on the adjacent neighbors or the neighborhood. The dwelling on the adjacent property to the left is 34 feet away. The dwelling

on the adjacent property to the right is 24 feet away and it is situated at an elevation which is 2.5 feet higher than the subject property. The placement of the neighbor's dwelling to the right is closer to the street than the Applicant's home with the proposed addition. As a result, the home with the proposed addition will not impact on the adjacent neighbors' light, air and open space. Although the proposed addition would extend the Applicant's front facing garage an additional 3.5 feet closer to the street, the home with the proposed addition will maintain a front yard setback of no less than 69.87 feet at the proposed covered front porch. The front facing garage with the proposed addition would be set back over 74 feet from the front property line while the average front yard setback on the street is 62.55 feet and the neighboring dwelling to the right has a front facing garage which is much closer to the street. The home with the addition would be in keeping with the other homes in the neighborhood, including the homes on the opposite side of the street, which are located in the R-5 zone district.

9. The Board concludes that the variance relief requested by the Applicant may be granted. The Board finds that the property can accommodate the proposed increase in floor area ratio. While the proposed addition results in approximately 523 square feet of new floor area, the proposed addition will not result in any additional bedrooms in the home. Almost 93 square feet of the new floor area is associated with the garage expansion. The addition will provide the Applicant with a second full bath on the second floor of the home. Importantly, the revised plans with the break in the roofline and the second floor offset will provide a visual improvement to the front façade of the home. The Board is also satisfied that the remaining variances are the result of the undersized lot area and lot width, as well as the placement of the existing dwelling, which results in several pre-existing nonconforming conditions. The home already has a pre-existing nonconforming garage facing and opening onto the street and the garage with the proposed expansion will continue to have a front yard setback that is more than 34 feet greater than the minimum 40 foot front yard setback and the 62.55 foot average front yard setback on this side of the street. If this property had a conforming lot area and lot width, in all likelihood, the required variances for building coverage, combined side yard setback and second floor side yard setback would be eliminated. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The home with the proposed addition and other improvements will not result in any substantial negative impact on the light, air or open space of the adjoining neighbors. The Board is satisfied that the home with the addition, covered front porch and covered rear deck will be in keeping with the other homes in the neighborhood. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 17th day of August, 2020 that variance relief to permit the construction of a covered front porch, covered rear deck and addition to the dwelling which results in a 29.5% floor area ratio, 17.94% building coverage, 30.2% combined side yard setback, 15.6 foot second floor side yard setback and a two car garage facing and opening onto a public street, granted by this Board on July 20, 2020 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicant shall submit revised sealed plans prepared by Dubinett Architects, LLC to reflect the plan changes presented during the hearing. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Dubinett Architects, LLC, consisting of three sheets, Sheets V-1 through V-3, dated March 10, 2020 and further revised in accordance with the exhibits prepared by Dubinett Architects, LLC, and presented at the hearing, which included a sketch of a reduced second floor, front elevation, and right side elevation.

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 17th day of August, 2020.

Cal#3748-20, Charles Morsel, 266 Millburn Avenue, Millburn

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

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

the following memorializing resolution was adopted:

**CHARLES MORSEL
BLOCK 810, LOT22**

**CALENDAR NO. 3748-20
AUGUST 17, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Charles Morsel, in Calendar No. 3748-20 for permission to construct a front portico and rear patio on the dwelling and denying variance relief for a front yard fence on property located at 266 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 22, Block 810 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) has held a public hearing according to law on July 20, 2020 in Calendar No. 3748-20 filed by Charles Morsel (hereinafter referred to as the “Applicant”) for permission to construct a front portico, rear patio and front yard fence on property located at 266 Millburn Avenue, Millburn, New Jersey, known and designated as Lot 22, Block 810 on the tax map of the Township of Millburn; and

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

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

2. The Applicant is the owner of the subject property which is located in the R-O zone district. The R-O zone requirements include the following: minimum 34.9 foot front yard setback from Parkview Drive based upon the average front yard setback within 200 feet, a minimum 69.8 foot accessory structure corner lot setback and permitted accessory uses are limited to private garages and off-street parking. In addition, pursuant to Section 609.6 of the Township Ordinance, lots fronting on a County road may have a four-foot-high decorative fence in the front yard, but board on board fences and chain link fences are prohibited. The Applicant propose a five-foot-high board on board fence in the Millburn Avenue and Parkview Drive front yards and an accessory patio. In addition, the proposed front portico would result in a 30 foot front yard setback from Parkview Drive and the proposed rear patio would provide a 43 foot accessory structure corner lot setback from Millburn Avenue. Therefore, the Applicant require variance relief.

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

A. Plans prepared by Miseo Assoc., P.A., consisting of three sheets, A-1 through A-3, dated November 8, 2019 and revised through March 2, 2020; and

B. A survey prepared by Brunswick West, Inc., dated September 17, 2019, marked up by the Applicant's architect to depict the proposed improvements; Plans prepared by L2A Land Design LLC, consisting of nine sheets, C-01 through C-09 dated July 24, 2019 and revised through December 16, 2019.

4. Applicant Charles Morsel and Christine Miseo, Registered Architect, testified in support of the application.

5. The subject property is a corner lot at the intersection of Millburn Avenue and Parkview Drive. Because the property is a corner lot, it has two front yards and two side yards. The existing dwelling fronts on Parkview Drive. The dwelling has a 34.9 foot front yard setback from Parkview Drive, which conforms to the R-O zone requirement, and a pre-existing nonconforming 28.1 foot front yard setback from Millburn Avenue, a County Road.

6. The Applicant removed an existing garage on the property which fronted on Millburn Avenue and resulted in dangerous ingress and egress because Millburn Avenue is a heavily traveled County Road. The Applicant replaced the demolished garage with a new two-car garage addition to the dwelling, which fronts on Parkview Drive. The addition to the dwelling also extended the existing kitchen by 10 feet which replaced an existing patio in that location. The Applicant now proposes to construct a 45 square foot covered front portico entry on the dwelling and a new 360 square foot patio on the easterly side of the property at the rear of the dwelling. The proposed front portico would result in a 30 foot front yard setback from Parkview Drive, which requires variance relief because it does not meet the 34.9 foot average front yard setback within 200 feet. The proposed patio requires variance relief from the following two requirements of the Township Ordinance: first, a patio is not a permitted accessory use in the R-O zone district; and second, the proposed patio would provide a 43 foot accessory corner lot setback from Millburn Avenue instead of the required 69.8 foot accessory corner lot setback.

7. In addition to the proposed covered front portico and accessory patio, the Applicant proposes to install a five foot board on board vinyl fence in the front yard with a five foot setback from the northeast corner of the Millburn Avenue property line and extending along the 70 foot radius of the property at its intersection with Parkview Drive. Previously, the property was buffered from Millburn Avenue by shrubbery, which was eight to nine feet in height. The Applicant was advised by the Township Forester that the shrubbery needed to be cut as it interfered with the sight triangle of the intersection. In response, the Applicant removed the shrubbery, leaving that area of the property open to the street. The proposed fence is intended to provide privacy and serve to buffer noise from the street. The Applicant also intends the northerly side of the property fronting along Millburn Avenue will serve as the major play area for his children. The Board expressed concerns regarding the impact of a five-foot-high board on board vinyl fence in an area where there are no other fences in the streetscape. Some members of the Board suggested that as an alternative to a five-foot board on board vinyl fence, the Applicant should consider a four-foot-high black estate fence or a four-foot-high natural cedar fence with street side landscaping to be maintained in perpetuity. In response to the Board

members comments, the Applicant testified that a four-foot-high fence would only be acceptable to him on the Millburn Avenue side of the property.

8. The Board concludes that the three variances requested by the Applicant in connection with the proposed front portico and rear patio may be granted. The Board is satisfied that the need for variance relief is the result of the corner lot placement of the property at the intersection of Millburn Avenue and Parkview Drive, and the placement and orientation of the dwelling. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The existing dwelling has a 34.9 foot front yard setback. As a result, any addition to the front of the dwelling, would require variance relief from the front yard setback requirement. The proposed 45 square foot covered portico is modest in size and it will provide the Applicant and visitors to the property with a sheltered entry to the dwelling. The proposed portico entrance on the front façade of the home will also serve to enhance the streetscape of the property. Although a patio is not a permitted accessory use in the R-O zone and the placement of the proposed patio will not meet the 69.8 foot accessory structure corner lot setback, the Board notes that this property previously contained a patio so the construction of a new patio will not be out of keeping with the prior accessory use on the property. The Board also finds that a patio is a reasonable residential amenity. The proposed patio will be accessible from the kitchen and family room in the dwelling and its placement will be partially concealed from the street by the existing dwelling. The Board is satisfied that the proposed single-family dwelling with the proposed covered front portico and rear patio will be in keeping with the other homes in this Parkview Drive residential neighborhood. Therefore, the Board further concludes that the granting of variance relief associated with the front portico and rear patio 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.

9. The Board finds that the Applicant has not satisfied the positive and negative criteria as required by N.J.S.A. 40:55D-70(c) and concludes that it is not appropriate to grant the variance relief requested by the Applicant to permit the construction of a five foot high board on board vinyl fence in the front yard of the property with a five foot setback. The Applicant testified that he intends the northerly side of the property fronting on Millburn Avenue to serve as the primary play area and the proposed five-foot-high board on board vinyl fence would provide privacy and serve to buffer noise from the street. The Board finds and concludes that the rationale presented in support of the fence in the front yard is not related to any hardship associated with the property or the improvements on the property, but personal to the Applicant. The Board finds and concludes that there are less intrusive alternative means of buffering noise from the street and providing privacy, which would not require the installation of a five-foot-high board on board vinyl fence in the front yard of the property. To illustrate, the Board specifically finds that there are alternative locations on the property which could serve to provide a backyard play area, such as its southeast corner of the property, adjacent to other residential property along Parkview Drive. Similarly, the Applicant could plant a living fence that serves to buffer noise from the street in a location on the property which does not impact on the sight triangle at the intersection of Millburn Avenue and Parkview Drive. The Board finds and concludes that the Applicant has not demonstrated any reasons to support the granting of variance relief pursuant to N.J.S.A. 40:55D-70c(2) as the installation of a fence in the front yard

would not advance any of the purposes of the Municipal Land Use Law. In fact, the Board finds and concludes that the proposed fence would be a substantial detriment to the neighborhood and the streetscape as it is directly contrary to the Township Ordinance which expressly prohibits board on board fences at a height greater than four feet along County roads. When the detriments associated with the granting of variance relief are balanced against the benefits of the application, which are purely personal to the Applicant, the Board finds that the detriments outweigh any benefit and concludes that relief cannot be granted without substantial impairment to the intent and purpose of the zone plan and zoning ordinance and without substantial detriment to the public good.

NOW, THEREFORE, BE IT RESOLVED on this 17th day of August, 2020 that action taken by this Board on July 20, 2020 granting variance relief to permit the construction of a covered front portico on the dwelling and an accessory rear patio use on the property, resulting in a 30 foot front yard setback and a 43 foot accessory structure corner lot setback and denying variance relief for a five foot high front yard board on board vinyl fence in the Millburn Avenue and Parkview Drive front yard with a five foot setback, is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Miseo Assoc., P.A., consisting of three sheets, A-1 through A-3, dated November 8, 2019 and revised through March 2, 2020.
2. The Applicant shall apply for a building permit within 365 days from the date of publication of this Resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.
3. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professionals and other witnesses at the public hearing, as set forth in the Board's findings of fact contained in this Resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
5. The Applicant shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 17th day of August, 2020.

Cal#3750-20, Marc & Randi Berson, 63 Sagamore Road, Millburn

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

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

the following memorializing resolution was adopted:

**MARC BERSON
BLOCK 101, LOT 6**

**CALENDAR NO. 3750-20
AUGUST 17, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Marc Berson, in Calendar No. 3750-20 for permission to construct an addition to the dwelling on property located at 63 Sagamore Road, Millburn, New Jersey, known and designated as Lot 6, Block 101 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 20, 2020 in Calendar No. 3750-20 filed by Marc Berson (hereinafter the “Applicant”) for permission to construct an addition to the dwelling on property located at 63 Sagamore Road, Millburn, New Jersey, known and designated as Lot 6, Block 101 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. Allen Rush and Joan Netsky, of 73 Sagamore Road, Millburn appeared and testified at the hearing as objectors to the application.
2. The Applicant and his wife are the owners of the subject property, which is located in the R-4 zone. The R-4 zone district permits a maximum 35% lot coverage and maximum 14% building coverage. The proposed addition will result in a 37.88% lot coverage and 20.94% building coverage. Therefore, variance relief is required.

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

A. Plans prepared by Zampolin & Associates, Architects, consisting of two sheets, A1 & A2, dated February 19, 2020 and revised through July 1, 2020;

B. A variance plan prepared by Casey & Keller, consisting of one sheet, dated March 25, 2020;

C. Five photographs of the site and neighborhood, which were admitted into evidence as A-1; and

D. Application Attachment E which was revised through July 20, 2020 and admitted into evidence as A-2.

4. Applicant Marc Berson, Robert Zampolin, Registered Architect and Richard Keller, Professional Engineer and Professional Planner, testified in support of the Application.

5. The Applicant and his wife purchased the subject property in 1988. The original dwelling was built in 1929 and its construction predates the Township Zoning Ordinance. An enclosed pool was attached to the dwelling in the 1950's. The property and the existing structures on the property result in a pre-existing nonconforming 18.49% building coverage and pre-existing nonconforming 38.55% lot coverage. As a result, any addition to the dwelling would require lot coverage and building coverage variance relief.

6. The home has an elegant exterior façade but like many homes of the era, the interior consists of a series of small rooms and spaces which lack many of the standard residential amenities common in homes today. In addition, because of the unusual horizontal and vertical layout of the interior spaces in the home, the primary living spaces extend over multiple floor levels which are only accessible by a series of three separate sets of stairs. Because of the different floor levels, it is not possible to create a more functional and appropriately sized family room area for a home of this size without the construction of an addition. The proposed addition also provides for the installation an elevator, which would provide the Applicant and his wife with improved accessibility to all levels of the residence, as barrier free access is not possible within the confines of the existing footprint and layout of the existing home.

7. The proposed family room, designated as a great room/reception area on the first floor of the architectural plans, would replace an existing elevated patio on the south side of the home. The proposed family room would serve to connect the existing living and dining rooms in the home via a loggia. The proposed addition would include three sets of French doors providing access between the family room and the heavily landscaped courtyard. The family room addition would provide an aluminum barrel vaulted roof. The proposed addition would include a 70 square foot 3-stop elevator shaft extending from the unfinished basement area to the

second floor master bedroom. The proposed improvements would also include an additional 35 square feet of lot coverage to provide for a walkway connecting the loggia level door in the proposed new addition to the lawn and fountain area on the west side of the property. The exterior of the proposed addition would be stucco over masonry block consistent with the existing exterior of the home. The exterior of the elevator shaft would be disguised to resemble a faux chimney that replicates the existing chimney on the east side of the home.

8. The property is an oversized lot with a 39,555 square foot lot area whereas the R-4 zone requires a minimum lot area of 20,000 square feet. It is located on the northwest side of Sagamore Road and the rear of the property abuts the South Mountain Reservation. The subject property is the widest lot on this side of Sagamore Road but it is also one of the shallowest. Of the 38 lots on this side of the street, 34 lots are less than 120 feet wide and only four lots are wider, including the subject property with a 185.02 foot lot width. As for lot depth, 33 of the 38 lots on this side of Sagamore Road are deeper than the subject property, with 17 of the lots greater than 310 feet deep, and 10 lots greater than 400 feet deep. Although the subject property has an oversized 211.41 foot lot depth, it is impossible to determine the actual depth of the subject property from the street because the lot is steeply sloped with a 65 foot change in grade from the street level of Sagamore Road to the rear property line abutting South Mountain Reservation. In addition to the pre-existing nonconforming 38.55% and building coverage is a pre-existing nonconforming 18.49%, there are several other pre-existing nonconforming conditions affecting the property and the existing structures on the property, including the westerly side yard setbacks, combined side yard setback, rear yard unoccupied and rear setback. These pre-existing nonconforming conditions relate to the existing enclosed pool constructed in the 1950's at the northwest corner of the property abutting the South Mountain Reservation.

9. The proposed addition requires variance relief for building coverage and lot coverage. The need for variance relief is the result of the pre-existing nonconforming building coverage and lot coverage resulting from the placement of the existing dwelling and other improvements on the property and its topography. To mitigate the extent of the proposed deviation from lot coverage, the Applicant's proposed plan includes the removal and replacement of the existing patio and stone walks in the westerly side yard with lawn. Although lot coverage will be 37.88%, which is a 1,138 square foot reduction in the pre-existing nonconforming 38.55% lot coverage. As for building coverage, much of the existing dwelling's pre-existing nonconforming 18.49% building coverage is the result of the enclosed pool addition built in the 1950's. The proposed 970 square foot addition to the existing dwelling will promote several purposes of zoning including purpose (a) as the general welfare is served by making this 1929 home, with its multiple levels and small spaces, a more functional dwelling for modern living, and it will promote purpose (g) as the addition will provide barrier-free accessibility for aging homeowners. The Applicant's planner, Richard Keller, P.E./P.P. testified that if this lot were only 18 feet deeper, no variance relief would be required for lot coverage or building coverage. Mr. Keller also testified that the proposed addition would not result in any detriment to the public good or to the zone plan and zoning ordinance because the new addition itself will conform to all the setback requirements of the R-4 zone due to the oversized lot width of the property.

10. Allen Rush and Joan Netsky of 73 Sagamore Road, Millburn, New Jersey testified in opposition to the application. They advised the Board that now that they are working from home due to COVID-19, the noise associated with the construction of the proposed addition will be disruptive. They also opposed the pre-existing nonconforming conditions associated with the enclosed pool, but acknowledged that the construction of the dwelling and enclosed pool predates their ownership of the adjacent property. In response to their objections, Mr. Keller testified that the proposed addition will have a 49.96 foot side yard setback from the shared property line, while the R-4 zone district only requires a 15 foot side yard setback for building segments up to 18 feet in height, and a 22 foot side yard setback for building segments over 18 feet in height. The proposed application does not propose any changes to the enclosed pool area, which is a pre-existing nonconforming condition. Mr. Keller also testified that any construction must comply with the Township Ordinance provisions regarding noise.

11. The Board finds that the need for lot coverage and building coverage variance relief is the result of the placement of the dwelling and other improvements on the property, the topography of the property which results in multiple vertical and horizontal levels within the dwelling, as well as numerous pre-existing nonconforming conditions affecting the property and the structures on the property, including but not limited to lot coverage and building coverage. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. Even though the Applicant requires variance relief to permit the proposed addition, the proposed 37.88% lot coverage will be an improvement over the pre-existing nonconforming 38.55% lot coverage and the proposed 970 square foot addition will increase the pre-existing nonconforming 18.49% building coverage by only 2.45%. The proposed addition will allow for a large family room, a reasonable residential amenity, in keeping with the size and style of the existing dwelling. The Board also finds that the proposed addition will provide a three-stop elevator in this multilevel home, which will result in barrier-free accessibility promoting zoning purposes (a) and (g) of the Municipal Land Use Law, N.J.S.A. 40:55D-2. The Board is satisfied that the proposed addition will not result in any negative impact on the streetscape or the neighbors because of the oversized lot area and lot width, deep setback from the neighboring lot to the west, the heavy landscaping and topography of the property. Therefore, the Board concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 17th day of August, 2020 that variance relief to permit the construction of an addition to the dwelling resulting in 37.88% lot coverage and 20.94% building coverage, granted by this Board on July 20, 2020, be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and plans prepared by Zampolin & Associates, Architects, consisting of two sheets, A1 & A2, dated February 19, 2020 and revised through July 1, 2020 and the variance plan prepared by Casey & Keller, consisting of one sheet, dated March 25, 2020.

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 17th day of August, 2020.

APPLICATIONS

CAL#3755-20, ALYSSA & ANDREW BRESSLER, 79 MINNISINK ROAD, SHORT HILLS

The matter was carried to September 21, 2020 with no further notice required.

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

Chairman Joseph Steinberg indicated that the Board heard testimony on this matter on July 6, 2020. At the conclusion of the applicant's testimony, the Board felt that they could not proceed to a vote without the input from a Board hired traffic expert. Subsequently, the Board retained the services of Lee Klein to prepare a traffic impact study on the proposed development.

Lee Klein, Traffic Expert, appeared and was sworn. His credentials were presented and accepted by the Board. Mr. Klein acknowledged that he was retained by this Board and prepared a report dated August 7, 2020 in response to Cal#3751-20.

Entered as B-1: Klein traffic report

Gail Price, attorney for the applicant, stated her appearance. She indicated that at the Board's request she has asked Matt Jessup to return tonight to answer some of the Board's questions from the July 6, 2020 meeting.

Matt Jessup, appeared and remains sworn. On questions from Board members, he stated that he was redevelopment counsel for the Township of Springfield. He reiterated the importance of this project.

Jessica Glatt stated that Mr. Jessup referred to the collaborative efforts that were taken at several meeting between Springfield and Millburn. She asked Mr. Jessup who was part of those efforts. Mr. Jessup indicated that he, personally, was not at the meetings but he believes the Mayor, Deputy Mayor and Administrator from Millburn were present. Mr. Jessup stated that the project was developed with Millburn review and input. He indicated that the plans were shared with Millburn Township for their review and comments. He added that he did not send the plans directly but believes they were sent by the Springfield Planner or Administrator.

Gail Price called Dan Disario, P. E., P. P., who appeared and remained sworn. He spoke to the report prepared and submitted by Klein Traffic, the Board's traffic consultant.

Entered as A-7: Langan 8/14/20 report

Mr. Disario indicated that the driveways on Millburn Avenue are not subject to NJDOT requirements. Millburn Avenue is an Essex County roadway and improvements fall outside the jurisdiction of Millburn Township. Mr. Disario stated that revised traffic analyses were conducted and the results indicate that there is minimal impact at the Glenwood Drive/Municipal Drive/Site Driveway intersections from this development. Mr. Disario stated that providing exclusive left turn lanes on Millburn Avenue would result in a much less pedestrian friendly area. He indicated that due to the anticipated signal, there is no need for exclusive left turn lanes in that area. Mr. Disario stated that the proposed traffic signal would promote more efficient operations for the side streets with minimal impact to Millburn Avenue. The anticipated queues along Millburn Avenue will not have a significant impact on the overall Millburn Avenue corridor. Mr. Disario stated that the on-site parking complies with the Springfield Township ordinance requirements and is adequate parking for the residents of the proposed development.

Scott Loventhal, managing member of the Applicant, appeared and remains sworn. He spoke to access to the site by services such as garbage collection, deliveries, moving companies, buses, guests and emergency vehicles, based on previous concerns by Board members. He stated that he has vetted some of the concerns with representatives from Springfield Township and can confirm that the use of the Thomas Street access by those vehicles would be acceptable to Springfield Township.

With respect to a shuttle service to the Short Hills train station, Mr. Loventhal stated that the proposed development is being marketed as public transit oriented and the need for a shuttle

service would be based on resident demand. A shuttle service to the Short Hills Mall is also dependent on resident demand.

Richard Keller, P. P., P. E., appeared and was sworn. He stated that the applicant is requesting use variance relief to permit the use of access drives on Millburn property that do not serve a use that lies entirely in Millburn Township. The applicant recognizes that the Board has concerns about the traffic impacts of the residential use on the Springfield portion of the tract, as well as the nonresidential use which triggers the applicant's requirement for site plan approval.

The applicant has confirmed their willingness to construct a traffic signal at the intersection of the Millburn Avenue/Baltusrol Way/western access drive. The applicant has also agreed to expand the types of vehicles utilizing the gated Thomas Street access driveway.

Mr. Keller testified that the applicant has satisfied the positive and negative criteria in that it will provide vital support for the neighborhood businesses and it will cause no substantial detriment to the public good. The project results in a net benefit to the Township.

Gail Price summarized by stating that the applicant has presented a well-designed development. Mr. Loventhal has agreed to the stipulation that buses, guests, deliveries and move-in vans utilize the gated access and will not access the site via Millburn Avenue. This development will stimulate this section of Millburn Avenue. There have been no members of the public who have spoken out in opposition to this development. This is a unique property and there is no use that can be developed on the strip of land that lies in Millburn Township. This is a well-designed, aesthetic development that will breathe life into this area of Millburn.

Wolfgang Tsoutsouris feels the proposed development is a benefit to the community and will not result in a substantial detriment.

Steve Togher feels the development is huge and the site is being over-built. He feels this development will have a huge negative impact on the neighborhood.

Mary McNett stated that this property has been vacant for over 20 years and feels the proposed development was sensitively designed.

Jessica Glatt felt that the Traffic expert hired by this Board is in agreement with the applicant's testimony and we should be guided accordingly. Mary McNett was in agreement and felt that the applicant is working with Springfield to address many of the concerns expressed by this Board.

After discussion amongst Board members, it was agreed that the Board Attorney will draft a resolution of approval on the application to be voted on at the September 21, 2020 meeting.

The applicant consented to an extension of time for decision until 9/22/20.

ADJOURNMENT

A motion to adjourn was made by Mary McNett, seconded by Jessica Glatt, and carried with a unanimous voice vote. (11:01 PM)

Eileen Davitt
Board Secretary

Motion: MM
Second: ST
Date Adopted: 11/2/20