

Township of Millburn
Minutes of the Zoning Board of Adjustment
March 21, 2022

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, March 21, 2022** at 7:00 PM via Zoom webinar.

The following members were present for the meeting:

Amy Lawrence
Jyoti Sharma
Joseph Steinberg
Steve Togher
Wolfgang Tsoutsouris
Craig Ploetner, Chairman

Also present:

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

MEMORIALIZATIONS

Cal#3833-21, Qing Zhao, 15 Meadowbrook Road, Short Hills

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

Amy Lawrence – yes
Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes

the following memorializing resolution was adopted:

**QING ZHAO
BLOCK 1803, LOT 14**

**CAL. NO. 3833-21
MARCH 21, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Qing Zhao (hereinafter the “Applicant”), in Calendar No. 3833-21 to permit the construction of a second floor bedroom and bathroom, on property located at 15 Meadowbrook Road, Short Hills, New Jersey, and designated as Lot 14, Block 1803, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held public hearings according to law on November 1, 2021 and February 7, 2022 as to Calendar No. 3833-21 to permit the construction of a second floor bedroom and bathroom, on property located at 15 Meadowbrook Road, Short Hills, New Jersey, and designated as Lot 14, Block 1803, on the tax map of the Township of Millburn; and

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

1. At both the November 1, 2021 and February 7, 2022 hearings, the application and provision of public notice of the hearings were found to be in order. The Applicant appeared without counsel and, together with his licensed Architect, Martha Victoria, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicant is the owner of the subject property, which contains a single family residence, located in the Township’s R-6 Zone District (the “R-6 Zone”). The subject property is undersized for the R-6 Zone and is irregularly shaped. The Applicant seeks to create a master bedroom and bathroom addition on the second floor of the subject residence, located above the existing first floor, and adding a total of 407 square feet to the second floor of the subject residence. The proposed construction is intended to increase the functionality of the subject residence.

3. The subject property currently contains four (4) nonconforming conditions pursuant to the Township Zoning Ordinance: (a) a minimum lot area of 6,000 square feet is required, and the subject property has an existing lot area of 5,282 square feet; (b) a minimum lot width of 60 feet is required, and the subject property has an existing lot width of 55 feet; (c) a minimum combined side yard setback of 35% of the lot width is required, and the subject property has an existing combined side yard setback of 30.03%; and (d) a maximum building coverage of 23% is required, and the subject property has an existing building coverage of 24%.

4. The proposed construction would result in a combined side yard setback of 32.2% where 35% of the lot width is the minimum required combined side yard setback; and a Floor Area Ratio (“FAR”) of 42.3% where 36% is the maximum allowable FAR for the R-6 Zone. Therefore, FAR and bulk variance relief is required.

5. At the February 7, 2022 hearing, the Board received and considered the following additional documents submitted in support of the application:

A. 3 photographs of the subject residence, taken by Martha Victoria on January 17, 2022, introduced into evidence as Exhibit A-1, on February 7, 2022.

6. The Applicant testified that the proposed construction seeks to add a master bedroom

and bathroom on the second floor of the subject residence. The Applicant also stated that the proposed construction intends to modernize the subject residence while increasing its functionality, and that the proposed construction was designed to keep the subject residence similar to other residences in the subject neighborhood.

7. Martha Victoria, the Applicant's Architect, testified that the subject property is both irregularly shaped and undersized for the R-6 Zone, both in area and width, and this creates an undue hardship for the Applicant. Ms. Victoria stated that the proposed construction would only add 407 square feet to the second floor of the subject residence, and that the proposed addition was still smaller than the existing first floor over which the proposed construction would occur. Ms. Victoria stated that the proposed construction could not be accomplished while remaining under the allowable FAR for the R-6 Zone, as the subject property only has 70 square feet to "spare" before triggering the need for FAR variance relief.

8. Ms. Victoria stated that the proposed second floor expansion aligns the second floor with the rest of the residence, and will result in a residence similar to many other two-story residences in the subject neighborhood. Ms. Victoria also stated that many of the houses in the subject neighborhood are bigger than the subject residence, and that the proposed construction will not be visible from the front of the subject residence. Ms. Victoria stated that the rear of the subject property where the addition is proposed is not immediately adjacent to a neighboring home but rather faces an "open area." Ms. Victoria concluded by stating that the proposed left side elevation steps back the façade to reduce the massing of the building, and that the subject property can accommodate the proposed construction.

9. N.J.S.A. 40:55D-70c(1) states:
Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

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

11. In a floor area ratio ("FAR") variance application pursuant to N.J.S.A. 40:55D-70(d)(4), besides needing to provide competent proofs to demonstrate compliance with the negative criteria, an applicant must demonstrate that the proposed site will accommodate any problems associated with the proposed floor area larger than that permitted by the Zoning

Ordinance to establish special reasons. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412 (App. Div. 1999).

12. The Board finds that the Applicant has satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicant to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the aforementioned existing nonconforming conditions on the subject property, including the location of existing structures, as well as the property's irregular shape, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant.

13. Although the proposed construction requires variance relief to permit a combined side yard setback of 32.2% where 35% of the lot width is the minimum allowable combined side yard setback, the deviation from this requirement is modest in light of the inability to relocate the proposed construction elsewhere on the property without requiring the same or additional variance relief. The application proposes no increase from the existing front yard setback, and does not increase any of the subject property's other existing nonconforming conditions. The variance relief requested by the Applicant cannot be eliminated by locating the proposed construction elsewhere on the subject property due to the property's undersized nature and the location of the existing residence thereon.

14. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. The subject property can accommodate the negligible impact of the application's proposed construction. The positive and negative criteria for variance relief have therefore been met by the Applicant pursuant to N.J.S.A. 40:55D-70c(1). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

15. The Board finds that the Applicant has also satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(d)(4) for FAR variance relief, and concludes that it is appropriate to grant this variance relief requested by the Applicant to permit the proposed construction. As set forth in detail above, the Board is satisfied that the proposed construction is modest in size and similar to other houses in the subject neighborhood and the Township. Although the proposed construction requires FAR variance relief, the deviation from the applicable requirement is modest and can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance. Although the application proposes to increase the FAR by 6.3% (337 square feet) above the allowable FAR for the R-6 Zone, the increase is reasonable given the existing FAR calculation for the property and the size of homes and properties in the surrounding

neighborhood. The proposed FAR deviation can be accommodated by the subject property and will not negatively impact neighboring properties.

16. Additionally, the subject property is burdened by its existing status as an undersized lot for the R-6 Zone. The subject property will accommodate any perceived problems associated with the proposed FAR larger than that permitted by the Township Zoning Ordinance, so to establish special reasons. The proposed construction will result in the residence on the subject property remaining similar in size to other residences in the subject neighborhood. The scale and design of the proposed addition is also in keeping with that of neighboring homes and properties. The Board further concludes, for all the reasons set forth above, that the granting of FAR variance relief to permit the proposed addition can be accomplished 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 21st day of March 2022, that the variance relief requested by the Applicant to permit the construction of a second floor addition, resulting in a combined side yard setback of 32.2% where 35% of the lot width is the minimum allowable combined side yard setback, and a FAR of 42.3% where 36% is the maximum allowable FAR for the R-6 Zone, on property located at 15 Meadowbrook Road, Short Hills, New Jersey, granted by this Board at its meeting of February 7, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicant shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant at the public hearing, including as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. 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 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 21st day of March, 2022.

Cal#3841-21, Cliff Chu and Katherine Ryder, 9 South Mountain Road, Millburn

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

Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes

the following memorializing resolution was adopted:

**CLIFF CHU & KATHERINE RYDER
BLOCK 601, LOT 34**

**CAL. NO. 3841-21
MARCH 21, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Cliff Chu & Katherine Ryder (hereinafter the “Applicants”), in Calendar No. 3841-21 to permit the construction of a one-story addition and deck, on property located at 9 South Mountain Road, Millburn, New Jersey, and designated as Lot 34, Block 601, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on January 24, 2022 as to Calendar No. 3841-21 to permit the construction of a one-story addition and deck, on property located at 9 South Mountain Road, Millburn, New Jersey, and designated as Lot 34, Block 601, on the tax map of the Township of Millburn; and

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

1. At the January 24, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Ying Li, provided sworn testimony in support of the application. There was no public opposition to the application.
2. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township’s R-6 Zone District (the “R-6 Zone”). The Applicants propose to expand the existing first floor family room and construct a new deck, adding a total of 375 square feet to the subject residence, in order to modernize the residence to accommodate their family.
3. The subject property contains four (4) non-conforming conditions pursuant to the Township Zoning Ordinance: (a) a minimum lot width of 60 feet is required, and the subject property has an existing lot width of 50 feet; (b) a minimum front yard setback of 40 feet is

required, and the subject property has an existing front yard setback of 39 feet; (c) a minimum side yard setback of 8 feet for a building up to 18 feet in height is required, and the subject property has an existing minimum side yard setback of 7.1 feet for a building up to 18 feet in height; and (d) a maximum accessory use coverage of 20% of the rear yard area is required, and the subject property has an existing accessory use coverage of 24.7%.

4. The proposed construction would result in a building coverage of 25% where 23% is the maximum building coverage allowed; a lot coverage of 48% where 45% is the maximum lot coverage allowed; an accessory structure side yard setback of 8.6 feet where 12 feet is the minimum accessory structure side yard setback allowed; an accessory use coverage of 29.1% where 20% of the rear yard area is the maximum accessory use coverage allowed; and a rear yard unoccupied area of 19.2% where 25% of the lot area is the minimum rear yard unoccupied area allowed. Therefore, variance relief is required.

5. The Applicants testified that they moved to the subject property in 2011, and are seeking to modernize their residence to increase its functionality.

6. Ying Li, the Applicants' Architect, testified that due to existing constraints and deviations associated with the property, there was no alternative way to achieve the proposed construction without requiring greater or additional variance relief. Ms. Li stated that four (4) of the application's requested variances are triggered by the existing location of the two (2) car garage at the rear of the subject property, as the garage takes up much of the building coverage, lot coverage, and rear yard unoccupied area. According to Ms. Li, most of the variances requested by the Applicants are a direct result of the existing, oversized garage and driveway, which imposes an undue hardship on the applicants. Ms. Li also stated that the subject residence was located to the right side of the property, which triggered the requested variance relief for maximum accessory coverage.

7. Ms. Li stated that the application only proposes a modest one-story expansion of the family room; that the proposed deck was designed to have the minimum dimensions for a useable deck; and that the proposed construction would replace the existing deck. Ms. Li stated that the deck needs to remain where it is since alternate locations would impact ingress and egress for the existing garage. Ms. Li concluded by stating that the aforementioned existing conditions imposed a hardship on the Applicants, that the subject property can accommodate the proposed construction, and that the proposed construction is modest and similar in scale and design to other residences in the subject neighborhood.

8. Due to comments and concerns expressed by the Board at the January 24, 2022 hearing, the Applicants agreed to install evergreen arborvitaes or green giants, 6 feet to 7 feet above the root ball, in a sufficient number to preserve the privacy of the Applicants' neighbors and to sufficiently screen the application's proposed construction from view from the streetscape.

9. N.J.S.A. 40:55D-70c(1) states:
Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely

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

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

11. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the subject property’s deficient width for the R-6 Zone, as well as the aforementioned and numerous existing nonconforming conditions on the subject property, including those caused by the location of existing structures and the oversized existing garage and driveway, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

12. Although the proposed construction requires variance relief to permit a building coverage of 25% where 23% is the maximum building coverage allowed; a lot coverage of 48% where 45% is the maximum lot coverage allowed; an accessory structure side yard setback of 8.6 feet where 12 feet is the minimum accessory structure side yard setback allowed; an accessory use coverage of 29.1% where 20% of the rear yard area is the maximum accessory use coverage allowed; and a rear yard unoccupied area of 19.2% where 25% of the lot area is the minimum rear yard unoccupied area allowed, the deviations from the aforementioned requirements are relatively modest and can be achieved without undermining the intent or purpose of the Township Zoning Ordinance or the Master Plan pertaining to the R-6 Zone.

13. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment especially given the Applicants’ willingness to install additional screening and plantings. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 21st day of March, 2022, that the variance relief requested by the Applicants to construct a one-story addition and deck, resulting in a building coverage of 25% where 23% is the maximum building coverage allowed; a lot coverage of 48% where 45% is the maximum lot coverage allowed; an accessory structure side yard setback of 8.6 feet where 12 feet is the minimum accessory structure side yard setback allowed; an accessory use coverage of 29.1% where 20% of the rear yard area is the maximum accessory use coverage allowed; and a rear yard unoccupied area of 19.2% where 25% of the lot area is the minimum rear yard unoccupied area allowed, on property located at 9 South Mountain Road, Millburn, granted by this Board at its meeting of January 24, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicants shall plant six (6) evergreen arborvitae or green giants, 6 feet to 7 feet above the root ball, to be installed in a “C” configuration to provide adequate screening of the proposed construction from view from the Applicants’ neighbors’ property and from the streetscape.
2. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
3. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and at the public hearing, including as set forth in the Board’s findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
4. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
5. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 21st day of March, 2022.

Cal#3844-21, Ernest Lim and Jennie Cho-Lim, 40 Holly Drive, Short Hills

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

Amy Lawrence – yes

Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes

the following memorializing resolution was adopted:

**ERNEST LIM & JENNIE CHO-LIM
BLOCK 4704, LOT 9**

**CAL. NO. 3844-21
MARCH 21, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Ernest Lim & Jennie Cho-Lim (hereinafter the “Applicants”), in Calendar No. 3844-21 to permit the construction of a new residence on property located at 40 Holly Drive, Short Hills, New Jersey, and designated as Lot 9, Block 4704, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on January 24, 2022 as to Calendar No. 3844-21 to permit the construction of a new residence on property located at 40 Holly Drive, Short Hills, New Jersey, and designated as Lot 9, Block 4704, on the tax map of the Township of Millburn; and

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

1. At the January 24, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Steven C. Hockstein, and their Engineer and Planner, Richard Keller, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township’s R-4 Zone District (the “R-4 Zone”). The subject property contains extensive areas of steep slopes pursuant to the Township Zoning Ordinance. As the existing residence is apparently in disrepair, the Applicants seek to demolish the existing home on the property, construct a new residence, and modify the location of the existing driveway to service the new residence.

3. The proposed construction would result in a building height of 41.58 feet, where the maximum allowable building height is 40 feet; and a steep slope disturbance of 4,000 square feet, where 1,000 square feet is the maximum allowable steep slope disturbance. Therefore, variance relief is required.

4. At the January 24, 2022 hearing, the Board received and considered the following additional documents submitted in support of the application:

- A. Colored rendering of subject property elevations, prepared by Steven C. Hockstein on January 20, 2022, introduced into evidence as Exhibit A-1, on January 24, 2022;
- B. Existing Conditions Photographs, taken by the Applicants, introduced into evidence as Exhibit A-2, on January 24, 2022;
- C. Nine (9) Photographs with key map, taken by the Applicants on January 21, 2022, introduced into evidence as Exhibit A-3, on January 24, 2022.

5. Steven C. Hockstein, the Applicants' Architect, testified that the subject property is steeply sloped. Mr. Hockstein stated that the proposed construction's average height is 30 feet when measuring on the right side of the property where the garage is located, but that the height variance was required as the Township Zoning Ordinance requires measurement from the lowest to highest elevation. Mr. Hockstein stated that the proposed construction was designed to slope the proposed roof away from the side of the proposed residence to mitigate the height of the home as may be perceived by the Applicants' neighbors. Mr. Hockstein also stated that the proposed driveway modification relocated a portion of the existing driveway away from the right side of the residence so as to comply with all bulk standards. Mr. Hockstein concluded by stating that the proposed residence's size and design are appropriate for the subject neighborhood.

6. Richard Keller, the Applicants' Engineer and Planner, testified that the most severe steep slope areas at the property are located at its front and rear, and were artificially created. Mr. Keller stated that the subject property had the most excessive slopes in the subject neighborhood, with a 17.9% average slope when measured from the front to the back of the subject property, and that the existing driveway itself was on a 21.9% slope. Mr. Keller stated that the proposed construction would slightly lower the driveway elevation, would not be detectable from the street or from any surrounding properties, and that the subject property could accommodate the proposed construction.

7. Mr. Keller stated that the application did not propose to change the landscaping or grading in the front yard of the subject property. Mr. Keller also stated that the application proposed to move the existing driveway further away from the Applicants' neighbors. Mr. Keller informed the Board that the application would include double retaining walls, which would be 4 feet tall in the rear and spaced 5 feet apart, and that there would be additional retaining walls in the front by the driveway to further limit steep slope disturbance.

8. Mr. Keller stated that the Applicants satisfied the c(1) criteria due to the existing steep slopes, which imposed an undue hardship upon the Applicants, and that there would be no stormwater impacts from the proposed steep slope disturbance as the natural drainage would not be impacted by the proposed construction. Mr. Keller also stated that it was not possible to avoid the steep slope disturbance, and that the driveway was being lowered by three feet for safety purposes, which contributed to the need for the height variance. Mr. Keller concluded by stating that the application makes the property safer and that the proposed new residence was consistent with other residences in the subject neighborhood.

9. Ed Tang, 36 Holly Drive, testified that existing stormwater on the property is successfully intercepted by the driveway and a groundwater recharge device, and that he believed the application would similarly not cause any adverse stormwater impacts nor have any negative effect on any neighbor.

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

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

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

12. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions and site improvements affecting the property as set forth above and contained in the application materials. Specifically, the subject property’s excessive steep slope areas, overall topography, and existing structures are hardships and exceptional situations uniquely affecting the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

13. Although the proposed construction requires variance relief to permit in a building height of 41.58 feet where the maximum allowable building height is 40 feet, and a steep slope disturbance of 4,000 square feet where 1,000 square feet is the maximum allowable steep slope disturbance, the deviations from the aforementioned requirements can be accommodated by the subject property. In fact, if not for the subject property’s unique topography, it appears the application would fully conform to the Township Zoning Ordinance.

14. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject neighborhood, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without

substantially impairing the intent and purpose of the Master Plan and Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 21st day of March, 2022, that the variance relief requested by the Applicants to construct a new residence, resulting in a building height of 41.58 feet where the maximum allowable building height is 40 feet, and a steep slope disturbance of 4,000 square feet where 1,000 square feet is the maximum allowable steep slope disturbance, on property located at 40 Holly Street, Short Hills, New Jersey, granted by this Board at its meeting of January 24, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

1. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and at the public hearing, including as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 21st day of March, 2022.

Cal#3845-21, David and Natalie Reichman, 29 Jefferson Avenue, Short Hills

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

- Amy Lawrence – yes
- Jyoti Sharma – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of certain variance relief requested by the Applicants, David and Natalie Reichman (hereinafter the “Applicants”), in Calendar No. 3845-21 to permit the construction of a pool, pool house, and associated patios, on property located at 29 Jefferson Avenue, Short Hills, New Jersey, and designated as Lot 4, Block 2306, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on January 24, 2022, as to Calendar No. 3845-21 to permit the construction of a pool, pool house, and associated patios, on property located at 29 Jefferson Avenue, Short Hills, New Jersey, and designated as Lot 4, Block 2306, on the tax map of the Township of Millburn; and

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

1. At the January 24, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and together with John James, the Applicants’ Licensed Architect, Edward Clark, the Applicants’ Landscape Architect, and Rich Keller, the Applicants’ Engineer and Planner, provided testimony in support of the application. There was no public opposition to the application.
2. The Applicants are the owners of the subject property, which will contain a single family residence currently under construction, and is located in the Township’s R-3 Zone District (the “R-3 Zone”). The subject property is a “through lot” pursuant to the Township Zoning Ordinance, and therefore does not have a rear yard as one is defined in the Township Zoning Ordinance. The Applicant proposes to construct a pool, pool house, and associated patios behind the Jefferson Avenue-facing portion of the residence, which is technically located in the area that would be considered the front yard setback for Madison Terrace pursuant to the Township Zoning Ordinance.
3. The proposed construction would result in an accessory structure located in a front yard, where accessory structures are not permitted to be located in a front yard; pool equipment being stored in the front yard, where pool equipment is not permitted to be stored in a front yard; and a front yard fence, where front yard fences are not permitted. Due to comments and concerns expressed by the Board at the January 24, 2022 hearing, the Applicants agreed to relocate the proposed pool equipment storage to the basement of the subject residence, eliminating the need for this variance relief. However, the proposed construction would still result in an accessory structure located in a front yard, where accessory structures are not

permitted to be located in a front yard; and a front yard fence, where front yard fences are not permitted. Therefore, variance relief is required.

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

A. Renderings of the subject property, consisting of 9 sheets, prepared by Edward Clark, last revised on January 21, 2022, introduced into evidence as Exhibit A-1, on January 24, 2022;

B. Aerial Photograph of the subject property, introduced into evidence as Exhibit A-2, on January 24, 2022;

C. Photograph Exhibit, consisting of 5 photographs, taken by Rich Keller on January 21, 2022, introduced into evidence as Exhibit A-3, on January 24, 2022.

5. Both the Applicants and John James, the Applicants' Architect, testified that the subject property, as well as other properties in the subject neighborhood, constituted "through lots" facing Madison Terrace. Mr. James also stated that the proposed construction would be sufficiently screened by a combination of proposed plantings and existing mature trees, and that decorative elements of the proposed pool house would match the decorative elements of the subject residence that are visually similar to existing residences and structures in the subject neighborhood.

6. Edward Clark, the Applicants' Landscape Architect, testified that the proposed pool house would screen the proposed pool from street view, and that the subject property's existing mature plantings would be combined with the application's proposed additional plantings to abundantly screen the application's proposed construction. Mr. Clark stated that Madison Terrace is a lower elevation than the proposed pool house. Mr. Clark also stated that there were existing green giant arborvitae on the North side of the property, with spruce trees and green giant arborvitae on the South side of the Property. Mr. Clark testified that other properties in the subject neighborhood were "through lots", and that both the proposed pool house and subject residence were similar to other residences and structures in the subject neighborhood, both visually and in terms of scale and size. Mr. Clark concluded by stating that the proposed front yard fence would be screened from view from Madison Terrace by the proposed and existing landscaping, and that the location of the proposed and existing evergreen trees and shrubs was designed to replicate a woodland setting.

7. Richard Keller, the Applicants' Engineer and Planner, testified that the subject property did not have a rear yard pursuant to the Township Zoning Ordinance, and that accessory structures were only permitted in a rear yard in the R-3 Zone, which created a hardship for the Applicants. Mr. Keller stated that the proposed perimeter plantings and front yard fence were moved in 10 feet from Madison Terrace, and that the application's proposed construction fully complied with the R-3 Zone's bulk standards. Mr. Keller stated that the proposed accessory structures were not located directly across from any home on Madison Terrace. Mr. Keller also

stated that the proposed construction was not an overdevelopment of the property, and that all proposed construction would occur from the Jefferson Avenue side of the property, not the Madison Terrace side of the property. Mr. Keller also stated that the application would be fully conforming “if there was no Madison Terrace.” Mr. Keller concluded that the neighbor most impacted by the proposed construction was contacted and has no objection to the application. Due to comments and concerns expressed by the Board at the January 24, 2022 hearing, the Applicants agreed to store the proposed pool equipment in the basement of the subject residence, eliminating the need for the associated pool equipment variance relief.

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

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

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

10. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the variance relief requested by the Applicants to permit the proposed construction. While accessory structures can only be located in a rear yard in the R-3 Zone, the subject property’s status as a “through lot”, with no rear yard pursuant to the Township Zoning Ordinance, creates an undue hardship for the Applicants. The need for variance relief is related to this and other existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

11. Although the proposed construction requires variance relief to permit an accessory structure located in a front yard where accessory structures are not permitted to be located in a front yard, and a front yard fence where front yard fences are not permitted, the deviation from the requirements are appropriate given the aforementioned “through lot” status of the property pursuant to the Township Zoning Ordinance.

12. The Board concludes that the proposed construction preserves the character of the subject neighborhood given that it will not be visible to neighboring properties, and that any

negative impact from the proposed improvements is negligible and not a substantial detriment. Specifically, the Applicants' willingness to eliminate the need for front yard pool equipment storage variance relief, coupled with the abundant landscaping existing and proposed as set forth above, mitigates the already-negligible impact of the application's proposed construction. The positive and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1). For the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 21st day of March, 2022, that the variance relief requested by the Applicants to permit the construction of a pool, pool house, and associated patios, resulting in an accessory structure located in a front yard where accessory structures are not permitted to be located in a front yard, and a front yard fence where front yard fences are not permitted, on property located at 29 Jefferson Avenue, Short Hills, New Jersey, granted by this Board at its meeting of January 24, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

1. The Applicants shall apply for a building permit within 365 days from the date of publication of this decision.
2. The Applicants shall be bound to comply with the representations made before this Board by the Applicants and the Applicants' professionals and at the public hearing, as set forth in the Board's findings of fact contained in this resolution. The Board has relied upon such representations in adopting its findings of fact and granting the approvals set forth herein. Such representations are hereby made conditions of such approvals.
3. The Applicants shall remove all debris from the subject premises immediately upon completion of construction and shall maintain the site in reasonable order during construction.
4. The Applicants shall comply with all other rules, regulations and requirements affecting development in the Township, County and State.

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 21st day of March, 2022.

Cal#3848-21, Debraj Bhattacharyya and Anjali Katoch, 1 Ridge Terrace, Short Hills

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

Amy Lawrence – yes
Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes

the following memorializing resolution was adopted:

**DEBRAJ BHATTACHARYYA & ANJALI KATOCH
BLOCK 1812, LOT 1**

**CAL. NO. 3848-21
MARCH 21, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Debraj Bhattacharyya and Anjali Katoch (hereinafter the “Applicants”), in Calendar No. 3848-21 to permit the construction of a second floor addition, on property located at 1 Ridge Terrace, Short Hills, New Jersey, and designated as Lot 1, Block 1812, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on January 24, 2022 as to Calendar No. 3848-21 to permit the construction of a second floor addition, on property located at 1 Ridge Terrace, Short Hills, New Jersey, and designated as Lot 1, Block 1812, on the tax map of the Township of Millburn; and

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

1. At the January 24, 2022 hearing, the application and service of notice were found to be in order. The Applicants appeared without counsel and, together with their licensed Architect, Malathi Ananthakrishnan, provided sworn testimony in support of the application.
2. There was no public opposition to the application.
3. The Applicants are the owners of the subject property, which contains a single family residence, located in the Township’s R-6 Zone District (the “R-6 Zone”). The subject property is both an undersized lot and a corner lot pursuant to the Township Zoning Ordinance, located at the intersection of Ridge Terrace and Baltusrol Way.

4. The subject property contains four (4) non-conforming conditions pursuant to the Township Zoning Ordinance: (a) a minimum lot area of 6,000 square feet is required, and the subject property has an existing lot area of 5,416.36 square feet; (b) a minimum lot width of 60 feet is required, and the subject property has an existing lot width of 56.63 feet; (c) a minimum front yard setback of 40 feet for a corner lot is required, and the subject property has an existing front yard setback of 23.125 feet for a corner lot; and (d) a minimum rear yard unoccupied area of 25% of the lot area (1,354.09 square feet), is required, and the subject property has an existing rear yard unoccupied area of 18.25% (989 square feet).

5. The proposed construction would result in a front yard setback of 23.125 feet for a corner lot, where 40 feet is the minimum required front yard setback for a corner lot; and a Floor Area Ratio ("FAR") of 38.45% where 36% is the maximum allowable FAR for the R-6 Zone. Therefore, FAR and bulk variance relief is required.

6. At the January 24, 2022 hearing, the Board received and considered the following additional documents submitted in support of the application:

A. Photographs of the subject residence, consisting of 4 sheets, taken by the Applicants in January 2022, introduced into evidence as Exhibit A-1, on January 24, 2022;

B. Additional Photographs of the subject residence, consisting of 4 sheets, taken by the Applicants in January 2022, introduced into evidence as Exhibit A-2, on January 24, 2022.

6. The Applicants testified that the existing residence currently has three (3) bedrooms, one (1) bathroom, and very limited closet space. The Applicants stated that the existing bedrooms and the existing bathroom are all located on the second floor of the subject residence, and that the Applicants desire an additional bedroom and bathroom to make their home more functional and modernized.

7. Malathi Ananthakrishnan, the Applicants' Architect, testified that the subject property is an undersized corner lot for the R-6 Zone, both in area and width, and is required to have two (2) front yard setbacks pursuant to the Township Zoning Ordinance. According to the Applicants' Architect, this creates an undue hardship for the Applicants. Mr. Ananthakrishnan also stated that the subject residence's one (1) existing bathroom is insufficient for proper functionality of the home, while the proposed construction will modernize the subject residence, increasing its efficiency and allowing for the creation of full-sized rooms on the second floor of the subject residence. Mr. Ananthakrishnan stated that the proposed construction is modest, thoughtful, and similar to other residences in the subject neighborhood, and that the subject property will be able to accommodate the proposed FAR increase without undermining the intent or purpose of the Township Zoning Ordinance.

8. N.J.S.A. 40:55D-70c(1) states:
Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional

situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 [C.40:55D-62 et seq.] of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship[.]

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

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

11. The Board finds that the Applicants have satisfied the statutory criteria of N.J.S.A. 40:55D-70c(1) and concludes that it is appropriate to grant the bulk variance relief requested by the Applicants to permit the proposed construction. The need for such variance relief is related to existing conditions affecting the property, dwelling and other site improvements as set forth above and contained in the application materials. Specifically, the subject property’s undersized nature in area and width for the R-6 Zone, as well as the aforementioned existing nonconforming conditions on the subject property, including the location of existing structures and the subject property’s status as a corner lot, are hardships specific to the subject property. The Board finds these conditions to be extraordinary and exceptional conditions affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicants.

12. Although the proposed construction requires variance relief to permit a front yard setback of 23.125 feet for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, the deviation from the aforementioned requirement is relatively modest.

13. Additionally, the application proposes no increase from the existing front yard setback, and does not increase any of the subject property’s other existing nonconforming conditions. It appears that the proposed construction cannot be located elsewhere on the subject property due to the aforementioned, undersized nature of the subject property and the location of existing structures on the subject property.

14. The Board concludes that the proposed construction is tasteful and modest, preserves the character of the subject residence, and that any negative impact from the proposed improvements is negligible and not a substantial detriment. Specifically, the subject property can accommodate the negligible impact of the application’s proposed construction. The positive

and negative criteria for variance relief have therefore been met by the Applicants pursuant to N.J.S.A. 40:55D-70c(1). Therefore, for the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Township Zoning Ordinance.

15. The Board finds that the Applicants have also satisfied the statutory criteria as required by N.J.S.A. 40:55D-70(d)(4) for FAR variance relief, and concludes that it is appropriate to grant this variance relief requested by the Applicants to permit the proposed construction. The Board is satisfied that the proposed construction is modest in size and similar to other houses in the Township. Although the proposed construction requires FAR variance relief as set forth above, the deviation from the requirements can be accomplished without undermining the intent and purpose of the Township Zoning Ordinance. Although the application proposes to increase the FAR by 2.45% above the allowable FAR for the R-6 Zone, the increase is reasonable and can be accommodated by the subject property and will not negatively impact neighboring properties.

16. Additionally, the subject property is burdened by its existing status as an undersized lot for the R-6 Zone. The subject property will accommodate any perceived problems associated with the proposed FAR larger than that permitted by the Township Zoning Ordinance, so to establish special reasons. The proposed construction will result in the residence on the subject property remaining similar in size to other residences in the subject neighborhood. The scale and design of the proposed addition is also in keeping with that of neighboring homes and properties. The Board further concludes, for all the reasons set forth above, that the granting of FAR variance relief to permit the proposed addition can be accomplished 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 21st day of March, 2022, that the variance relief requested by the Applicants to permit the construction of a second floor addition, resulting in a front yard setback of 23.125 feet for a corner lot where 40 feet is the minimum required front yard setback for a corner lot, and a FAR of 38.45% where 36% is the maximum allowable FAR for the R-6 Zone, on property located at 1 Ridge Terrace, Short Hills, New Jersey, granted by this Board at its meeting of January 24, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10g, subject to the following conditions:

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

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 21st day of March, 2022.

Cal#3849-21, Jonathan Shehee, 97 Oakview Terrace, Short Hills

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

- Amy Lawrence – yes
- Jyoti Sharma – yes
- Steve Togher – yes
- Wolfgang Tsoutsouris – yes
- Craig Ploetner – yes

the following memorializing resolution was adopted:

**JONATHAN SHEHEE
BLOCK 1904, LOT 61**

**CAL. NO. 3849-21
MARCH 21, 2022**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Jonathan Shehee (hereinafter the “Applicant”), in Calendar No. 3849-21 to permit the raising of an existing roof and creation of a second floor bedroom and bathroom on property located at 97 Oakview Terrace, Short Hills, New Jersey, known and designated as Lot 61, Block 1904, on the tax map of the Township of Millburn.

RESOLUTION

WHEREAS the Millburn Township Zoning Board of Adjustment (hereinafter the “Board”) held a public hearing according to law on January 24, 2022, as to Calendar No. 3849-21 to permit the raising of an existing roof and the creation of a second floor bedroom and bathroom on property located at 97 Oakview Terrace, Short Hills, New Jersey, known and designated as Lot 61, Block 1904, on the tax map of the Township of Millburn; and

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

1. At the January 24, 2022 hearing, the application and service of notice were found to be in order. The Applicant appeared without counsel, and together with Thomas Singer, the Applicant's licensed architect and planner, provided sworn testimony in support of the application. There was no public opposition to the application.

2. The Applicant and his wife, Golchehreh Abtahian, are the owners of the subject property, which contains a single-family residence and is located in the Township's R-6 Zone District (the "R-6 Zone"). The Applicant proposes to alter the existing roofline on the left side of the subject residence by raising it 5.4 feet (which will reduce the roof area devoted to the existing roof eaves) and will also allow for the creation of a second floor bedroom and bathroom.

3. The subject property contains four (4) existing nonconforming conditions pertaining to the Township Zoning Ordinance for the R-6 Zone: (a) a minimum side yard setback of 8 feet for buildings up to 18 feet in height is required, and the subject property has an existing side yard setback of 6.8 feet for a building up to 18 feet in height; (b) a minimum side yard setback of 11.1 feet for buildings up to 32 feet in height is required, and the subject property has an existing side yard setback of 6.8 feet for a building up to 32 feet in height; (c) a minimum combined side yard setback of 35% of the lot width (21.4 feet) is required, and the subject property has an existing combined side yard setback of 24.2% (15.1 feet); and (d) a minimum front yard setback of 40 feet is required, and the subject property has an existing front yard setback of 25.2 feet.

4. The proposed development would result in a side yard setback of 6.8 feet for a building up to 18 feet in height, where a minimum side yard setback of 8 feet for buildings up to 18 feet in height is required; a side yard setback of 6.8 feet for a building up to 32 feet in height, where a minimum side yard setback of 11.1 feet for buildings up to 32 feet in height is required; a combined side yard setback of 24.2% (15.1 feet), where a minimum combined side yard setback of 35% of the lot width (21.4 feet) is required; and a front yard setback of 25.2 feet, where a minimum front yard setback of 40 feet is required for the R-6 Zone. Therefore, variance relief is required.

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

A. Photographs of the subject property, consisting of 26 sheets, taken by the Applicant, introduced into evidence as Exhibit A-1, on January 24, 2022.

6. The Applicant testified that the proposed construction would keep the residence similar to other residences in the subject neighborhood. The Applicant also stated his and his wife's desire to construct the additional bedroom and bathroom is to accommodate their mother, who is living with the Applicant and his wife, and to make the home more functional.

7. Thomas Singer, the Applicant's licensed Architect and Planner, testified that the subject property backs up to the Hartshorn Arboretum. Mr. Singer stated that the subject property has a retaining wall in the rear, and that there is approximately a 25 to 30 foot difference in elevation from the front to the back of the lot, which creates a hardship for the Applicant. Mr. Singer stated that the proposed construction will raise the existing roofline by 5.4 feet on the left side of the subject residence, which will create enough space for the addition of the proposed second floor bedroom and bathroom.

8. Mr. Singer stated that the subject residence is currently the shortest house on the street, and the front yard setback of the subject residence is consistent with the setbacks of other residences in the subject neighborhood. Mr. Singer stated that the proposed construction will logically and visually fit in with existing residences in the subject neighborhood, is consistent with the middle terrace layout for residences on the same side of Oakview Terrace as the subject property, and that the proposed construction will not result in any adverse shadow impact and will not adversely impact the Applicant's neighbors.

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

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

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

11. The Board finds that the Applicant has satisfied the statutory criteria as required by N.J.S.A. 40:55D-70c(1) for the requested variance relief, and that it is appropriate to grant this variance relief to permit the proposed construction. The need for the requested variance relief is related to several already-existing conditions affecting the property, dwelling and other site improvements, including the subject property's existing nonconforming front yard, side yard, and combined side yard setbacks for the R-6 Zone. Specifically, the location of the subject property's existing residence and the subject property's existing topography creates an undue hardship for the Applicant. The Board finds these conditions to be exceptional circumstances affecting the property and the structures thereon, which result in practical difficulties and undue hardship to the Applicant.

12. The application only deviates from the R-6 Zone front yard setback requirement by 14.8 feet; the combined side yard setback requirement by a mere 6.5 feet; the side yard setback for a building up to 18 feet by 1.2 feet; and the side yard setback for a building up to 32 feet by 4.5 feet. The application will not result in any material increase to the existing nonconforming conditions of the subject property. The Board finds that the proposed construction will increase the overall appeal of the property and the appearance of the subject residence. The Board further concludes that the proposed development preserves the character of the subject neighborhood, and that any negative impact from this proposed construction is negligible and not a substantial detriment. Therefore, for all the reasons stated above, the Board concludes that the granting of the variance relief requested relating to the proposed construction can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and the Township Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 21st day of March, 2022, that the variance relief requested by the Applicant pursuant to N.J.S.A. 40:55D-70c(1), to permit the raising of an existing roof and the creation of a second floor bedroom and bathroom, resulting in a side yard setback of 6.8 feet for a building up to 18 feet in height where a minimum side yard setback of 8 feet for buildings up to 18 feet in height is required; a side yard setback of 6.8 feet for a building up to 32 feet in height where a minimum side yard setback of 11.1 feet for buildings up to 32 feet in height is required; a combined side yard setback of 24.2% (15.1 feet), where a minimum combined side yard setback of 35% of the lot width (21.4 feet) is required; and a front yard setback of 25.2 feet where a minimum front yard setback of 40 feet is required, on property located at 97 Oakview Terrace, Short Hills, New Jersey, approved by this Board at its meeting of January 24, 2022, is memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g), subject to the following conditions:

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

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

3. 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 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 21st day of March, 2022.

APPLICATIONS

CAL#3854-21, MUKTA BHATIA, 45 PINE TERRACE EAST, SHORT HILLS

Vikas and Mukta Bhatia, and Tom Singer, architect, appeared and were sworn. Tom Singer's credentials were presented and accepted by the Board. The applicant is proposing to construct an addition. Proposal is in violation of:

- 606.2e1e1a – Side yard setback up to 18 feet height
- 606.2e1e1b – Additional side yard setback
- 606.2e1f – Combined side yard setback

Entered as Exhibit A-1: 9 slide presentation

Tom Singer gave a brief description of the proposal. The property is located in the R-6 zone. The applicant requires three variances in order to construct their proposed addition. The proposal is a two-story addition to the rear of the dwelling as well as building out the second floor to create a two-story colonial style. Tom Singer stated that the existing garage on the right creates the need for side yard variances.

Tom Singer indicated that c(1) variance relief can be granted due to the shape of the lot as well as the lawfully existing structure on the lot. He added that relief can also be granted under c(2) relief since the proposal promotes a desirable visual impact. In addition, there is no substantial detriment to the public good and the proposal will have no substantial detrimental impact on the intent of the Master Plan.

Steve Togher questioned whether the variances being requested are pre-existing conditions or are being caused by the proposed construction. Mr. Singer indicated that the side yard and combines side yard variances are pre-existing conditions. The additional side yard setback variance request is a result of the proposed construction.

Overall, Board members were in support of the application. Wolfgang Tsoutsouris said he visited the site and feels this is a good addition to the neighborhood. He thought it was not too bulky. Amy Lawrence also thought this application was a reasonable request. Steve Togher felt that this was a modest proposal and believed it would enhance the streetscape.

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

Amy Lawrence – yes
Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Craig Ploetner – yes

Cal#3854-21, Mukta Bhatia, 35 Pine Terrace East, was **APPROVED**.

CAL#3856-21, W. CHOU/W. CHEN, 58 PINE STREET, MILLBURN

Wenshey Chou, applicant, and Doug Miller, architect, appeared and were sworn. The Board Attorney alerted the applicant and their architect to the fact that a 5 affirmative votes are required for the “d” variance being requested and there are only 6 members in attendance tonight. The applicant requested that the matter be carried to a future agenda.

The matter was carried to May 2, 2022.

CAL#3855-21, JASON BAUER, 165 LONG HILL DRIVE, SHORT HILLS

Jason and Mia Bauer, and Tim Klesse, architect, appeared and were sworn. Tim Klesse’s credentials were presented and accepted by the Board. The applicants would like to construct an addition to their dwelling. Proposal was in violation of:

606.2e1e2b – Side yard setback
606.2e1f – Combined side yard setback

Tim Klesse gave a brief summary of the proposal. The applicants are proposing to add a one-story addition to the left side of the dwelling and a second floor addition to the rear of the dwelling.

Mr. Klesse referred to the sheet BOA-1 of the submitted plans. He indicated that the property is an irregularly shaped lot on the curve of Long Hill Road, located in the R-4 zone district.

There are 10 foot high green giant arborvitae on the left side property line that will screen the addition from the neighbor’s view.

Entered as A-1: 1 video of subject area driving toward White Oak Ridge Road
Entered as A-2: 1 video of subject area driving away from White Oak Ridge Road

Mr. Klesse spoke to Attachment E and summarized the variance relief being sought. Variance relief is required to allow a 7.3 foot setback where 15 feet is required on the first floor. The second floor also will be setback 20.8 feet where 22 feet is required by ordinance. Combined side yard setback variance relief is caused due to the extreme width at the 40 foot front yard setback. The property tapers in as the property deepens.

The Board had some concerns with the setback relief being requested. After a short break, Mr. Klesse returned with a revised plan.

Entered as A-3: revised Attachment E

Mr. Klesse indicated that the applicant has agreed reduce the size of the 1st floor addition, thereby increasing the side yard setback variance relief to 9.33 feet. The reduction to the size also eliminates the need for 2nd floor setback variance relief and improves the combined side yard setback variance request to 31%.

The Board expressed their support of the applicant's revision to the plans.

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

Amy Lawrence – yes
Jyoti Sharma – yes
Joseph Steinberg – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Craig Ploetner – yes

Cal#3855-21, Jason Bauer, 165 Long Hill Drive, was **APPROVED** with the condition that revised plans be submitted to the Board Secretary.

CAL#3858-21, WENDY & BRUCE PRASHKER, 26 PARK ROAD, SHORT HILLS

Wendy Prashker and Angelo Onello, P. E., appeared and were sworn. Mr. Onello's credentials were presented and accepted by the Board. The applicant would like to install an in-ground pool and patio. Proposal is in violation of:

606.2e2b – Lot coverage
609.1c – Maximum accessory use coverage

Mr. Onello referred to the plans submitted as part of the application. The Prashkers are proposing to install a 16 foot by 30 foot pool and a 425 SF patio. There is a gentle slope in the rear yard and the pool is proposed to be in the left rear corner of the property, 12 feet off the side and rear property lines. There is a 425 SF patio proposed which wraps the west corner of the pool.

The 12,000 SF lot is undersized for the R-4 zone, which has a minimum lot area of 20,000 SF. As part of the proposal, the applicant intends to fix many of the drainage issues which currently exist on site. They are increasing the overall lot coverage by 597 SF and propose coverage of 40.84% where 35% is the maximum permitted lot coverage.

There was brief discussion on potential steep slope disturbance. Based on documentation presented, the application does not exceed the allowable disturbance.

Amy Lawrence indicated that she is always concerned with excess lot coverage due to the Township's ongoing flooding issues.

Joe Steinberg asked for additional landscaping and requested additional arborvitae.

The meeting was opened for public questions. Francis Del Campo asked about the rationale behind the siting of the pool. Wendy Prashker responded saying they chose that location because that is where they get the most sun and wanted to keep a large part of the back yard walkable.

The public portion of the meeting was opened. Howard Margolis, 14 Cross gates, appeared and was sworn. Mr. Margolis expressed his concerns with potential water issues this proposal may cause.

Entered as O-1: PowerPoint presentation

In his presentation, Mr. Margolis referenced the non-conforming conditions on the property due to variances that have been granted in the past. Mr. Margolis also indicated that the increased lot coverage would cause more surface water. The lot is also undersized and the properties to the rear will be negatively affected.

Steve Togher asked Mr. Margolis if he feels the new dry well proposed will help the situation. Mr. Margolis' response was that it would not help enough.

Francisco Delcampo, 28 Park Road, appeared and was sworn. Mr. Delcampo was also concerned with potential water run-off this application will cause. Mr. Delcampo stated that the site slopes downward towards his property. He indicated that there are existing drainage issues and he is not convinced that the storm water management proposed is sufficient and felt the lot coverage is excessive. He indicated that he received notice of this hearing very recently and has contacted a professional engineer to review the plans to assess the drainage proposed. However, it was not enough time to have the professional come to the site and/or prepare a written report.

Lisa Romano, 20 Park Road, appeared and was sworn. Ms. Romano did not support this application. Ms. Romano stated this property has received five previous variances prior to the two variances being sought at this hearing. Ms. Romano discussed how this applicant strongly opposed a proposed re-zoning of this area to a more appropriate R-6 zone. Now the applicant wants to use the R-6 standards to their benefit.

The Board offered the following comments.

Joseph Steinberg felt that these 2 requests are not insignificant. They are large departures from the ordinance requirements. Several of the neighbors have expressed their concerns with the negative effects this proposal will have to their property. One of the neighbors has indicated that he has a professional engineer prepared to evaluate the current and proposed situation. He feels this Board has the responsibility to listen to this testimony of this professional before they render a decision.

Wolfgang Tsoutsouris also felt that the testimony of the objectors' professional may be relevant to this matter. Jyoti Sharma indicated that she feels a letter of analysis from the Township Engineer would be beneficial in this decision.

The Board discussed the variances being requested irrespective of the existing and proposed drainage issues. Several members felt the variances being requested were substantial deviations from the ordinance. They struggled with the negative criteria and the benefit to the public good. Others expressed support and felt it would have minimal to no effect on the neighboring property owners.

The matter was carried to April 18, 2022.

BUSINESS

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

ADJOURNMENT

A motion to adjourn was made by Wolfgang Tsoutsouris, seconded by Steve Togher, and carried with a unanimous voice vote. (10:30 PM)

Eileen Davitt
Board Secretary

Motion: JSt
Second: WT
Date Adopted: 5/2/22