

Township of Millburn
Minutes of the Zoning Board of Adjustment
January 13, 2020

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, January 13, 2020** at 7:00 PM in Millburn Town Hall.

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

Board Attorney, Gail Fraser, administered the oath of office to Stephen Togher.

The following members were present for the meeting:

Jessica Glatt
Mary McNett
Craig Ploetner
Jyoti Sharma
Joy Siegel
Joseph Steinberg
Steve Togher
Wolfgang Tsoutsouris

Also present:

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

ORGANIZATION OF THE BOARD

Eileen Davitt asked for a nomination for Chairman of the Zoning Board.

A motion to nominate Joseph Steinberg for Chairman was made by Craig Ploetner, seconded by Mary McNett, and carried with a roll-call vote as follows:

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Wolfgang Tsoutsouris – yes

The meeting was turned over to Chairman Joseph Steinberg who asked for a nomination for Vice Chairman of the Zoning Board. A motion to nominate Jessica Glatt for Vice

Chairwoman was made by Joy Siegel, seconded by Craig Ploetner, and carried with a roll-call vote as follows:

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Joseph Steinberg – yes

A motion to appoint Gail Fraser as Board Attorney was made by Mary McNett, seconded by Jessica Glatt, and carried with the following roll-call vote:

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

A motion to appoint Eileen Davitt as Board Secretary was made by Mary McNett, seconded by Craig Ploetner, and carried with the following roll-call vote:

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

APPROVAL OF MINUTES

A motion to approve the minutes of December 16, 2019 was made by Craig Ploetner, seconded by Joy Siegel, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3713-19, Jon & Marni Betlow, 49 Grosvenor Road, Short Hills

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

Mary McNett – yes
Craig Ploetner – yes

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

the following memorializing resolution was adopted:

**JON AND MARNI BETLOW
BLOCK 2903, LOT 9**

**CALENDAR NO. 3713-19
JANUARY 13, 2020**

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 a two-story addition to the dwelling on property located at 49 Grosvenor Road, Short Hills, New Jersey, known and designated as Block 2903, Lot 9 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 November 18, 2019 on the application filed by Jon and Marni Betlow to permit the construction of a two-story addition to the dwelling on property located at 49 Grosvenor Road, Short Hills, New Jersey, known and designated as Block 2903, Lot 9 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The Applicants are the owners of the subject property, which is located in the R-3 zone. The R-3 zone district requirements are as follows: minimum 15 foot side yard setback, minimum 25 foot second story side yard setback, minimum 35% combined side yard setback, minimum 20% rear yard setback, minimum 25% unoccupied rear yard, maximum 20% accessory coverage and garages facing and opening onto a public street are prohibited. The Applicants' proposal would result in a 9.02 foot side yard setback, 9.02 foot second story side yard setback, 21.15% combined side yard setback, 14.75% rear yard setback, 11.04% unoccupied rear yard, 31.8% accessory coverage and a garage facing and opening onto a public street. Therefore, variance relief is required.
3. The Board received and considered the following documents:
 - A. Plans prepared by John James, Architect, consisting of eleven sheets, Sheets T-02, A-01 through A-03 A-20 & A-21, E-01 through E-03, and E-20 & E-21, dated April 29 2019 and revised through July 24, 2019;

- B. Plans prepared by Casey & Keller, Inc., consisting of two sheets, Sheet 1 dated July 23, 2019 and Sheet 2, dated January 13, 2017 and revised through June 10, 2019;
- C. A group of six photographs prepared by John James, Licensed Architect, depicting various views of the dwelling, which were admitted into evidence as A-1;
- D. An aerial photo exhibit prepared by Casey & Keller, which was admitted into evidence as A-2; and
- E. A colorized version of the Casey & Keller Sheet 1 Variance Plan, which was admitted into evidence as A-3.

4. The following witnesses testified in support of the application: Applicants Jon Betlow, John James, Registered Architect, and Richard Keller, Professional Planner and Professional Engineer.

5. The Applicants' wish to construct an addition on the dwelling, which would include an expanded family room, mud room and additional garage on the first floor, and two bedrooms and one bathroom on the second floor. The existing dwelling, a small three-bedroom Tudor home built in 1928, is located in the R-3 zone district, the largest residential district in the Township characterized by homes which generally have four to five or more bedrooms. The subject property is an undersized trapezoidal-shaped lot with a lot area of 21,688 square feet instead of the required minimum lot area of 29,000 square feet. The placement of the existing dwelling is at the rear of the property, more than 85 feet from the street, in an area of the property with the narrowest lot width. As a result, the existing one-story component of the home containing the family room and one-car garage extends beyond the allowable building envelope. Moreover, the deep front yard setback of the existing home results in several pre-existing nonconforming conditions, including combined side yard setback, rear yard setback, rear yard unoccupied and accessory coverage. The existing dwelling is oriented at an angle in relation to the street and the existing one-car garage is a pre-existing nonconforming front facing garage.

6. The proposed addition would rebuild the existing one-story component at the rear of the home into two stories, aligning with and extending the angled placement by an additional 11 feet to the right to allow for a second garage bay, which would also face the street. The proposed front facing garage would not be generally visible from the street due to the deep front yard setback buffered by dense plantings, and angled placement of the home with the addition which is uphill from the street. The proposed addition to the dwelling would allow for a wider family room, a powder room with a new mud room separating the family room from the proposed two-car garage. The second floor of the addition would provide two additional bedrooms and a bathroom, resulting in a five-bedroom home, which is more consistent with the homes in this neighborhood.

7. The placement of the existing dwelling at the rear of the property and in the narrowest portion of the lot trigger the need for the requested variance relief. The proposed addition would be situated in the same location as the existing one-story family room and garage to preserve the look and exposure of the main dwelling and to make the proposed second garage bay accessible from the existing driveway. In conjunction with the proposed addition to the dwelling, the Applicants' propose to replace the existing L-shaped patio that now extends into the side yard, with a new patio situated wholly in the rear yard in the space between the main dwelling and the proposed addition. The proposed patio placement would make the patio accessible from the dining room and the expanded family room. Although a portion of the proposed patio projects into the rear yard requiring variance relief for accessory coverage, the Applicants' proposed patio placement actually reduces the extent of the deviation from the permitted accessory coverage from 39.4% to 31.8%. While the proposed improvements would require variance relief to permit a 14.7% rear yard setback and 11.04% rear yard unoccupied, the reduction in rear yard consists of seven and one-quarter inches, which is the result of the family room addition. Moreover, the rear yard setback and rear yard unoccupied conditions are already pre-existing nonconforming conditions which result from the unusually deep setback of the dwelling and the narrow width of the property at the rear of the lot due to its trapezoidal shape. Despite the need for variance relief, the home with the addition will provide a 30.40% lot coverage and 22.26% floor area ratio, which are significantly less than the 35% lot coverage and 26% floor area ratio permitted in the zone district.

8. The Applicants' professional planner, Richard Keller, testified that the subject property was once part of a large estate. When the estate was broken up, the Applicants' property was one of the smaller lots created and in fact, it is the smallest lot on the block. He testified that the need for variance relief is the result of the undersized lot area, the trapezoidal shape of the property, and the placement of the dwelling with its unusually large front yard setback, which is the deepest front yard setback on the block. He also testified that the home after the construction of the addition would remain consistent with the original 1928 Tudor style which already has a garage that faces the street. Mr. Keller testified that it would not be possible to reorient the existing garage to eliminate the front facing condition, so the most logical placement for a second garage bay is to duplicate the existing front facing garage. Due to the deep angled setback of the existing garage, both the existing and proposed front facing garage would be visible only from the entrance to the driveway. After the construction of the proposed addition the new garage bay would be set back 110.5 feet from the right of way of Grosvenor Road. Mr. Keller testified that most of the homes in the neighborhood have three to four car garages, so the proposed addition to allow a second garage bay would be more consistent with the neighborhood than the existing dwelling with its single garage bay. Mr. Keller opined that the elimination of the nonconforming side patio would benefit the neighborhood and that the proposed improvements would not result in any negative impact on the neighboring properties. The rear yard of the Applicants' property is at a lower elevation than all the adjacent properties and the proposed placement of the addition and patio would be well screened from the neighbors' view by mature trees. He testified that the granting of variance relief to permit the proposed improvements would be consistent with the goals of the Master Plan, which include protecting the character of established neighborhoods and promoting the Township as a suburb of the highest quality. Although the Applicants' dwelling is not a designated historic site, the

proposed addition will maintain the historic qualities of the existing 1928 Tudor home, and remain in keeping with the established character of the neighborhood.

9. The Board is satisfied that the variances requested are appropriate and satisfy the criteria for the granting of variance relief. The Board finds that the undersized lot area, the trapezoidal shape, and the placement of the existing home on the narrowest portion of the lot with an unusually deep front yard setback, which results in the pre-existing nonconforming second story side yard setback, combined side yard setback, rear yard unoccupied, rear yard setback, accessory setback and accessory coverage are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. In addition, the existing front facing garage is a pre-existing nonconforming condition. The proposed two-story addition with a second front facing garage bay will be in keeping with the architectural character of the original 1928 Tudor home. The Board is also satisfied that the home with the proposed addition will continue to be hidden from view from the street and from adjoining residential properties due to its lower elevation and heavy landscaping. Therefore, the proposed side yard setbacks and combined side yard setbacks will not have any negative impact on the neighboring properties. Although the addition proposes a second front facing garage bay, it will generally not be visible from the street except at the driveway entrance. Although the proposed improvements will result in slightly greater deviations from the required rear yard unoccupied and rear yard setback conditions, the elimination of an existing side patio will remove the pre-existing nonconforming accessory setback condition, and reduce the extent of the accessory coverage deviation. 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 13th day of January, 2020 that variance relief granted by this Board on November 18, 2019 to permit the construction of a two-story addition to the dwelling and rear yard patio, resulting in a 9.02 foot side yard setback, 9.02 foot second story side yard setback, 21.15% combined side yard setback, 14.75% rear yard setback, 11.04% unoccupied rear yard, 31.8% accessory coverage and a garage facing and opening onto a public street, 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 John James, Architect, consisting of eleven sheets, Sheets T-02, A-01 through A-03 A-20 & A-21, E-01 through E-03, and E-20 & E-21, dated April 29, 2019 and revised through July 24, 2019.

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

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

4. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and other witnesses at the public 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.

5. 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 13th day of January, 2020.

Cal#3718-19, Xi Wang/Dapeng He, 8 Parkview Drive, Millburn

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

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

the following memorializing resolution was adopted:

**XI WANG AND DAPENG HE
BLOCK 810, LOT 24**

**CALENDAR NO. 3718-19
JANUARY 13, 2020**

Mr. Chairman, I move the adoption of the following resolution memorializing the denial of the variance relief requested by the Applicants, Xi Wang and Dapeng He, to avoid construction of a detached garage on property located at 8 Parkview Drive, Millburn, New Jersey known and designated as Lot 24, 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 November 18, 2019 in Calendar No. 3718-19 filed by Xi Wang and Dapeng He (hereinafter referred to as the “Applicants”) for permission to avoid construction of a detached garage on property located at 8 Parkview Drive, Millburn, New Jersey; and

WHEREAS, the Board does hereby set forth its findings of facts, circumstances, reasons and conclusions:

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. James Peter Kokkalis, 6 Parkview Drive, Millburn, appeared and testified as an interested party in support of the application.
2. The Applicants are the owners of the subject property. The Township Zoning Ordinance requires that each residential unit provide a minimum of one parking space in a garage. The Applicants demolished an existing detached garage and obtained a building permit to construct a new detached garage and an addition to the dwelling. Variance relief is required to permit the Applicants to avoid constructing the new detached garage.
3. The Board considered the following documents in connection with this application:
 - A. A survey prepared by Brunswick West, Inc., dated June 27, 2017, marked up by the Applicants to show the addition to the dwelling and the replacement detached garage.
4. Applicants Xi Wang and Dapeng He testified in support of the application. The Applicants’ neighbor, James Peter Kokkalis of 6 Parkview Drive, Millburn, testified in support of the application. The Board also heard testimony from Eileen Davitt, Township Zoning Officer.
5. The Applicants purchased the property in 2017. At the time of their purchase, they learned from their home inspection report that the detached garage had structural issues and was unsafe. The Applicants had the garage structure demolished after they purchased the property. Thereafter, the Applicants submitted plans to the Township to construct an addition to the dwelling and a new detached garage. Based on those plans, the Applicants were issued a building permit and they constructed the addition to the dwelling. Once the addition to the dwelling was constructed the Applicants decided they did not want to construct the new detached garage. They offered their opinion that the location of the proposed new detached garage was set back so far from the street, that there would be no negative impact on the streetscape if the Board allows them to avoid construction of the new detached garage. In addition, their son would have more room to play in the back yard without the garage. However, the Zoning Officer testified that the Applicants cannot obtain a Certificate of Occupancy from the Township without

constructing the detached garage depicted on the approved plans, or obtaining variance relief from this Board to allow them to maintain the property without a parking space in a garage.

6. The Applicants' neighbor, James Peter Kokkalis, testified that he resides at the property to the left of the Applicants. He advised the Board that the Applicants' original detached garage was falling down. He opined that the Applicants' original garage was too small to accommodate a car and he stated that many of the property owners on this street do not use their garages for parking cars because the garages are small.

7. The Board finds that the Applicants have 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 Applicants to permit them to avoid construction of the detached garage. The Board finds that the Applicants have not demonstrated any reasons to support the granting of variance relief pursuant to N.J.S.A. 40:55D-70c. The Township Ordinance requires all single family and two-family dwellings to maintain at least one parking space in a garage. The Applicants' property had a detached garage, which the Applicants chose to demolish. Thereafter, the Applicants obtained a building permit on the basis of plans submitted which depicted the construction of a new detached garage and an addition to the dwelling on the property. The Board finds and concludes that the rationale presented in support of the requested variance relief is not related to any hardship associated with the property or the lawfully existing improvements on the property. When the detriments associated with the granting of variance relief are balanced against the benefits of the application, which are purely personal to the Applicants, 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 13th day of January, 2020 that the variance relief requested by the Applicants, Xi Wang and Dapeng He to avoid construction of the detached garage as depicted on the approved plans submitted in connection with the issuance of a building permit on property located at 8 Parkview Drive, Millburn, denied by this Board at its meeting of November 18, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 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 13th day of January, 2020.

Cal#3725-19, Edward & Pamela Rubin, 45 Deer Path, Short Hills

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

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

the following memorializing resolution was adopted:

**PAMELA AND EDWARD RUBIN
BLOCK 4804, LOT 6**

**CALENDAR NO. 3725-19
JANUARY 13, 2020**

Mr. Chairman, I move the adoption of the following resolution memorializing the denial of the variance relief requested by the Applicants, Pamela and Edward Rubin, to construct a four-foot high fence in the front yard of the property located at 45 Deer Path, Short Hills, New Jersey known and designated as Lot 6, Block 4804 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 November 18, 2019 in Calendar No. 3725-19 filed by Pamela and Edward Rubin (hereinafter referred to as the “Applicants”) for permission to construct a four-foot high fence in the front yard of the property located at 45 Deer Path, Short Hills, New Jersey; and

WHEREAS, the Board does hereby set forth its findings of facts, circumstances, reasons and conclusions:

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The Applicants are the owners of the subject property, which is located in the R-5 zone district. The Township Zoning Ordinance prohibits fences in the front yard. The Applicants propose to construct a four-foot high fence in the front yard of the property. Therefore, variance relief is required to permit the construction of the fence.
3. The Board considered the following documents in connection with this application:
 - A. A survey prepared by Benjamin and Wizorek, Inc., marked up by the Applicants to show the location of the proposed fence, which was admitted into evidence as A-1.

4. Applicant Edward Rubin testified in support of the application. The Applicants have a new puppy and they wish to install a four-foot high fence in the front yard of their property to provide a safe area for their pet. The subject property is a corner lot fronting on Deer Path and Oswego Lane. The proposed fence would extend from the northwest corner of the dwelling towards Oswego Lane and then run in a southerly direction along Oswego Lane before turning east into the property to a point where it would connect with the Applicants' existing stockade fence at the southerly property line. The proposed fence would be constructed inside the existing landscaping that runs along the Oswego Lane front yard of the property.

5. In response to questions from the Board, the Applicants testified they considered an electric fence but rejected that alternative. Enclosing a portion of the yard with fencing in a conforming location would not provide the Applicants with as much useable backyard area as the proposed fence location.

6. The Board finds that the Applicants have 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 Applicants to permit the construction of a four-foot high fence in the front yard of the property. The Applicants contend that the proposed fence is the only recommended means of containing their new puppy in their yard. However, the subject property is a large lot and a fence could be constructed in a conforming location to provide a safe, suitable area to contain their pet without the need for variance relief. The Applicants' proposed placement of the fence would not conceal the view of the fence from Oswego Lane due to gaps in the existing landscaping, which is a mix of evergreen and deciduous plantings that would not buffer the view of the fence year-round. Moreover, there is no landscaping to conceal the proposed fence from view from Deer Path. 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 Applicants. While the Applicants claim the proposed fence would serve to contain their new puppy in their yard, the Board finds that there are alternative methods of doing so that would not require the installation of a four-foot high fence in the front yard. The Board alternatively finds that the Applicants have 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 existing streetscape. When the detriments associated with the granting of variance relief are balanced against the benefits of the application, which are purely personal to the Applicants, 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 13th day of January, 2020 that the variance relief requested by the Applicants, Pamela and Edward Rubin to construct a four-foot high fence in the front yard of property located at 45 Deer Path, Short Hills, denied by this Board at its meeting of November 18, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 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 13th day of January, 2020.

Cal#3728-19, Benja Suwankosai, 13 Bailey Road, Millburn

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

- Mary McNett – yes
- Craig Ploetner – yes
- Joy Siegel – yes
- Steve Togher – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**BENJA SUWANKOSAI
BLOCK 211, LOT 13**

**CALENDAR NO. 3728-19
JANUARY 13, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Benja Suwankosai, in Calendar No. 3728-19 for permission to construct an addition on the dwelling on property located at 13 Bailey Road, Millburn, New Jersey, known and designated as Lot 13, Block 211 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 November 18, 2019 in Calendar No. 3728-19 filed by Benja Suwankosai (hereinafter referred to as the “Applicant”) for permission to construct an addition to the dwelling on property located at 13 Bailey Road, Millburn, New Jersey, known and designated as Lot 13, Block 211 on the tax map of the Township of Millburn; and

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

1. The Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The property is located in the R-6 zone, which is subject to a minimum 8 foot side yard setback and minimum 35% combined side yard setback. The home with the proposed addition would result in a 7.75 foot side yard setback and 28.17% combined side yard setback. Therefore, the Applicant requires variance relief.

3. The Board received and considered plans prepared by Studio 3 Architecture, Ahmed A. Emara, Architect, consisting of two sheets, Sheets Z1 and Z2 dated August 31, 2019 in support of the application.

4. Benja Suwankosai, and Henry Latch, Registered Architect, testified in support of the application.

5. The Applicant resides at the property with his wife and two children and they wish to construct a family room addition to the existing dwelling. There is an existing screened-in porch at the rear of the dwelling, which would provide the most logical location for the proposed family room addition because it is at the rear of the dwelling and would not have any impact on the streetscape or the adjacent neighbor. The Applicant's proposal would incorporate the existing screened-in porch in the new family room. The proposal would allow the Applicant to utilize the foundation and side wall framing of the screened-in porch. The height of the proposed addition would be no greater than the existing screened-in porch. The screened-in porch has a pre-existing nonconforming 7.75 foot side yard setback, which would extend an additional five feet eight inches into the rear yard under the Applicant's proposal. In addition, the screened-in porch is slightly offset from the main dwelling on the property, which has a pre-existing nonconforming 7.5 foot side yard setback and a pre-existing nonconforming 27.6% combined side yard setback. The subject property is located in the R-6 zone district. While the property has a conforming lot area, the lot width is 50 feet instead of the minimum required 60 feet. If this property had a conforming lot width, in all likelihood, the need for variance relief to permit the proposed addition would be reduced or eliminated. The proposed addition would be concealed from view from the adjacent neighbor by existing tall evergreens on the side of the property which buffer the neighbor's view of the Applicant's property.

6. The Board is satisfied that variance relief may be granted to permit the proposed addition to the dwelling. The need for variance relief is the result of the nonconforming lot width and the placement of the dwelling on the property with its pre-existing nonconforming side yard setbacks and combined side yard setback. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The Board is also satisfied that the proposed addition will not result in any substantial negative impact on the nearest neighbors or the neighborhood. The addition will be located at the rear of the existing dwelling, which will conceal its view from the street. Tall evergreens on the Applicant's property will conceal the nearest neighbor's view of the addition. 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 13th day of January, 2020 that variance relief to permit the construction of a one-story addition resulting in a 7.75 foot side yard setback and 28.17% combined side yard setback, granted by this Board on November 18, 2019, be and it is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Studio 3 Architecture, Ahmed A. Emara, Architect, consisting of two sheets, Sheets Z1 and Z2 dated August 31, 2019.
2. The Applicant shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the provisions of Section 422 of the Township Land Development Ordinance shall provide otherwise.
3. Prior to the issuance of a Certificate of Occupancy, the Applicant shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and the Applicant's professional witness 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 13th day of January, 2020.

Cal#3730-19, Jeffrey & Davina Rauch, 11 Myrtle Avenue, Millburn

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

Mary McNett – yes

Craig Ploetner – yes
Joy Siegel – yes
Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**JEFFREY AND DAVINA RAUCH
BLOCK 107, LOT 9**

**CALENDAR NO. 3730-19
JANUARY 13, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Jeffrey and Davina Rauch, to permit the construction of a two-story addition to the dwelling on property located at 11 Myrtle Avenue, Millburn, New Jersey known and designated as Lot 9, Block 107 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) has held public hearings according to law on November 18, 2019 in Calendar No. 3730-19 filed by Jeffrey and Davina Rauch (hereinafter the “Applicants”) for permission to construct a two-story addition to the dwelling on property located at 11 Myrtle Avenue, Millburn, New Jersey; and

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

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

2. The property is located in the R-5 zone district. The R-5 zone district requires a minimum 40 foot front yard setback, 0.33 per foot side yard setback for building segments above 18 feet in height, which in this case requires a 15.7 foot side yard setback for building segments above 18 feet in height, and a minimum 35% combined side yard setback. The Applicants propose to construct a two-story addition to the dwelling that would result in a 27.7 foot front setback, 12.5 foot side yard setback for building segments over 18 feet in height, and a 30.0% combined side yard setback. Therefore, variance relief is required.

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

A. Plans prepared by Dubinett Architects, LLC, consisting of two sheets, Sheets V-1 and V-2, dated August 13, 2019;

- B. A survey of the property prepared by Eric P. Silvestro, PLS, dated June 19, 2019 and a copy of the Silvestro survey marked up by the Applicants' Architect to depict the proposed addition;
- C. A photograph of the existing dwelling and colored rendering of the home with the proposed two-story addition, prepared by Dubinett Architects, LLC and admitted into evidence as A-1;
- D. Two photographs of the neighboring property to the right, which were admitted into evidence as A-2; and
- E. Sheet V-2 of the Dubinett plans, which was highlighted to depict the portion of the proposed addition which requires side yard setback for building segments over 18 feet in height, which was admitted into evidence as A-3.

4. Jeffrey Rauch, and Danial Dubinett, Registered Architect, testified in support of the application.

5. The subject property is located in the R-5 zone district. The property has a 12,800 square foot lot area instead of the minimum required 14,500 square foot lot area, but the lot width of the property is 80 feet, which is greater than the minimum 75 foot lot width required in the zone. Pursuant to Township Ordinance a minimum of one parking space in a garage is required for a dwelling unit. The subject property does not currently have a garage and the Applicants' vehicles are parked in the paved driveway on the right side of the dwelling. The Applicants wish to construct a two-story addition, which would provide a two-car garage, mud room and family room on the first floor, with two bedrooms and an additional bathroom on the second floor. The existing dwelling is a Dutch Colonial style home with a gambrel roof. The existing home has a pre-existing nonconforming 11.5 foot side yard setback on the left side of the property and a 34.2 foot side yard setback on the right side of the property. As a result of the placement of the existing dwelling, the Applicants propose to construct the addition on the right side of the existing dwelling. The gambrel roof design creates the need for the side yard setback variance for building segments over 18 feet in height as depicted by the highlighted triangular portion of the roof shown on the exhibit presented during the hearing. The addition would provide a conforming 12.5 foot side yard setback on the right side of the property, but the combined side yard setback would be 30%, or 24 feet, which is less than the required 35%, or 28 foot, combined side yard setback required for the property's 80 foot lot width. However, based upon the placement of the neighbor's home to the right, there would be 41 feet separating the Applicants' home with the proposed addition from the neighboring dwelling to the right. In addition, the nearest portion of the neighbor's dwelling is their greenhouse, not living space, and the neighbor's property is at a slightly higher elevation than the Applicants' lot.

6. As for the proposed front yard setback, the existing dwelling has a pre-existing nonconforming 32 foot front yard setback at the left front corner of the dwelling, while the open front porch has a 24 foot, 8 inch front yard setback. The proposed addition would provide a 27.7 foot setback, which is a deeper front yard setback than the adjacent front porch, but less than the

32 foot front yard setback of the front façade of the existing dwelling. In addition, the proposed 27.7 foot front yard setback is greater than the average 26 foot front yard setback on Myrtle Avenue between Maple Street and Mountain Avenue. The proposed 27.7 foot front yard setback is consistent with the front yard setbacks of the homes on the adjacent properties, as the dwelling to the left has a 24.2 foot front yard setback and the dwelling to the right has a 25.7 foot front yard setback.

7. The Board concludes that variance relief may be granted to permit the proposed two-story addition to the dwelling. The property is a undersized lot and the existing dwelling has a pre-existing nonconforming front yard setback. In addition, while the property has an 80 foot lot width, the existing dwelling is not centered on the property and the property does not have a garage, which is required by the Township Zoning Ordinance. The Board is satisfied that these conditions present exceptional circumstances uniquely affecting the property that justify variance relief. As a result of the placement of the dwelling, the proposed addition would result in a 30% or 24 foot combined side yard setback. In addition, a 3.2 foot wide triangular portion of the gambrel roof would not meet the required 15.7 foot side yard setback for building segments over 18 feet in height. The Board is satisfied that the 41 feet separating the Applicants' home, after the proposed addition, from the neighboring dwelling to the right will continue to provide adequate light, air and open space between the two dwellings. With respect to the proposed front yard setback, the current home already has a pre-existing nonconforming 32 foot front yard setback and the open front porch has a 24 foot 8 inch setback from Myrtle Avenue. The proposed addition would maintain a 27.7 foot front yard setback, which is consistent with the homes on the adjacent properties, as well as the average 26 foot front yard setback on this block. The Board is satisfied that the proposed addition to the dwelling will be an improvement to the property and the neighborhood. The proposed addition will provide parking space in a garage for two cars, satisfying the Township Ordinance requirement and eliminating the current nonconforming condition. The Board is satisfied that the proposed two-story addition to the dwelling will not have any negative impact on the streetscape or on the adjacent properties. The Board is satisfied that the home with the two-story addition will continue to be in keeping with the neighborhood in which it is located. 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 13th day of January, 2020 that variance relief granted by this Board on November 18, 2019 to permit the construction of a two-story addition to the dwelling that would result in a 27.7 foot front setback, 12.5 foot side yard setback for building segments over 18 feet in height, and a 30.0% 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 at the hearing and the plans prepared by Dubinett Architects, LLC, consisting of two sheets, Sheets V-1 and V-2, dated August 13, 2019.

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 Township Land Development Ordinance shall provide otherwise.

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

4. 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 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 13th day of January, 2020.

Cal#3726-19, Cory & Jill Schneider, 191 Hartshorn Drive, Short Hills

Upon a motion made by Craig Ploetner, a second by Mary McNett, and with a unanimous voice vote the following memorializing resolution was adopted:

**CORY AND JILL SCHNEIDER
BLOCK 2901, LOT 13**

**CALENDAR NO. 3726-19
JANUARY 13, 2020**

Mr. Chairman, I move the adoption of the following resolution memorializing the dismissal of the application for variance relief requested by the Applicants, Cory and Jill Schneider, to construct an addition to the dwelling on property located at 191 Hartshorn Drive, Short Hills, New Jersey known and designated as Lot 17, Block 3503 on the tax map of the Township of Millburn.

RESOLUTION

BE IT RESOLVED on this 13th day of January, 2020 that the variance relief requested by the Applicants, Cory and Jill Schneider, to construct an addition to the dwelling on property located at 191 Hartshorn Drive, Short Hills, dismissed for lack of prosecution by this Board at its

meeting of December 16, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 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 13th day of January, 2020.

Cal#3729-19, Etai Harel, 26 Clive Hills Road, Short Hills

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

- Mary McNett – yes
- Craig Ploetner – yes
- Joy Siegel – yes
- Steve Togher – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

**ETAI HAREL
BLOCK 4602, LOT 17**

**CALENDAR NO. 3729-19
JANUARY 13, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Etai Harel, to permit the construction of an in-ground pool and pool patio on property located at 26 Clive Hill Road, Short Hills, New Jersey known and designated as Lot 17, Block 4602 on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS, the Millburn Township Zoning Board of Adjustment (the “Board”) has held a public hearing according to law on November 18, 2019 and December 16, 2019 in Calendar No. 3729-19 filed by Etai Harel (the “Applicant”) for permission to construct an in-ground pool and pool patio on property located at 26 Clive Hill Road, Short Hills, New Jersey; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. The owner of the property, Yair Bendory, consented to the

application. Jay Katz as executor of the estate of Arthur Badisch of 30 Clive Hill Road appeared at the hearing as an interested party.

2. The subject property is located in the R-4 zone, which requires an 80 foot accessory structure front setback on a corner lot. In this case, the proposed in-ground pool and pool patio would result in a 72.6 foot accessory structure front setback on a corner lot. Therefore, the Applicant requires variance relief to permit the construction of the proposed in-ground pool and pool patio. Originally, the Applicant sought variance relief to permit a 71.25 foot accessory structure front setback on a corner lot and to permit the construction of a front yard fence. During the course of the hearing, the Applicant revised the plan to eliminate the request for variance to permit a front yard fence and reduced the extent of the deviation from the required 80 foot accessory structure front yard setback on a corner lot.

3. The following documents were submitted in support of the application:

- A. A plan prepared by Dubinett Architects, LLC, consisting of one sheet dated July 30, 2018 and revised through October 2, 2019;
- B. A copy of a survey prepared by James J. Mantz, dated May 8, 2018, marked up by the Applicant's architect to depict the originally proposed in-ground pool, pool patio and front yard fence;
- C. A plan prepared by Dubinett Architects, LLC, consisting of one sheet dated July 30, 2018 and revised through December 2, 2019;
- D. A colorized version of the Dubinett plan revised through October 2, 2019, which was admitted into evidence as A-1;
- E. Two photographs of the existing landscape on the property with the originally proposed front yard fence, which was admitted into evidence as A-2;
- F. A copy of the Dubinett plan, revised through December 2, 2019 to depict the conforming fence location, which was admitted into evidence as A-3.

4. Danial Dubinett, Registered Architect and Etai Harel, builder and son-in-law of the property owner, testified in support of the application.

5. The subject property is a corner lot located at the intersection of Clive Hill Road and Lancer Drive. In response to a request from the prospective purchaser of the property, the Applicant seeks variance relief to permit the construction of an in-ground pool and pool patio on the property. Initially, the Applicant sought to construct an in-ground pool and patio with a 71.25 foot accessory front yard corner lot setback from Clive Hill Road and a 48 inch high pool fence, required by the NJ State Construction Code, in the Clive Hill Road front yard of the property inside the existing privacy screen at the property line, which consists of 12 foot tall

green giant arborvitae and Norway spruces. During the initial hearing, the Applicant and his Architect, Danial Dubinett confirmed that a pool fence could be constructed southeast of the front façade of the dwelling, which would eliminate the need for variance relief for a front yard fence. When measured from Clive Hill Road to the southeasterly side property line at the rear of the dwelling, the property is only 97.75 feet deep. Because of the configuration and dimensions of the lot and the placement of the dwelling on the property, there is no place on the property where an in-ground pool and pool patio could be constructed in a conforming location.

6. Jay Katz offered his lay opinion that the pool fence should be constructed around the pool and not in the front yard. Various Board members also expressed concerns regarding the pool fence. As a result of concerns expressed during the initial hearing, the Applicant revised the plan to eliminate the need for variance relief to permit a fence in the front yard. The proposed pool fence would be constructed in a conforming location behind the front façade of the dwelling. The Applicant also revised the plans to increase the accessory structure front yard corner lot setback to 72.6 feet, which still requires variance relief but is closer to the required 80 foot accessory structure front yard corner lot setback than the originally proposed placement. The proposed placement would allow a 24.21 foot setback from the neighboring property to the left on Clive Hill Road and it would provide a conforming 12 foot accessory side yard setback along the southeast property line.

7. The Board concludes that variance relief requested by the Applicant may be granted to permit the construction of the proposed in-ground pool and pool patio. The Board is satisfied that the need for variance relief is the result of the corner lot status of the property, the configuration and dimensions of the property, and the placement of the dwelling on the property, which preclude the placement of an in-ground pool and pool patio with a conforming accessory corner lot setback. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The proposed in-ground pool and pool patio will be concealed from view from Clive Hill Road and the adjacent properties by existing evergreen privacy screening consisting of 12 foot tall arborvitae and Norway spruces. Moreover, the proposed in-ground pool and pool patio will maintain conforming accessory side yard setbacks from the two adjoining lots. As a result, the Board is satisfied that the proposed in-ground pool and pool patio will not result in any negative impact on the nearest neighbors or the streetscape. The Board is also satisfied that the proposed home with the proposed in-ground pool and patio will be in keeping with the other homes in the neighborhood. Therefore, the Board also concludes that variance relief can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW, THEREFORE, BE IT RESOLVED on this 13th day of January, 2020 that variance relief granted by this Board on December 16, 2019 to permit the construction of an in-ground pool and pool patio with a 72.6 foot accessory structure corner lot front yard setback from Clive Hill Road be and it hereby is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plan prepared by Dubinett Architects, LLC, consisting of one sheet dated July 30, 2018 and revised through December 2, 2019.

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 13th day of January, 2020.

Cal#3714-19, Richard & Robin Jacobs, 9 Rahway Road, Millburn

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

- Mary McNett – yes
- Craig Ploetner – yes
- Joy Siegel – yes
- Steve Togher – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Richard and Robin Jacobs, in Calendar No. 3714-19 for permission to construct a deck and an addition to the dwelling on property located at 9 Rahway Road, Millburn, known and designated as Lot 22, Block 501 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 October 21, 2019 and December 16, 2019 in Calendar No. 3714-19 filed by Richard and Robin Jacobs (hereinafter referred to as the “Applicants”) for permission to construct a two-story addition and deck to the existing single family home located at 9 Rahway Road, Millburn, New Jersey known and designated as Lot 22, Block 501 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The Applicants are the owners of the subject property which is located in the R-6 zone district. The R-6 zone requirements include the following: maximum 36% floor area ratio, maximum 23% building coverage, minimum 35% combined side yard setback, minimum 40 foot front yard setback and minimum 12 foot accessory structure side yard setback. The proposed deck and addition to the dwelling would result in a 44.42% floor area ratio, 24.8% building coverage, 32.8% combined side yard setback, 32.7 foot front yard setback and 11.1 foot accessory side yard setback. Therefore, the Applicants require variance relief. The floor area ratio variance requires relief pursuant to N.J.S.A. 40:55D-70d(4). In a floor area ratio variance application pursuant to N.J.S.A. 40:55D-70d(4), an Applicant must demonstrate that the proposed site will accommodate the problems associated with the proposed floor area larger than that permitted by the zoning ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).
3. Initially, the Applicants proposed a two-story addition and deck which would have resulted in greater deviations from the allowable floor area ratio, building coverage and accessory side yard setback, but revised the plans to reduce the extent of the deviations in response to comments from the Board at the initial hearing.
4. The Board received and considered the following in support of the application:

- A. Plans prepared by Thomas Singer Associates AIA, consisting of two sheets, Sheets A1 and A2, dated July 10, 2019 and revised through July 26, 2019;
- B. A survey of the property prepared by 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. Plans prepared by Thomas Singer Associates AIA, consisting of two sheets, Sheet A1 dated July 10, 2019 and revised through November 15, 2019 and Sheet A2 dated July 10, 2019 and revised through December 3, 2019.
- D. A marked-up copy of the Dunn survey which depict the revised plan for a one-story rear addition, second story front dormer addition and new deck.

5. The Applicants, Richard and Robin Jacobs, and Thomas Singer, Registered Architect, testified in support of the application.

6. The Applicants have resided at the property since 1997 and had hoped to be empty-nesters by now, but their grown sons are now living with them. They wish to construct an addition that would provide additional living space including a second full bathroom on the second floor to accommodate four adults, as well as additional storage space. The basement in the dwelling does not provide suitable storage space as it experiences water infiltration during periods of heavy rains.

7. The subject property has a slightly undersized 5,500 square foot lot area and 50 foot lot width. In addition, the existing dwelling has several pre-existing nonconforming conditions, including a 38.67% floor area ratio, 29.6% combined side yard setback, 31.7 foot front yard setback and 8.6 foot accessory side yard setback. As a result of a 6 foot change in elevation on the property, the front of the house is above the 100-year flood plain, but the rear of the dwelling is within the 100-year flood plain. The proposed addition includes a 216 square foot one-story addition at the rear of the dwelling in the location of the current deck to allow for an expanded kitchen. The proposed addition would maintain a conforming 9.3 foot side yard setback. The Applicants propose to replace the existing deck with the construction of a new deck adjacent to the new one-story addition. The proposed deck would be 11.6 feet wide and 15 feet 4 inches deep, resulting in an 11.1 foot accessory side yard setback instead of the minimum required 12 feet. Reducing the width of the deck to satisfy the 12 foot accessory side yard setback would negatively impact its utility for outdoor dining and entertainment. A new second floor dormer is proposed for the front of the dwelling which would provide additional closet space and an enlarged master bedroom. The proposed dormer will have a deeper front yard setback than the existing dwelling, but because the front façade of the dwelling has a pre-existing nonconforming 31.7 foot setback, the 32.7 foot front yard setback of the proposed new dormer requires front yard setback variance relief. The home with the addition will be an aesthetic

improvement to the front façade which will be more in keeping with the other homes in the neighborhood than the existing dwelling.

8. The Board concludes that the variance relief requested by the Applicants may be granted. The Board finds that the property can accommodate the proposed increase in floor area ratio. Floor area ratio is already a pre-existing nonconforming condition. While the proposed additions result in 316 square feet of new floor area, the proposed one-story rear yard addition and front dormer addition are modest in size. The additions will provide the Applicants with an expanded kitchen and allow for closet space and a second full bath on the second floor of the home. Importantly, the proposed 216 square foot one-story addition will be located in the rear yard where it will not be visible from the street. The Board is also satisfied that the remaining variances are the result of the undersized lot width, as well as the placement of the existing dwelling, which results in several pre-existing nonconforming conditions. Although the proposed 216 square foot one-story addition results in a building coverage that exceeds the allowable building coverage by 99 square feet, the additional building coverage will be located at the rear of the home, where it will have no impact on the streetscape. When calculated based upon the placement of the new addition, the combined side yard setback measures 32.8% or 16.4 feet, while the pre-existing nonconforming combined side yard setback of the existing dwelling remains unchanged at 29.6% or 14.8 feet. Similarly, the front yard setback of the dwelling remains a pre-existing nonconforming 31.7 feet, while the proposed new dormer will have a deeper setback of 32.7 feet. If this property had a conforming lot width, in all likelihood, two of the required variances for combined side yard setback and accessory side yard setback would be eliminated. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The home with the proposed 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 additions and new 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 13th day of January, 2020 that variance relief to permit the construction of a deck and two-story addition to the Applicants' dwelling, which results in a 44.42% floor area ratio, 24.8% building coverage, 32.8% combined side yard setback, 32.7 foot front yard setback and 11.1 foot accessory side yard setback, granted by this Board on December 16, 2019 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Thomas Singer Associates AIA, consisting of two sheets, Sheet A1 dated July 10, 2019 and revised through November 15, 2019 and Sheet A2 dated July 10, 2019 and revised through December 3, 2019.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this resolution, or this variance approval shall expire unless one or more of the

provisions of Section 422 of the Millburn Township Development Regulations and Zoning Ordinance shall provide otherwise.

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 13th day of January, 2020.

APPLICATIONS

CAL#3690-19, BING SHEN, 332 LUPINE WAY, SHORT HILLS

Douglas Asral, Architect, and Bing Shen, appeared and remain sworn. Mr. Asral responded to several of the Board's comments from the applicant's previous appearance. The applicant has revised the original plans by setting the second floor back 5 feet, giving less of a massive appearance from the street. The proposal still requires variance relief from the average front yard setback of 50.6 feet. The applicant proposes a front yard setback of 49 feet. Variance relief is also required to permit front yard coverage of 43.2% where 30% is permitted. The applicant has agreed to keep the front yard wall height at 2 feet, thereby eliminating the need for variance relief for wall height.

Overall, Board members were pleased with the applicant's revisions.

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

- Mary McNett – yes
- Craig Ploetner – yes
- Joy Siegel – yes

Steve Togher – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3690-19, Bing Shen, 332 Lupine Way, Short Hills, was **APPROVED**.

CAL#3706-19, ZHUPING LIU/JIE XU, 31 ELMWOOD PLACE, SHORT HILLS

Chairman Steinberg alerted the applicant that there are only 6 eligible voters at tonight’s meeting and “d” variance relief is being sought, requiring 5 affirmative votes. The applicant indicated that he will proceed with the application.

Scott Hoffman, Architect, and Zhuping Liu, appeared and remain sworn. Mr. Liu indicated that he has modified the plans resulting in the reduction of the requested floor area ratio from 40.8% to 37.5%. Also, the revised plans resulted in the elimination of the need for side yard setback variance relief. Combined side yard setback variance relief of 31% is still being requested, where the requirement is 35%. Building coverage variance relief of 25.9% is being requested, where the ordinance maximum is 23%.

Scott Hoffman, Architect, gave a brief description of the proposed plans. He stated that the applicant has reduced the addition to 1-story and has eliminated several of the originally requested variances.

Overall, Board members were pleased with the concessions that the applicant made to the original plans. They took the comments of the Board into consideration and have reduced and eliminated several of the originally requested variances.

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

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3706-19, Zhuping Liu/Jie Xu, 31 Elmwood Place, Short Hills, “d” variance relief for floor area ratio was **APPROVED**.

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

Mary McNett – yes
Craig Ploetner – yes

Joy Siegel – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3706-19, Zhuping Liu/Jie Xu, 31 Elmwood Place, Short Hills, “c” variance relief was **APPROVED**.

CAL#3731-19, JUSTIN & ALISON BREEN, 8 WORDSWORTH ROAD, SHORT HILLS

The matter was not heard due to deficient notice.

CAL#3734-19, SUDESHNA & VIVEK KAPOOR, 51-53 ELMWOOD PLACE, SHORT HILLS

The matter was carried to March 2, 2020.

CAL#3738-19, ALISON FELDMAN/ALEX BENJAMIN, 376 WYOMING AVENUE, MILLBURN

Alison Feldman and Alex Benjamin appeared and were sworn. They would like to install a fence on their property. Proposal is in violation of:

609.6a – Front yard fences are prohibited

Alex Benjamin stated that they would like to install a fence on their corner lot. A portion of the fence projects into the Elm Street front yard of the property, thereby requiring variance relief. There is substantial landscaping along the Elm Street property line which will buffer the view of the fence from the Elm Street property line. There is a small portion of approximately 15 feet that extends toward Elm Street that will be visible from Wyoming Avenue.

The fence proposed will be 4 feet high decorative aluminum and will have no negative impact to the area.

Several Board members were concerned with the visibility of the fence as one travels down Elm Street and felt there were other viable options that the applicant could take. Other Board members felt they could support the application with a condition of evergreen screening to shield the fence from street view.

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

Mary McNett – yes
Craig Ploetner – yes
Joy Siegel – yes

Steve Togher – no
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

Cal#3738-19, Alison Feldman/Alex Benjamin, 376 Wyoming Avenue, Millburn, was **APPROVED.**

BUSINESS

The Board discussed retaining the services of a Traffic Engineer for the NJ Energy application that is currently before the Board. Chairman Steinberg indicated that he spoke to Gary Dean, from the firm of Dolan and Dean, who has no known conflicts with the applicant. Chairman Steinberg obtained a fee schedule from Mr. Dean and the Board agreed to retain Mr. Dean's services.

A motion to approve a resolution retaining the services of Gary Dean, from Dolan and Dean Consulting Engineers, LLC, was made by Steve Togher, seconded by Craig Ploetner, and carried with a unanimous voice vote.

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

ADJOURNMENT

A motion to adjourn was made by Steve Togher, seconded by Craig Ploetner, and carried with a unanimous voice vote. (8:15 PM)

Eileen Davitt
Board Secretary

Motion: WT
Second: MM
Date Adopted: 2/3/2020