

Township of Millburn  
Minutes of the Zoning Board of Adjustment  
March 18, 2019

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, March 18, 2019** at 7:00 PM in Millburn Town Hall.

Chairman Joseph Steinberg opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Mary McNett  
Craig Ploetner  
Joy Siegel  
Steve Togher  
Wolfgang Tsoutsouris  
Kevin Wenzel  
Joseph Steinberg, Chairman

Also present:

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

**APPROVAL OF MINUTES**

A motion to approve the minutes of March 4, 2019, as corrected, was made by Wolfgang Tsoutsouris, seconded by Joy Siegel, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Cal#3666-19, Daniel & Andrea Cannon, 29 Bailey Road, Millburn**

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

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

the following memorializing resolution was approved:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Daniel and Andrea Cannon, in Calendar No. 3666-19 for permission to construct a two-story addition on the dwelling and install a rear patio and generator on property located at 29 Bailey Road, Millburn, New Jersey, known and designated as Lot 5, 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 March 4, 2019 in Calendar No. 3666-19 filed by Daniel and Andrea Cannon (hereinafter referred to as the “Applicants”) for permission to construct a two-story addition on the dwelling and install a rear patio and generator on property located at 29 Bailey Road, Millburn, New Jersey, known and designated as Lot 5, 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 Applicants 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 the following zoning requirements: maximum 36% floor area ratio, maximum 23% building coverage, additional side yard setback for building segments over 18 feet in height which in this case the Zoning Officer has determined to be a minimum of 12 feet, maximum 20% accessory use coverage and minimum 12 foot generator setback. The home with the proposed addition, patio and generator would result in a 40.0% floor area ratio, 23.7% building coverage, 11 foot additional side yard setback for building segments over 18 feet in height, 22.5% accessory use coverage and 8 foot generator setback. Therefore, the Applicants require variance relief.
3. 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).
4. Initially, the Applicants also requested variance relief to permit a 47% lot coverage and 24% unoccupied rear yard, instead of the maximum 45% lot coverage and minimum 25% rear yard unoccupied required by the Township Ordinance. During the course of the hearing, the Applicants proposed to revise their plans and withdrew their request for lot coverage and rear yard unoccupied variance relief based on the proposed plan revisions.

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

A. Plans prepared by Ying Li, Architect, consisting of five sheets, Sheets L100, A101 through A103 and A201, dated November 1, 2018 and revised through December 10, 2018.

B. A copy of a survey of the property prepared by Benjamin and Wizorek, Inc., dated September 3, 2003, which was marked up by the Applicants' architect to depict the proposed addition, patio and generator.

C. Two photographs of the existing dwelling, which were admitted into evidence as A-1.

D. Two photographs of the neighborhood, which were admitted into evidence as A-2.

E. A photograph of the rear yards of the neighboring homes, which was admitted into evidence as A-3.

6. Applicants Daniel Cannon and Andrea Cannon, and Ying Li, Licensed Architect, testified in support of the application.

7. The existing dwelling on the property was built in 1926 and it has not been improved since its construction. The home has a small, inadequate galley kitchen and there is no connection from the rear of the dwelling to the back yard. In addition, there are an inadequate number of bathrooms to serve a modern family. The home is dated and its small living spaces are out of keeping with the homes in the neighborhood. The Applicants wish to construct an addition to the home which would update and modernize it for daily living. The proposed two-story addition would include an enlarged kitchen and family room on the first floor and a master bedroom and bathroom suite on the second floor. A portion of the addition would replace an existing concrete patio in the rear yard and the Applicants wish to install a new patio behind the proposed addition. The Applicants also wish to install a standby generator for use during periods of power outages. The proposed generator placement would be adjacent to the existing air conditioning condenser because that location is in close proximity to the utilities serving the dwelling.

8. Although the property has an oversized lot area and lot depth, the lot has an undersized lot width of 50.69 feet, where as a minimum 60 foot lot width is required in the R-6 zone. In addition, the existing dwelling has a pre-existing nonconforming 11 foot additional side yard setback for building segments over 18 feet in height. In conjunction with the proposed improvements, the Applicants propose to replace the existing roof which has reached the end of its useful life. The Applicants propose that the replacement roof will eliminate the odd angles of the existing roof by extending the ridgeline to the side façade. In addition to the dwelling, the property contains a detached two-car garage, which contributes to the calculation for floor area

ratio and building coverage. During the course of the hearing, the Applicants proposed to remove portions of existing walkways on the property in order to eliminate the need for variance relief from lot coverage and rear yard unoccupied requirements. Although the Applicants also considered whether there were alternative designs which might eliminate the need for floor area ratio and building coverage variances, it is not possible for the Applicants to construct a reasonably sized addition that would update the living spaces in this 1926 home to suit the needs of a family without violating the floor area ratio and building coverage requirements of the R-6 zone, while maintaining the character of the existing home in keeping with the neighborhood streetscape.

9. The Board is satisfied that variance relief may be granted to permit the proposed addition to the dwelling. Although the proposed floor area ratio of 40.0% is a deviation of 304.16 square feet greater than the permitted floor area ratio, the Board finds that the property can accommodate the excess floor area ratio. The addition will be located to the rear of the existing dwelling, where it will be concealed from view from the street. The home with the proposed addition will be similar in size to the expanded homes on either side of the subject property.

10. The Board is also satisfied that the remaining variances for building coverage, additional side yard setback for building segments over 18 feet in height, accessory use coverage and generator setback are the result of the placement of the dwelling, detached garage and other improvements on the property and the pre-existing nonconforming lot width and additional side yard setback conditions affecting the property and the structures on the property. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. The dwelling has a side entry which is located on the opposite side of the dwelling from the driveway, which results in the need for additional paved walkway to access the side entry to the home. Despite the large 360 square foot detached garage on the property, the proposed addition allows for an updated and modern kitchen and family room while limiting the deviation from the allowable building coverage to less than 55 square feet. The home with the proposed addition to the dwelling will be consistent with the homes on either side of the subject property. The Board also finds that if the property had a conforming lot width, in all likelihood no variance relief would be required for the proposed 11 foot additional side yard setback, or the 8 foot generator setback. The Board is also satisfied that the proposed addition will not result in any substantial negative impact on the nearest neighbors or the neighborhood. In fact, the home with the proposed addition will be an attractive improvement to the property and the streetscape. 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 18th day of March, 2019 that variance relief to permit the construction of a two-story addition to the dwelling, rear patio and generator resulting in a 40.0% floor area ratio, 23.7% building coverage, 11 foot additional side yard setback for building segments over 18 feet in height, 22.5% accessory use coverage and 8 foot generator setback, granted by this Board on March 4, 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. Prior to the issuance of a building permit, the Applicants shall submit revised plans eliminating portions of the walkways on the property to provide a conforming lot coverage and conforming rear yard unoccupied. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Ying Li Architect, consisting of five sheets, Sheets L100, A101 through A103 and A201, dated November 1, 2018 and revised through December 10, 2018 and as further revised in accordance with this condition.

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

3. Prior to the issuance of a Certificate of Occupancy, the Applicants shall 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 18th day of March, 2019.

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**Cal#3670-19, Alan & Karen Lieberman, 1 Pilgrim Road, Short Hills**

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

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

the following memorializing resolution was approved:

**ALAN AND KAREN LIEBERMAN  
BLOCK 4305, LOT 9**

**CAL. NO. 3670-19  
MARCH 18, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief to the Applicants, Alan and Karen Lieberman, in Calendar No. 3670-19 to permit the reconfiguration and replacement of an existing patio and pool surround on property located at 1 Pilgrim Road, Short Hills, New Jersey, known and designated as Lot 9, Block 4305 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 March 4, 2019 in Calendar No. 3670-19 filed by Alan and Karen Lieberman (hereinafter the “Applicants”) to permit the reconfiguration and replacement of an existing patio and pool surround on property located at 1 Pilgrim Road, Short Hills, New Jersey, known and designated as Lot 9, Block 4305 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 subject property is located in the R-4 zone district. The Township Zoning Ordinance requirements for the R-4 zone include the following: maximum 7% accessory use coverage, minimum 80 foot accessory corner lot setback and minimum 12 foot accessory structure side yard setback. The Applicants’ proposed patio and pool surround would result in an 11.6% accessory use coverage, an accessory corner lot setback of 50 feet and an 8 foot accessory side yard setback. Therefore, variance relief is required.
3. The Board received and considered the following documents submitted with the application:
  - A . A Landscape Plan prepared by CLC Landscape Design, consisting of one sheet dated September 26, 2018.
  - B. A survey of the property prepared by James W. Halsey, dated November 16, 1999, which was marked up by the Applicants to depict the proposed reconfiguration of the patio and pool surround.
4. Applicant Alan Lieberman testified in support of the application.

5. The subject property is an existing corner lot at the intersection of Pilgrim Road and Kean Road. The house faces Pilgrim Road. There is an existing in-ground pool with pool surround in the northwest corner of the property, as well as a paved patio area which wraps around the house from the northerly side yard to the westerly side yard behind the home. The Applicants wish to remove a portion of the pool surround and patio along the northerly side yard and construct a reconfigured new patio that will better serve their needs for an outdoor entertainment area in proximity to the pool and barbeque area. The property is an oversized lot in the R-4 zone district. However, the existing improvements on the property have a pre-existing nonconforming 11.7% accessory use coverage, 40 foot accessory corner lot setback and a 6 foot accessory structure side yard setback. The proposed construction and reconfiguration of the pool surround and patio areas would result in an 11.6% accessory use coverage, which is a slight reduction in the extent of the deviation from the maximum allowed accessory use coverage. The proposed paved patio would maintain the existing 40 foot accessory corner lot setback where the patio meets the walkway in the Pilgrim Road front yard, but the new patio area would be set back an additional 10 feet so that it provides a 50 foot accessory corner lot setback. The patio in the proposed reconfiguration would be screened from view from the street and the neighboring properties by an existing fence and landscaping. As for the accessory side yard setback variance, the existing pool surround has a 6 foot accessory side yard setback along the west side of the lot. While portions of the patio along the westerly side yard would be removed, a portion of the proposed patio would provide an 8 foot accessory side yard setback. Although the proposed 8 foot accessory side yard setback requires variance relief it is closer to the required 12 foot accessory side yard setback than the existing pool surround and patio. This portion of the patio would also be screened from view from the neighboring property and the street by an existing fence.

6. The Board finds that the Applicants have satisfied the statutory criteria for the granting of variance relief to permit the reconfiguration and replacement of the pool surround and patio. Although the subject property has an oversized lot area and lot dimensions, there is an existing in-ground pool with pool surround and patio on the property which results in pre-existing nonconforming accessory use coverage, accessory corner lot setback and accessory side yard setback. The need for variance relief to permit the proposed reconfiguration and replacement of the pool surround and patio is the result of the pre-existing nonconforming conditions, which the Board finds to be exceptional circumstances resulting in practical difficulties and undue hardship to the Applicants. The Board is satisfied that the reconfigured patio will provide an accessory use coverage, accessory corner lot setback and accessory side yard setback which are closer to conforming than the existing pool surround and patio. In fact, the proposed new pool surround and patio will reduce accessory use coverage to 11.6%, which is an improvement over the existing accessory use coverage. The Board is also satisfied that the existing fence and landscaping will serve as a privacy buffer that conceals the proposed reconfigured pool surround and patio from view from the street and the neighboring properties so there will not be any negative impact on the streetscape and the adjoining residential properties. Therefore, the Board concludes that the granting of the variance relief to permit the proposed construction may 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 18th day of March, 2019 that the variance relief to permit the construction of a reconfigured pool surround and patio resulting in an 11.4% accessory use coverage, accessory corner lot setbacks of 50 feet for the proposed new patio area, and a 6 foot accessory side yard setback on the west side of the lot, granted by this Board at its meeting of March 4, 2019 be and it hereby is memorialized pursuant to the provisions of NJSA 40:55D-10(g), subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the Landscape Plan prepared by CLC Landscape Design, consisting of one sheet dated September 26, 2018.
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. The Applicants shall be bound to comply with the representations made before this Board by the Applicants 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.
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 18th day of March, 2019.

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**Cal#3671-19, Adam & Miri Forster, 2 Oval Road, Millburn**

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

- Mary McNett – yes
- Joy Siegel – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes

Joseph Steinberg – yes

the following memorializing resolution was approved:

**ADAM AND MIRI FORSTER  
BLOCK 507, LOT 37**

**CALENDAR NO. 3671-19  
MARCH 18, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Adam and Miri Forster, in Calendar No. 3671-19 for permission to construct a second story addition to the dwelling on property at 2 Oval Road, Millburn, New Jersey, known and designated as Lot 37, Block 507 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 March 4, 2019 in Calendar No. 3671-19 filed by Adam and Miri Forster (hereinafter the “Applicants”) for permission to construct a second story addition to the dwelling on property located at 2 Oval Road, Millburn, New Jersey, known and designated as Lot 37, Block 507 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. Roy Sauberman of 3 Oval Road appeared and testified as an interested party in favor of the application.
2. The Applicants are the owner of the subject property, which is located in the R-6 zone. The R-6 zone district requires a minimum 40 foot front yard setback. The proposed second story addition would result in a front yard setback ranging from 30.19 feet to 36.09 feet. Therefore, variance relief is required.
3. The Board received and considered plans prepared by Klesse Architects, consisting of six sheets, BOA-1 through BOA-6, dated January 14, 2019 submitted in support of the application.
4. Applicants Adam and Miri Forster testified in support of the application. They previously obtained variance relief from the Board in 2012 to construct a second story addition of a slightly different design. That addition was never constructed and the prior variance relief has expired pursuant to the terms of the Township Ordinance. The new plans for a proposed second story addition were prepared by a different architect, Dubinett Architects, LLC, and the design is slightly different. However, the Applicants still require variance relief to construct the proposed addition. The property is an irregularly shaped corner lot at the intersection of Oval Road and Greenwood Drive. While the property has an oversized lot area, the existing dwelling has pre-existing nonconforming front yard setbacks of 35.47 feet from Oval Road and 30.19 feet

from Greenwood Drive. The Applicants do not propose any change in the existing footprint of the dwelling, as the proposed addition would be constructed above the existing dwelling. The proposed addition would extend the 30.19 foot front yard setback from Greenwood Drive to the new second story. On Oval Road, the new second story addition would provide a 36.09 foot front yard setback requirement, which is a slightly larger setback than the existing dwelling. Although the proposed second story addition would not extend farther into the front yards than the existing dwelling, the front yard setbacks of the proposed addition do not meet the required 40 foot front yard setback so variance relief is required. In conjunction with the proposed addition, the outdated exterior façade of the existing home would be renovated with new siding and stone veneer, which would be an aesthetic improvement to the dwelling which enhances the streetscape.

5. Roy Sauberman, of 3 Oval Road, resides in the home directly across the street from the subject property. He advised the Board of his opinion that the Applicants' architectural design of the proposed addition is thoughtful and sensitive to the neighbors. He testified that he is in favor of the proposed application, which would be beneficial to the streetscape.

6. The Board finds that the need for variance relief is the result of the property's irregular shape and corner lot status, as well as the placement of the existing home which results in pre-existing nonconforming front yard setbacks from Oval Road and Greenwood Drive. The Board finds these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicants. Although the proposed second story addition over the existing dwelling requires variance relief to permit a 36.09 foot front yard setback from Oval Road and a 30.19 foot front yard setback from Greenwood Drive, the proposed addition will be no closer to either street than the existing dwelling. Moreover, the Board notes that in conjunction with the proposed addition, the Applicants' architectural plans include replacing the outdated exterior of this home with new siding and stone veneer, which will be an aesthetic improvement to the property which benefits the streetscape and the neighborhood. 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 18th day of March, 2019 that variance relief to permit the construction of a second story addition to the dwelling that would result in a 36.09 foot front yard setback from Oval Road and 30.19 foot front yard setback from Greenwood Drive, granted by this Board on March 4, 2019 be and 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 plans prepared by Klesse Architects, consisting of six sheets, BOA-1 through BOA-6, dated January 14, 2019 and the testimony at the hearing.

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. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and other witnesses 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 18th day of March, 2019.

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**Cal#3674-19, Scott Saperstein/Julie Lorber, 5 Dorset Lane, Short Hills**

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

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

the following memorializing resolution was approved:

**SCOTT SAPERSTEIN AND JULIE LORBER  
BLOCK 5003, LOT 13**

**CALENDAR NO. 3674-19  
MARCH 18, 2019**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Scott Saperstein and Julie Lorber, to permit the construction of a covered open porch extension on the dwelling on property located at 5 Dorset Lane, Short Hills, New Jersey known and designated as Lot 13, Block 5003 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 March 4, 2019 in Calendar No. 3674-19 filed by Scott Saperstein and Julie Lorber (hereinafter the “Applicants”) for permission to construct a covered open porch extension on the dwelling on property located at 5 Dorset Lane, 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 Applicants appeared without counsel. No objectors or interested parties appeared or testified at the hearing.

2. The property is located in the R-4 zone district. The R-4 zone district requires a minimum 15 foot side yard setback. The Applicants propose to construct a covered open porch extension on the dwelling that would result in a 10.5 foot side yard setback. Therefore, variance relief is required.

3. The Board received and considered the following documents:

A. Plans prepared by Bol Architecture, consisting of two sheets, Sheets 1 and 2, dated November 30, 2018.

B. Plans prepared by Korzen Engineering, LLC, consisting of two sheets, Sheets 1 and 2, dated November 26, 2018.

C. Five photographs of the subject property and neighborhood.

4. Applicant Scott Saperstein and Beata Szacillo, Licensed Architect, testified in support of the application.

5. The Applicants are in the process of constructing a conforming addition on the dwelling and a conforming modification to the existing covered open front porch, which are Phase 1 of their proposed improvements to the existing home. This application for variance relief relates to Phase 2 of their proposed improvements, which consists of an expansion of the existing covered open front porch so it aligns with the side elevation of the dwelling. The Applicants have undertaken the improvements in phases so that construction could commence on the conforming aspects of the proposed improvements which are unrelated to the front porch. Although the property is an oversized lot with a conforming lot width, the property is wedge-shaped, tapering towards the street. As a result of the shape of the property, the existing dwelling has a pre-existing nonconforming 11.5 foot side yard setback. The proposed Phase 2 construction would extend the covered open front porch along the front façade of the home so it would align with the southerly side façade of the existing home. Because the lot tapers towards the street, the proposed extension of the covered open front porch would result in a 10.5 foot side yard setback at the point closest to the neighboring lot to the south.

6. The Applicants' architect, Beata Szacillo, testified that the proposed covered open porch extension combined with the modification of the existing front porch would serve to improve the curb appeal of the dwelling without any negative impact on the neighbors. The proposed porch extension would have no impact on the neighbors to the north as the porch extension is on the opposite side of the subject property. The proposed extension of the covered open porch would not have any negative impact on the neighbor to the south because it would be buffered from the neighbor's view by existing and proposed evergreen landscaping. Moreover, the neighbor's driveway is closer to the shared property line than their home and there are approximately 40 feet separating the proposed porch extension from the neighbor's home.

7. The Board finds and concludes that variance relief may be granted to permit the proposed extension of the covered open porch on the dwelling. The Board is satisfied that the shape of the property, which tapers towards the street, together with the placement of the existing dwelling with its pre-existing nonconforming side yard setback present exceptional circumstances uniquely affecting the property that justify variance relief. The Board is satisfied that the proposed extension of the covered open porch will be an architectural enhancement to the front façade of the home which improves the curb appeal of the property without any negative impact on the neighbors. 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 18th day of March, 2019 that variance relief granted by this Board on March 4, 2019 to permit the construction of a covered open porch extension on the dwelling resulting in a 10.5 foot 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 Bol Architecture, consisting of two sheets, Sheets 1 and 2, dated November 30, 2018.

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 plant at least one evergreen, eight feet in height above the root ball at the time of planting, along the southerly property line to supplement the existing evergreen buffer and screen the covered open porch extension from view from the neighbor's property.

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 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.

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

**CLERK CERTIFICATION**

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 18th day of March, 2019.

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**APPLICATIONS**

**CAL#3665-19, STEPHANIE & HOWARD VOGEL, 38 SINCLAIR TERRACE, SHORT HILLS**

Ronald Gasiorowski, Attorney for objectors, Gordon and Judith Freund, stated his appearance.

Richard Keller, applicants' engineer/planner, respectfully requested an adjournment.

Chairman Steinberg announced that the matter was being carried to May 6, 2019, with no further notice required.

**CAL#3669-19, ERIC & PERRINE GELLER, 79 CEDAR STREET, MILLBURN**

Eric Geller, and James Weill, Architect, appeared and were sworn. James Weill's credentials were presented and accepted by the Board. The applicants would like to rebuild a garage on their property. Proposal is in violation of:

- 606.2e2a – Building coverage
- 606.2e2b – Lot coverage
- 606.2e2d -- FAR

Entered as A-1: photos, simulation, and lamp style

Mr. Weill stated that the applicants would like to rebuild a garage on the property to replace the currently existing garage that is in a state of disrepair and undersized for today's standards. The proposed garage will have a conforming setback.

The property is located in the Wyoming Historic District and received a Certificate of Appropriateness from the Historic Preservation District on January 10, 2019. The property is a 10,000 SF lot in the R-5 zone district.

The slightly larger garage triggers the need for building coverage, lot coverage and FAR variance relief. The ordinance permits a building coverage of 18% and the proposal will result in building coverage of 20%. The R-5 zone permits lot coverage of 35% and the proposal will result in 44.89%. Finally, the ordinance permits an FAR of 30% and the proposal will result in 32.24%.

Mr. Weill stated that the lot is undersized at 10,000 SF where 14,500 SF is the required lot area in the R-5 zone. Additionally, the lot width is only 50 feet which is under the required 75 feet in the zone.

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  
Wolfgang Tsoutsouris – yes  
Kevin Wenzel – yes  
Joseph Steinberg – yes

Cal#3669-19, Eric & Perrine Geller, 79 Cedar Street, was **APPROVED**.

**CAL#3677-19, COREY & LISA BILLER, 13 RAHWAY ROAD, MILLBURN**

Corey & Lisa Biller and Danial Dubinett, Architect, appeared and were sworn. The applicants would like to construct an addition to their dwelling. Proposal is in violation of:

606.2e1g – Rear yard unoccupied  
606.2e2b – Lot coverage  
606.2e3a – Accessory structure side setback  
606.2e2d – FAR  
606.2e1e1a – Side yard setback  
606.2e1e1b – Addt'l side yard setback  
606.2e1f – Combined side yard setback

Mr. Dubinett's credentials were presented and accepted by the Board. He gave a brief description of the applicants' proposal. The applicants propose a 2-story addition to the rear of the home, a deck and patio. The lot is undersized at 5500 SF where the zone requirement is 6,000 SF. In addition, the current 50 foot lot width is under the required 60 foot lot width.

Entered as A-1: enlarged property survey  
Entered as A-2: rear yard unoccupied visual/photos

Mr. Dubinett spoke to the variances required. He indicated that many of the conditions are pre-existing non-conforming setbacks.

Mary McNett asked if there is any way to decrease the lot coverage. Mr. Dubinett stated that the applicants are agreeable to eliminating the proposed patio. This will decrease the lot coverage and accessory coverage and would increase the required rear yard unoccupied.

The applicant took a brief recess in order to discuss proposed revisions with his architect.

**CAL#3679-19, JACOB & ROBIN FELDMAN, 153 HIGHLAND AVENUE, SHORT HILLS**

Jacob Feldman and Richard Keller, P. E., P. P., appeared and were sworn. Mr. Keller's credentials were presented and accepted by the Board. The applicant would like to convert the existing home into an accessory structure to utilize it as a cabana. They are also proposing to install an in-ground pool and tennis court. Proposal is in violation of:

606.2e3c – Accessory structure height  
609.1c – Maximum accessory coverage

Chairman Steinberg questioned Mr. Keller with regard to his statement that the HPC required a setback of over 130 feet for the newly constructed dwelling.

Entered as A-1: HPC exhibit A-3  
Entered as A-2: land title survey 8/11/15  
Entered as A-3: colorized sheet A-12  
Entered as A-4: photoboard of 6 photos (existing structure)/aerial photo

The matter was briefly adjourned in order to resume the matter of Cal#3677-19, Corey & Lisa Biller, 13 Rahway Road.

**CAL#3677-19, COREY & LISA BILLER, 13 RAHWAY ROAD, MILLBURN -- continued**

Danial Dubinett stated that the applicant agreed to several changes in response to some of the Board's concerns. He stated that the applicant has reduced the driveway area and eliminated the proposed patio. This results in a total lot coverage of 3,009 SF or 54.7%, a decrease from the originally proposed 58.3%. The R-6 zone allows a maximum lot coverage of 45%. Variance relief is still required but has been brought closer to conformity. The proposed revision also results in a rear yard unoccupied of 21.8%, an increase from the originally proposed 18.2%, where 25% is required.

Most Board members were pleased with the reductions to the proposed lot coverage. They felt the addition was modest and would not be a substantial detriment to the surrounding area.

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 – no  
Wolfgang Tsoutsouris – yes  
Kevin Wenzel – no  
Joseph Steinberg – yes

Cal#3677-19, Corey & Lisa Biller, 13 Rahway Road, “d” variance relief for FAR was **APPROVED**.

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

Mary McNett – yes  
Craig Ploetner – yes  
Joy Siegel – yes  
Steve Togher – no  
Wolfgang Tsoutsouris – yes  
Kevin Wenzel – no  
Joseph Steinberg – yes

Cal#3677-19, Corey & Lisa Biller, 13 Rahway Road, “c” variance relief was **APPROVED**.

**CAL#3679-19, JACOB & ROBIN FELDMAN, 153 HIGHLAND AVENUE, SHORT HILLS -- continued**

In response to Joseph Steinberg’s question about the proposed front yard setback of the new dwelling, Mr. Keller indicated that the HPC highly recommended an increased setback for the new dwelling. Based on their recommendations, the applicant proposed a front setback of 130 feet, which makes the resulting rear yard rather small. The formerly principal structure is proposed to have the garage area as well as the front porch area removed and be converted into a pool house for the new pool. However, the structure exceeds the allowable 18 height limit for accessory structures. In addition, due to the small rear yard area, the applicant’s proposal results in the need for variance relief to exceed the allowable accessory use coverage.

The Board indicated that they would like to vote separately on the height and accessory coverage variance requests.

A motion to approve the variance for accessory coverage was made by Wolfgang Tsoutsouris. Said motion failed due to lack of a second.

The applicant, at that time, opted to remove the tennis court from the current plans and indicated that he would be seeking variance relief for the accessory structure height, only.

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

Mary McNett – yes  
Craig Ploetner – yes  
Joy Siegel – yes  
Steve Togher – no  
Wolfgang Tsoutsouris – yes  
Kevin Wenzel – yes  
Joseph Steinberg – no

Cal#3679-19, Jacob & Robin Feldman, 153 Highland Avenue, was **APPROVED**.

**BUSINESS**

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

**ADJOURNMENT**

A motion to adjourn was made by Craig Ploetner, seconded by Kevin Wenzel, and carried with a unanimous voice vote. (9:35 PM)

Eileen Davitt  
Board Secretary

Motion: WT  
Second: MM  
Date Adopted: 4/15/19