

Township of Millburn
Minutes of the Zoning Board of Adjustment
September 20, 2021

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, September 20, 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:

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

BUSINESS

A motion to go into closed session to discuss pending litigation matters was made by Craig Ploetner, seconded by Wolfgang Tsoutsouris and carried with a unanimous voice vote.

The Board returned to open session. (7:30 PM)

MINUTES

A motion to approve the minutes of July 19, 2021, was made by Craig Ploetner, seconded by Joy Siegel, and carried with a unanimous voice vote.

A motion to approve the minutes of August 2, 2021, was made by Wolfgang Tsoutsouris, seconded by Jyoti Sharma, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3798-21, Jinbao Tong, 14 Reeve Circle, Millburn

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

- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes

the following memorializing resolution was adopted:

**JINBAO TONG & XIAOMIN CHEN
BLOCK 402, LOT 16**

**CAL. NO. 3798-21
SEPTEMBER 20, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the denial of variance relief requested by the Applicants, Jinbao Tong and Xiaomin Chen (hereinafter the “Applicants”), in Calendar No. 3798-21 to deny permission to maintain an 18 foot by 26 foot paved patio/basketball “sports court” located at the rear of the residence on property located at 14 Reeve Circle, Millburn, New Jersey, known and designated as Lot 16, Block 402, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on August 2, 2021, as to Calendar No. 3798-21 to deny permission to maintain an 18 foot by 26 foot paved patio/basketball “sports court” on property located at 14 Reeve Circle, Millburn, New Jersey, known and designated as Lot 16, Block 402, 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 August 2, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and provided sworn testimony in support of the application. At the August 2, 2021 hearing, Jeffrey Cohn, 16 Reeve Circle, testified in opposition to the application, and Seth Monkarsh, former resident of 12 Reeve Circle, testified in support of the application.

2. The Applicants are the owners of the subject property, which is located in the Township’s R-6 zone district (the “R-6 Zone”). The Applicants request permission to maintain

an 18 foot by 26 foot paved patio/basketball “sports court”, located in the rear yard of the subject property, which was installed without first obtaining the necessary variances and permits.

3. The subject property contains a single-family residence and three (3) existing nonconforming conditions pursuant to the Township Zoning Ordinance for the R-6 Zone: (a) a minimum lot area of 6,000 square feet is required, and the subject property has an existing lot area of 5,640 square feet; (b) a minimum lot width of 60 feet is required, and the subject property has an existing lot width of 49.97 feet; and (c) a minimum side yard setback of 12 feet is required, and the existing residence on the subject property has a side yard setback of 7.08 feet. The proposed application would result in a 9 foot accessory structure side yard setback, where 12 feet is the minimum accessory structure side yard setback for the R-6 Zone, and would result in a rear yard accessory coverage of 24.4%, where 20% is the maximum allowable rear yard accessory coverage permitted in the R-6 Zone. Therefore, variance relief is required.

4. The Applicants desire to maintain an 18 foot by 26 foot proposed paved patio/basketball “sports court” as a place for outdoor activity and exercise for their son. The proposed is presently located in the rear yard of the subject property. The Board notes that the application materials fail to disclose that the described “patio” is actually a “sports court” with a basketball backboard.

5. Mr. Tong testified the existing residences on both sides of the subject property also violate the minimum side yard setback requirements for the R-6 Zone. Mr. Tong also stated that the application would result in a side yard setback of 9 feet, and that the Applicants’ neighbor to the west has an existing patio that is screened from view from the Applicants’ property. Mr. Tong stated that his property has a very large front yard area and a smaller rear yard area which limits the Applicants’ ability to install an adequate area for outdoor entertaining and recreational use, constituting a hardship. Mr. Tong stated that the Applicants sought approval for the construction so that their autistic son could get more exercise to remain healthy. Mr. Tong stated that there would not be any flooding issues or noise issues in connection with the application if it were approved.

6. Seth Monkarsh, formerly of 12 Reeve Circle, Millburn, stated that he was a resident of Reeve Circle until June of 2021, and stated that there were no flooding issues on his property or, to his knowledge, on the Applicants’ property during the time he resided at 12 Reeve Circle.

7. Jeffrey Cohn, 16 Reeve Circle, Millburn, testified in opposition to the application. Mr. Cohn expressed his concerns regarding the application, including potential flooding and noise associated with the application. Mr. Cohn stated that he was specifically concerned that the proposed basketball backboard was located close to the windows of his living room and basement, and that a basketball could easily damage or break the aforementioned windows. Mr. Cohn also expressed his concern regarding the noise associated with using the basketball “sports court” if the application were approved.

8. As a result of the comments and concerns expressed by Mr. Cohn, the Applicants stated that they would be willing to limit the use of the basketball “sports court” to 30 minutes

per day to reduce the overall amount of noise, and further stated that there were no flooding issues on the subject property.

9. 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[.]

10. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.” See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the so-called “negative criteria.”).

11. The Board finds that the Applicants have not satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) or 70c(2) and concludes that it is not appropriate to grant the variance relief requested by the Applicants to permit maintaining the patio/basketball “sports court” in violation of the Township Zoning Ordinance. The subject property is neither exceptionally narrow, shallow, nor shaped in a way that the application of the Township Zoning Ordinance would result in an undue hardship upon the Applicants. There are no exceptional topographical conditions or physical features that uniquely affect the subject property. There are no extraordinary and exceptional situations that uniquely affect the subject property. The need for variance relief is related to the size, scope, and location of the construction itself, not the subject property, and does not satisfy the “positive criteria” factors enumerated in N.J.S.A. 40:55D-70c(1). In fact, the Applicants may be able to relocate the desired patio/basketball “sports court” to a location that would fully conform to the Township Zoning Ordinance and not require any variance relief. The Applicants have not satisfied their burden of proving that the size and location of the construction is necessary or that the Applicants will suffer a hardship if the size or location of the construction is changed. The Board’s determination is supported by the lack of testimony that the Applicants made any attempt to locate the patio/basketball “sports court” anywhere else on the subject property which may avoid noncompliance with the Township Zoning Ordinance. Further, the Applicants failed to present any evidence for the Board to conclude that the Applicants met their burden of proof for variance relief pursuant to N.J.S.A. 40:55d-70c(2).

12. The Board further concludes that the negative impact on the surrounding neighbors from maintaining the patio/basketball “sports court” is a substantial detriment to the surrounding properties, especially given the safety and noise issues associated with the use of the

patio/basketball “sports court” in close proximity to adjacent houses. For the reasons stated above, the Board finds that the Applicants failed to demonstrate that the variance relief requested could be granted without substantially impairing the intent and purpose of the Township’s Zoning Ordinance and Master Plan and without causing substantial detriment to the public good.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of September, 2021 that the variance relief requested by the Applicants to maintain an 18 foot by 26 foot paved patio/basketball “sports court”, resulting in a 9 foot accessory structure side yard setback, where 12 feet is the minimum accessory structure side yard setback for the R-6 Zone, and a rear yard accessory coverage of 24.4%, where 20% is the maximum allowable rear yard accessory coverage permitted in the R-6 Zone, was denied by this Board at its meeting of August 2, 2021, for the property located at 14 Reeve Circle, Millburn, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g).

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 20th day of September, 2021.

Cal#3808-21, William & Jessica Irwin, 51 Undercliff Road, Millburn

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

- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes

the following memorializing resolution was adopted:

**WILLIAM & JESSICA IRWIN
BLOCK 809, LOT 1**

**CAL. NO. 3808-21
SEPTEMBER 20, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, William and Jessica Irwin (hereinafter the “Applicants”), in Calendar No. 3808-21 to permit the construction of a two-story addition to an existing residence to accommodate a dining room and covered porch on the first floor and a bedroom on the second floor on property located at 51 Undercliff Road, Millburn, New Jersey, and designated as Lot 1, Block 809, 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 August 2, 2021 as to Calendar No. 3808-21 to permit the construction of a two-story addition to an existing residence to accommodate a dining room and covered porch on the first floor and a bedroom on the second floor on property located at 51 Undercliff Road, Millburn, New Jersey, and designated as Lot 1, Block 809, 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 August 2, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared with Daniel Dubinett, the Applicants’ Architect, who 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 located in the Township’s R-6 Zone District (the “R-6 Zone”). The Applicants propose to construct a two-story addition to an existing residence to accommodate a dining room and covered porch on the first floor and a bedroom on the second floor. The Applicants seek the proposed construction due to the inefficiency of the layout of the existing residence on the subject property. The proposed construction does not change the shape or style of the existing residence, and will reduce existing impervious coverage and lot coverage.

3. The subject property is irregularly shaped, resembling a sail, and has one (1) existing non-conforming condition: an existing side yard setback of 6.7 feet for a building over 18 feet in height, where the required minimum side yard setback is 8 feet for a building over 18 feet in height.

4. The existing combined side yard setback is 17.2%. The application would result in a combined side yard setback of 24.6 feet or 28.9%, where 35% is the minimum combined side yard setback for the R-6 Zone. Therefore, variance relief is required.

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

A. Architectural slides and photographs, consisting of 10 sheets, created on July 1, 2021, prepared by Daniel Dubinett, introduced into evidence as **Exhibit A-1**, on August 2, 2021;

6. At the August 2, 2021 Board meeting, Daniel Dubinett, the Applicants’ Architect testified that the proposed construction would maintain the overall shape and style of the existing residence, and would keep the existing residence visually aligned with other existing residences in the subject neighborhood. Mr. Dubinett clarified that the proposed construction would allow

the existing streetscape of the subject residence to remain intact as a Tudor-style home. Mr. Dubinett stated that the existing garage was rear facing, and that the application proposed to change the garage to be front facing, which would result in a reduction of over 500 square feet of lot coverage. Mr. Dubinett stated that the property was irregularly shaped, and the sail-like configuration of the property, as well as the existing structures and residence on the property, resulted in a hardship to the Applicants. Mr. Dubinett stated that most of the existing residences in the subject neighborhood have detached garages, and that the construction proposed by the application would have no detrimental effect on the Applicants' surrounding neighbors. Mr. Dubinett further stated that the neighboring residence most impacted by the proposed construction did not have any windows on its first floor façade facing the subject property. Mr. Dubinett clarified that an existing deck would be removed and replaced by the proposed covered porch. Mr. Dubinett concluded by stating that the proposed addition would be located 16.63 feet from the right side property line on the subject property.

7. The Applicants testified that the proposed application would require the removal of only one (1) tree located in the rear yard of the subject property.

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.” See also Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984) (the “negative criteria”).

10. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1), and concludes that it is appropriate to grant the variance relief requested by the Applicants 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 need for variance relief primarily results from the property's unusual lot configuration. The unique shape of the property imposes a hardship on the Applicants and the proposed construction. 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.

11. Although the proposed construction requires variance relief to permit a 28.9% combined side yard setback where 35% is the required minimum combined side yard setback, the deviation from these requirements is modest, without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. The application only deviates from the R-6 Zone requirements by a mere 5.18 feet or 6.1%, resulting in a combined side yard setback of 24.6 feet where the minimum required side yard setback is 29.78 feet. The Board concludes that the proposed construction preserves the character of the subject neighborhood, 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 Master Plan and Zoning Ordinance.

12. 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 Municipal Land Use Law (“MLUL”) under 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 (to promote a desirable visual environment) for the reasons set forth above and contained in the application materials. Specifically, the application will result in an overall reduction in both impervious coverage and lot coverage by over 500 square feet, which advances the aforementioned purposes of the MLUL. 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. 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(2) can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of September, 2021 that the variance relief requested by the Applicants to permit the construction of a two-story addition to an existing residence to accommodate a dining room and covered porch on the first floor and a bedroom on the second floor, resulting in a combined side yard setback of 28.9%, where 35% is the minimum combined side yard setback for the R-6 Zone, on property located at 51 Undercliff Road, Millburn, New Jersey, granted by this Board at its meeting of August 2, 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 in the application and at the public hearing, and 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 20th day of September, 2021.

Cal#3809-21, Bruce & Randi Meiseles, 528 Wyoming Avenue, Millburn

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

- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes

the following memorializing resolution was adopted:

**BRUCE & RANDI MEISELES
BLOCK 603, LOT 12**

**CAL. NO. 3809-21
SEPTEMBER 20, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Bruce and Randi Meiseles (hereinafter the “Applicants”), in Calendar No. 3809-21 to permit the construction of a second floor master bathroom above the existing garage and adjacent to the existing master bedroom, on property located at 528 Wyoming Avenue, Millburn, New Jersey, and designated as Lot 12, Block 603, 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 August 2, 2021 as to Calendar No. 3809-21 to permit the construction of a second floor master bathroom above the existing garage and adjacent to the existing master bedroom, on property located at 528 Wyoming Avenue, Millburn, New Jersey, and designated as Lot 12, Block 603, 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 August 2, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and 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 located in the Township's R-6 Zone District (the "R-6 Zone"). The home on the property presently contains one bathroom on the second floor. The Applicants propose to construct a second floor master bathroom located above the existing garage and adjacent to the second floor master bedroom. The proposed construction will occur on the second floor over a portion of the existing garage of the residence on the property, and will not expand the footprint of the existing residence.

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 four (4) existing non-conforming conditions pursuant to the Township Zoning Ordinances: (a) a minimum lot width of 60 feet is required, and the subject property has an existing lot width of 50 feet; (b) a minimum side yard setback of 8 feet for a building up to 18 feet in height is required, and the subject property has an existing side yard setback of 7.19 feet for a building over 18 feet in height; (c) a minimum side yard setback of 11.225 feet for a building over 18 feet but under 32 feet in height is required, and the subject property has an existing side yard setback of 7.19 feet for a building over 18 feet but under 32 feet in height; and (d) a minimum combined side yard setback of 35% (17.5 feet) is required, and the subject property has an existing combined side yard setback of 31.78% (15.18 feet).

4. The proposed construction would result in a side yard setback of 7.19 feet for a building up to 18 feet in height, where 8 feet is the required minimum side yard setback for a building up to 18 feet in height; a side yard setback of 7.19 feet for a building over 18 feet but under 32 feet in height, where 11.225 feet is the required minimum side yard setback for a building over 18 feet but under 32 feet in height; and a combined side yard setback of 31.78% (15.18 feet), where a minimum combined side yard setback of 35% (17.5 feet) is required. Therefore, variance relief is required.

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

A. Current Floor Plan of the Residence on the Subject Property, Prepared by the Applicants on July 15, 2021, introduced into evidence as **Exhibit A-1**, on August 2, 2021;

B. Proposed Floor Plan of the Residence on the Subject Property, Prepared by the Applicant on July 15, 2021, introduced into evidence as **Exhibit A-2**, on August 2, 2021; Survey of Property, Prepared by Halsey Bros. Engineering & Surveying on March 18, 1948, introduced into evidence as **Exhibit A-3**, on August 2, 2021;

6. The Applicants propose to create a master bathroom on the second floor of the residence of the subject property. The proposed second floor addition is to be constructed over the footprint of the existing house and is to be located above the existing garage. The Applicants desire to update their home to reflect the amenities found in other homes in the subject neighborhood. The Applicants stated that the proposed layout was the only functional option due to the location of an existing waste line and that alternate designs would have required reducing the size of other rooms on the second floor and removing an existing second floor closet, while further narrowing an already cramped hallway. The Applicants stated that the proposed construction was designed to be similar in layout and appearance to existing residences in the subject neighborhood and that the proposed construction would align with the existing sight lines, height, and slope of the existing roof and residence. The Applicants stated that it would be impossible for the proposed construction to occur without triggering the need for variance relief due to the location of the existing residence, or without sacrificing functionality of the proposed construction. The Applicants further stated that Mrs. Meiseles would soon be undergoing a complex surgery, and that having a master bathroom located near the master bedroom on the second floor would be instrumental to her rest and recovery post-surgery. The Applicants concluded by testifying that all construction would occur within the original building footprint, and that upon speaking with their neighbors, the Applicants' neighbors have no objection to the application.

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

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

8. N.J.S.A. 40:55D-70 further states “[n]o variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and Zoning Ordinance.” 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 Applicants have 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 Applicants 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 unique shape and size of the property imposes a hardship on the Applicants and the proposed construction due to the property being less wide than the minimum requirements for the R-6 Zone. The Board finds these conditions to

be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

10. Although the proposed construction requires variance relief, the deviations 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, or without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. The application only deviates from the R-6 Zone requirements by a mere .85 feet for a side yard setback for a building up to 18 feet in height, a mere 4.075 feet for a side yard setback for a building over 18 feet but under 32 feet in height, and a mere 2.32 feet or 3.22% for a combined side yard setback. The proposed construction is modest and cannot be located elsewhere due to the existing waste line. The Board concludes that the proposed construction preserves the character of the subject neighborhood, 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.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of September, 2021 that the variance relief requested by the Applicants to construct a second floor master bathroom above the existing garage and adjacent to the existing master bedroom, resulting in a side yard setback of 7.19 feet for a building up to 18 feet in height, where 8 feet is the required minimum side yard setback for a building up to 18 feet in height; a side yard setback of 7.19 feet for a building over 18 feet but under 32 feet in height, where 11.225 feet is the required minimum side yard setback for a building over 18 feet but under 32 feet in height; and a combined side yard setback of 31.78% (15.18 feet), where a minimum combined side yard setback of 35% (17.5 feet), on property located at 528 Wyoming Avenue, Millburn, granted by this Board at its meeting of August 2, 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 as contained in the application and at the public hearing, and 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 20th day of September, 2021.

Cal#3811-21, Thomas Barrett, 32 Pine Terrace East, Short Hills

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

- Craig Ploetner – yes
- Jyoti Sharma – yes
- Joy Siegel – yes
- Wolfgang Tsoutsouris – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**THOMAS J. BARRETT
BLOCK 1709, LOT 16**

**CAL. NO. 3811-21
SEPTEMBER 20, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Thomas J. Barrett (hereinafter the “Applicant”), in Calendar No. 3811-21, to permit the installation of a generator in the side yard of the property located at 32 Pine Terrace East, Short Hills, New Jersey known and designated as Lot 16, Block 1709 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) held a public hearing according to law on August 2, 2021 in Calendar No. 3811-21, to permit the installation of a generator in the side yard of the property located at 32 Pine Terrace East, Short Hills, New Jersey known and designated as Lot 16, Block 1709 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 August 2, 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. There was no public opposition to the application. Board Member Amy Lawrence recused herself from the application.

2. The Applicant is the owner of the subject property, which contains a single-family residence, and is located in the Township's R-6 Zone District (the "R-6 Zone"). The Applicant desires to install a generator in the side yard on the southwest side of the subject property.

3. The proposed construction would result in a side yard setback of 3 feet for the proposed generator, where 12 feet is the minimum side yard setback for a generator pursuant to Section 609.1(f)(2) of the Zoning Ordinance of the Township of Millburn. Therefore, variance relief is required.

4. The Applicant testified that the generator would be located on the southwest side of the property. The Applicant stated that the proposed generator is 22 kW. The Applicant also stated that the proposed generator needed to be placed in the southwest side yard due to the location of the existing windows on the first floor of the subject residence that precluded the proposed generator from being located in the opposite side yard because generators need to be located at least 5 feet away from any window as per building code. The Applicant stated that the proposed generator would be located closer to the rear of the subject property, the proposed generator would be adjacent to the Applicant's neighbor's back yard, and the proposed generator would be located behind large existing trees and bushes on the subject property, which would result in the proposed generator being screened from view.

5. 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[.]

6. 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 "negative criteria").

7. The Board finds that the Applicant has satisfied the statutory criteria as required by 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 installation of a generator in the southwest side yard of the subject property. The Board is satisfied that the need for variance relief to permit the proposed generator is due to the conditions affecting the subject property, the placement of the dwelling on the property, and the existing windows on the first floor of the residence on the subject property.

There is no other side yard location on the subject property where the proposed generator can be located.

8. Although the proposed location of the generator requires variance relief to permit a 3 foot side yard setback for a generator where 12 feet is the minimum required side yard setback for a generator, the proposed generator will be effectively buffered from view from the Applicant's neighbor's property by the Applicant's existing trees and plantings. The deviation from the applicable requirement is modest in light of the practical inability to relocate the proposed generator elsewhere on the property, without undermining the intent and purpose of the Township Zoning Ordinance and Master Plan. The Board concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed use is negligible and not a substantial detriment.

9. For all the reasons stated 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 can be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of September, 2021 that the variance relief requested by the Applicant to install a generator 3 feet from the southwest side yard where 12 feet is the required minimum side yard setback, for the property located at 32 Pine Terrace East, Short Hills, granted by this Board at its meeting of August 2, 2021, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall insure that all existing trees and plantings shall be maintained in order to block the view of the generator from the street and from neighboring properties.

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

3. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, including those 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 approval set forth herein. Such representations are hereby made conditions of such approval.

4. 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 20th day of September, 2021.

Cal#3813-21, Ankur & Shivani Makhija, 45 Mountainview Road, Millburn

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

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

the following memorializing resolution was adopted:

**ANKUR & SHIVANI MAKHIJA
BLOCK 602, LOT 16**

**CAL. NO. 3813-21
SEPTEMBER 20, 2021**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Ankur and Shivani Makhija (hereinafter the “Applicants”), in Calendar No. 3813-21 to permit the construction of a patio located within the side yard of property located at 45 Mountainview Road, Millburn, New Jersey, known and designated as Lot 16, Block 602, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on August 2, 2021, as to Calendar No. 3813-21 to permit the construction of a patio located within the side yard of property located at 45 Mountainview Road, Millburn, New Jersey, known and designated as Lot 16, Block 602, 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 August 2, 2021 hearing, the application and service of notice were found to be in order. The Applicants appeared with counsel, James M. Foerst, Esq., and together with Barry Greenberg, the Applicants’ Landscape Architect, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which is a corner lot at the intersection of Mountainview Road and Wyoming Avenue, located in the Township's R-6 Zone District (the "R-6 Zone"). The Applicants propose to construct a 425 square foot patio located in the side yard of the subject property.

3. The subject property contains a single family residence. Beyond its condition as an undersized lot for the R-6 Zone, the subject property also contains two (2) existing nonconforming conditions pursuant to the Township Zoning Ordinance for the R-6 Zone: (a) a minimum lot depth of 90 feet is required, and the subject property has an existing lot depth of 69.52 feet; and (b) a minimum accessory structure side yard setback of 12 feet is required, and the subject property has an existing accessory structure side yard setback of 11 feet.

4. The proposed application would result in a 46 foot accessory structure setback from the front property line for a corner lot, where 80 feet is the minimum accessory structure setback from the front property line for a corner lot in the R-6 Zone; and an accessory structure side yard setback of 1 foot, where 12 feet is the minimum accessory structure side yard setback for the R-6 Zone. Therefore, variance relief is required.

5. In addition to the application materials, the Board received and considered the following documents submitted with the Application:

A. Photograph of the rear of the existing residence on the subject property, taken by the Applicants on July 31, 2021, consisting of 1 sheet, introduced into evidence as **Exhibit A-1** on August 2, 2021;

B. Photographs of the existing side yard on the subject property, taken by the Applicants on July 31, 2021, consisting of 1 sheet, introduced into evidence as **Exhibit A-2** on August 2, 2021

C. Photographs of the left side of the subject property, taken by the Applicants on July 31, 2021, consisting of 1 sheet, introduced into evidence as **Exhibit A-3** on August 2, 2021.

6. The Applicants desire to construct the 425 square foot proposed patio as a place for outdoor entertainment and recreation for their family. The proposed eating area was designed to be in close proximity to the Applicants' kitchen and outdoor grill. Due to the subject property's existing condition as an undersized corner lot for the R-6 Zone, with the lot depth of the subject property being only 69.52 feet deep, there is no location on the subject property where the proposed patio can be located that would conform with the minimum front yard setback requirements for a corner lot per the Township Zoning Ordinance.

7. The Applicants testified that the proposed patio will be screened from view from the Applicants' neighbors' property by the neighbors' existing detached garages and existing fences, and will be screened from street view by existing evergreen plantings on the subject property.

8. Barry Greenberg, the Applicant's Landscape Architect, testified that due to the existing curved shape of the subject property and due to its existing status as a corner lot, the subject property has no true back yard. Mr. Greenberg also stated that due to the location of the existing residence on the subject property, it would be impossible for any accessory structure to be located in a conforming location on the subject property. Mr. Greenberg stated that he designed the proposed patio to create the least impact to the Applicants' neighbors and to be fully screened from view from the Applicants' neighbors' property and from the street. Mr. Greenberg testified that the closest residence to the subject property was 20 feet off the property line, and that the existing structures and fences on the neighbors' properties were considered when designing the patio so to be screened from view, while also creating a private back yard for the Applicants.

9. Due to comments and concerns expressed by the Board at the August 2, 2021 application hearing, the Applicants agreed to move the proposed patio one (1) additional foot away from the closest neighboring property, so that the proposed patio would now be located two (2) feet from the side yard property line shared with that neighboring property.

10. 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[.]

11. 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.").

12. The Board finds that the Applicants have satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for accessory structure setback from the front property line for a corner lot and for accessory structure side yard setback, and that it is appropriate to grant this variance relief requested by the Applicants to permit the proposed construction. The need for the requested variance relief is related to several already-existing conditions affecting the property, dwelling and other site improvements, including the subject property's non-conforming lot depth for the R-6 Zone. Specifically, the subject property's status as a corner property, combined with the location of the existing residence on the subject property and the property's depth being only 69.52 feet, create an undue hardship on the Applicants, as there is no location where the proposed construction could be located on the subject property that would conform to the

Township Zoning Ordinance. 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 Applicants.

13. The proposed construction will be adequately screened from view from neighboring properties and from street view by both existing plantings and structures.

14. The Board concludes that the proposed construction preserves the character of the subject neighborhood, and that any negative impact from this proposed construction is negligible and not a substantial detriment especially given the existing plantings and structures that will fully screen the proposed construction from view. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of September, 2021, that the variance relief requested by the Applicants pursuant to N.J.S.A. 40:55D-70c(1), to construct a 425 square foot patio located in the side yard of the subject property resulting in a 46 foot accessory structure setback from the front property line for a corner lot, where 80 feet is the minimum accessory structure setback from the front property line for a corner lot in the R-6 Zone, and an accessory structure side yard setback of 2 foot, where 12 feet is the minimum accessory structure side yard setback, approved by this Board at its meeting of August 2, 2021, for the property at 45 Mountainview Road, Millburn, New Jersey, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The proposed patio shall be located 2 feet off the property line, per the variance relief granted above.

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 20th day of September, 2021.

APPLICATIONS

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

William Soukas, attorney for the applicant, stated his appearance. He indicated that the Board heard testimony from Richard Keller, P. E., and John Barre, P. P. at the last hearing. However, time constraints prevented any questions on Mr. Barre’s testimony.

John Barre, P. P., appeared and remained sworn. Board Attorney, Robert Simon, questioned Mr. Barre on his testimony regarding ample parking in the subject area. Mr. Barre stated that many of the surrounding retail businesses are open during the day, while this restaurant does not open for patrons until approximately 4:30 PM. There are several other eateries on the opposite side of the street and there are about 48 street parking spaces within 1 block of this restaurant. There is also a municipal parking lot behind the businesses across the street that provides hourly parking.

David Honeysett, 92 Meadowbrook Road, asked Mr. Barre if it would be possible that patrons would park on the side streets rather than utilize the parking along Millburn Avenue or in the municipal lot. Mr. Barre indicated that if there are no parking restrictions on the side street, it is possible that patrons will utilize the area. Mr. Honeysett asked if it is appropriate to store waste grease in the back of a property so close to residential properties. Mr. Barre indicated that if stored properly, it can be appropriate.

Jeffrey Feld, Alexander Lane, asked Mr. Barre if he knew the history of the property. Mr. Barre responded affirmatively. Mr. Feld asked if the former food use, Tillies, received the necessary approvals. Mr. Barre stated that records indicate that Tillies obtained the necessary permits for the work they performed. The plans submitted for permits were never vetted through the Zoning department.

Sylvio Caruso, owner, appeared and was sworn. He stated that he is the owner of Boccone South, operating at Millburn Avenue since June 2020. He stated that his restaurant was previously in South Orange and he moved his business to Short Hills because he like the area and he felt it was a good fit for his Italian-style cooking. He indicated that he did not obtain conditional use approval because he did not think it was necessary. Everything was already set up as a restaurant. He did not have to do any interior demolition and he has not altered any exterior features. He is open from 4:30 PM – 9:30 PM 7 days per week. His last reservation is at 8 PM. He has 4 employees on site at a given time. There are 48 seats on site and deliveries are made by a box-type truck and are done through the front of the restaurant.

Mr. Caruso stated that there is a state of the art hood in the kitchen that is very quiet. It was installed in 2016 by the previous tenant. There is an exhaust pipe through the roof and he had work done to redirect it away from the residential neighbors. He also installed a screen around the vent and cleaned up the rear of the property. There is no garbage stored in the back alley. Mr. Caruso has made arrangements with the landlord to use the dumpster across the street on a property that is also owned by the landlord.

David Honeysett asked Mr. Caruso why he moved his establishment to Short Hills. Mr. Caruso stated that he felt the area was a good location and it is still close to South Orange. He has maintained about 25% of his clientele.

Jean Pasternak, 342 Hobart Avenue, asked Mr. Caruso when he obtained his sidewalk café license. Mr. Caruso stated that he received the permit in June 2020 and had permission from the landlord. Mrs. Pasternak asked Mr. Caruso if he was aware that his café license permit had been denied by the Township. Mr. Caruso believed that he had received an approval.

Mr. Soukas recalled Mr. Keller, P. E., who appeared and remains sworn. David Honeysett asked why the site plan submitted does not show the storage of the grease tank. Mr. Keller stated that grease tanks, etc. are typically not shown on a site plan.

The meeting was opened for public comments.

Janet Pennise, 47 Mohawk Road, appeared and was sworn. She stated that Mr. Caruso and his restaurant are good neighbors. She has been in and out many times and he is attentive to his property and will do anything to make the neighborhood better.

Laura Regan, 342 Elmwood Avenue, Maplewood, appeared and was sworn. She stated that she has known Mr. Caruso for many years and was a frequent customer of Boccone South when it was located in South Orange. She is happy to see him here in Short Hills.

Merrily Riesebeck, 91 Whittingham Terrace, appeared and was sworn. She stated that she has been a resident of Millburn since 1958 and can remember this property as a food use since the Glenwood Sweet Shop operated there in the 70's. This is an ideal area for such a use. She stated that she has been appalled by some of the questions and comments made. Mr. Caruso opened at a difficult time and the Township should welcome his establishment.

Jay Morreale, 1 Claremont Drive, appeared and was sworn. He stated that it is important to follow Township regulations. This property has had 2 separate businesses without the necessary approvals. Bruce Jeffrey, the property owner, represented the subject property as a "turn-key" property. He misled the tenants.

David Honeysett, 92 Meadowbrook Road, appeared and was sworn.

Entered as O-1: 11-page power point

Mr. Honeysett stated that he has been a resident at the current address for 11 years. He believes this establishment will be a detriment to his quality of life.

Mr. Soukas asked Mr. Honeysett if he lived at the site when Tillies operated at the subject site. Mr. Honeysett stated that he did. Mr. Soukas stated, for the record, that he objected to the submission of O-1 and indicated that it aired general municipal grievances involving improper conduct of other area establishments based on random photos.

David Jacobs, 47 Mohawk Road, appeared and was sworn. He stated that he is a life-long member of the Township. The purpose of this Board is to determine if this use is a benefit to the community. This restaurant has been a positive addition to the area and the owner is very accommodating. The Township should welcome him as a new business owner.

Oyin Owolabi, 46 Maple Street, appeared and was sworn. She stated that the Board should consider the concerns of the area residents.

Jean Pasternak, 342 Hobart Avenue, appeared and was sworn. She stated her objection to the application. She stated that the ordinance is being violated and Township officials and personnel did not do their jobs.

Mr. Soukas briefly summarized the applicant's proposal. He stated that the applicant is seeking conditional use approval and a parking/loading variance. Mr. Caruso is happy to be part of the Millburn/Short Hills community. There have been general comments made about odors in the area. However, there are 4-5 other restaurants in the area. He respectfully requested the Board rule favorable on the applicant's proposal.

Joy Siegel stated that she can support the application. She feels the use is beneficial to the public. The downtown is in desperate need for change and she does not believe this application presents a substantial detriment to the public good and does not adversely impact the Master Plan.

Craig Ploetner feels the area is uniquely qualified to be a restaurant row. The loading/parking deficiency is a common issue. As to the "d" variance, he feels this use is not a detriment to the public good. Jessica Glatt echoed those comments.

Amy Lawrence stated that she generally supports the application. She does not feel the parking and loading space variance requests are an issue.

Joseph Steinberg stated that he was against the application. It is not the function of this Board to determine if the 125 foot requirement can be waived. The negative criteria has not been met and he feels the proposed restaurant substantially impairs the neighborhood. He stated that he does not want to be part of a vote that changes the character of the neighborhood.

Wolfgang Tsoutsoris felt there were many repercussions associated with the approval of this application. He stated that the 125 foot requirement is there for a reason and he does not support the application.

The Board was reminded that conditional use approval requires 5 affirmative votes.

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

Craig Ploetner – yes
Jyoti Sharma – no
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – no
Jessica Glatt – yes
Joseph Steinberg – no

Cal#3767-20, Boccone South, 517 Millburn Avenue, conditional use variance was **DENIED**.

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

Craig Ploetner – yes
Jyoti Sharma – no
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – no
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3767-20, Boccone South, 517 Millburn Avenue, parking/loading variance was **APPROVED**.

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

The matter was carried to October 4, 2021.

CAL#3806-21, OKSENHORN, 304 MILLBURN AVENUE, MILLBURN

The matter was carried to October 4, 2021, for scheduling purposes only.

CAL#3812-21, AHS HOSPITAL CORP., 284 MILLBURN AVENUE, MILLBURN

The matter was carried to October 4, 2021, for scheduling purposes only.

CAL#3820-21, ERICA & PETER KAY, 17 PARK CIRCLE, SHORT HILLS

The matter was carried to October 4, 2021, for scheduling purposes only.

CAL#3821-21, GRANT & SYDRA MILLER, 60 STEWART ROAD, SHORT HILLS

The matter was carried to October 4, 2021, for scheduling purposes only.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Craig Ploetner, seconded by Steve Togher, and carried with a unanimous voice vote. (11:22 PM)

Eileen Davitt
Board Secretary

Motion: JSi
Second: WT
Date Adopted: 10/27/21