

Township of Millburn
Minutes of the Zoning Board of Adjustment
June 1, 2020

A regular meeting of the Township of Millburn Zoning Board of Adjustment was held on **Monday, June 1, 2020** at 7:00 PM via Zoom webinar.

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

The following members were present for the meeting:

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

Also present:

Gail Fraser, Board Attorney
Eileen Davitt, Zoning Officer/Board Secretary

APPROVAL OF MINUTES

A motion to approve the minutes of March 2, 2020 was made by Mary McNett, seconded by Jessica Glatt, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Cal#3731-19, Justin & Alison Breen, 8 Wordsworth Road, Short Hills

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**JUSTIN AND ALISON BREEN
BLOCK 5107, LOT 18**

**CAL. NO. 3731-19
JUNE 1, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief to the Applicants, Justin and Alison Breen, in Calendar No. 3731-19 to permit the construction of an in-ground pool, patio and pergola on property located at 8 Wordsworth Road, Short Hills, New Jersey, known and designated as Lot 18, Block 5107 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 2, 2020 in Calendar No. 3731-19 filed by Justin and Alison Breen (hereinafter the “Applicants”) to permit the construction of an in-ground pool, patio and pergola on property located at 8 Wordsworth Road, Short Hills, New Jersey, known and designated as Lot 18, Block 5107 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-5 zone district. The Township Zoning Ordinance requirements for the R-5 zone include the following: maximum 35% lot coverage and maximum 20% accessory use coverage. The Applicants’ proposed pool, patio and pergola would result in a 41.5% lot coverage and a 23.4% accessory use coverage. Therefore, variance relief is required. Initially, the Applicants required variance relief to permit a 2 foot accessory structure setback, but revised their plans to provide a conforming accessory structure setback during the course of the hearing.
3. The Board received and considered the following documents submitted with the application:
 - A. A plan prepared by DJ Egarian & Associates, Inc., consisting of one sheet, Sheet 1, dated July 22, 2019;
 - B. An alternative plan prepared by DJ Egarian & Associates, consisting of one sheet, Sheet 1, dated March 2, 2020, which was admitted into evidence as A-1.

4. Applicants Justin and Alison Breen, and Jeffrey D. Egarian, P.E., testified in support of the application.

5. The Applicants purchased the property in 2016 and they always had the intention to construct an in-ground pool and patio in the back yard for their family's use and enjoyment. The subject property is a conforming lot in the R-5 zone district. The existing structures on the property result in a pre-existing nonconforming 35.2% lot coverage. As a result, the construction of any additional structure on the property would require lot coverage variance relief. The proposed pool, patio and pergola as originally designed would require variance relief to permit 43.1% lot coverage, 25.6% accessory coverage and a 2.7 foot accessory setback for the pool patio with pergola.

6. During the course of the hearing and in response to concerns expressed by the Board, the Applicants revised their plans to reduce the extent of variance relief required. The Applicants' revised plan eliminates the proposed 60 square foot shed, as well as the portion of the proposed pool patio on the east side of the pool. The proposed pergola is relocated to a slightly larger pool patio on the west side of the proposed pool. The proposed plan revisions result in a conforming 13.2 foot accessory setback. The reduction in the size of the proposed pool patio and the elimination of the shed would reduce the variance for lot coverage to 41.5% and the variance for accessory coverage to 23.4%. Proposed landscaping along the northeast corner of the rear yard would screen the proposed pool and patio improvements from the adjacent properties. The construction of the proposed improvements would also require on-site drainage improvements, which would provide stormwater management benefits to the subject and adjacent properties.

7. The Board finds that the Applicants have satisfied the statutory criteria for the granting of variance relief to permit the proposed pool, patio and pergola as redesigned. Although the subject property has a conforming lot area and lot dimensions, the property with its existing structures has a pre-existing nonconforming lot coverage. Variance relief would be required to permit any additional structure to the property, which the Board finds to be an exceptional circumstance which results in practical difficulties and undue hardship to the Applicants. The Board is also satisfied that the placement of the pool and patio, as well as proposed landscaping will serve as a privacy buffer that conceals the proposed pool, patio and pergola 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 1st day of June, 2020 that the variance relief to permit the construction of an in-ground pool, patio and pergola resulting in 41.5% lot coverage and 23.4% accessory use coverage, granted by this Board at its meeting of March 2, 2020 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 alternative plan prepared by DJ Egarian & Associates, consisting of one sheet, Sheet 1, dated March 2, 2020, which was admitted into evidence as A-1.

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 1st day of June, 2020.

Cal#3734-19, Vivek & Sudeshna Kapoor, 51-53 Elmwood Place, Short Hills

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

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Kevin Wenzel – yes
- Jessica Glatt – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Sudeshna and Vivek Kapoor, in Calendar No. 3734-19 for permission to construct an addition to the existing dwelling at 51 Elmwood Place, Short Hills affecting the properties located at 51-53 Elmwood Place, Short Hills, New Jersey, known and designated as Lots 20 & 21, Block 1808 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 2, 2020 in Calendar No. 3734-19 filed by Sudeshna and Vivek Kapoor (hereinafter referred to as the “Applicants”) for permission to construct an addition to the existing dwelling at 51 Elmwood Place, Short Hills, New Jersey, affecting the properties located at 51-53 Elmwood Place, Short Hills, New Jersey, known and designated as Lots 20 & 21, Block 1808 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. Anne & James Russotto of 82 Wellington Avenue, Short Hills, Susan Edmond of 43 Elmwood Place, Short Hills, and David & Jaimee Ehrenfried of 87 Wellington Avenue, Short Hills, appeared and testified in opposition to the application. Carol & Frank D’Alessio of 55 Elmwood Place, Short Hills, and Paul Hansen of 48 Elmwood Place, Short Hills, appeared and testified in favor of the application.

2. The Applicants are the owners of the subject property which is located in the R-6 zone district. The R-6 zone requirements include the following: minimum 40 foot front yard setback, minimum 12 foot accessory structure rear yard setback, 36 foot pool equipment setback in the rear yard, and maximum 20% accessory coverage. The Applicants propose an addition to the existing dwelling located at 51 Elmwood Place, which would result in a 29.91 foot front yard setback. Therefore, the Applicants require variance relief. Previously, the Applicants also proposed a 10 foot accessory structure rear yard setback, pool equipment in the side yard with a 22 foot setback, and 31.0% accessory coverage, conditions which required additional variance relief. Prior to the commencement of the hearing, the Applicants submitted revised plans which eliminated the need for those additional variances.

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

A. Plans prepared by Klesse Architects, consisting of five sheets, BOA-1 through BOA-5, dated October 21, 2019 with Sheets BOA-1 and BOA-2 revised through February 19, 2020;

B. A survey of Lot 20 in Block 1808 known as 51 Elmwood Place, Short Hills, New Jersey prepared by Canfora Surveying, Inc., dated November 16, 2000;

C. A survey of Lot 21 in Block 1808 known as 53 Elmwood Place, prepared by Jack L. Held, dated November 26, 2003;

D. Klesse Architects correspondence dated February 20, 2020 outlining the plan revisions with revised attachments to the original application;

E. Klesse Architects' Sheet BOA-1, revised through February 19, 2020 with an overlay to depict the proposed addition, which was admitted into evidence as A-1;

F. An exhibit with aerial views of the property and neighborhood with photographs and proposed plan, which was admitted into evidence as A-2.

4. The Applicants, Sudeshna and Vivek Kapoor, Timothy Klesse, Registered Architect, and Golda Speyer, Professional Planner, testified in support of the application. The Board also heard testimony from objectors and from interested parties in favor of the application.

5. The Applicants have resided at 51 Elmwood Place, Short Hills, New Jersey for approximately 20 years. The adjacent property at 53 Elmwood Place was vacant for more than one year when the Applicants purchased the property with the intent to demolish the dwelling on 53 Elmwood Place, merge the two lots into one lot, construct an addition to their existing dwelling at 51 Elmwood Place and install an in-ground swimming pool. Prior to the hearing, the Applicants revised their plans to eliminate three of the original variances requested. However, the Applicants still propose an addition to the dwelling which would require variance relief to permit a 29.91 foot front yard setback.

6. The properties at 51 and 53 Elmwood Place are both undersized lots, each with a 5,500 square foot lot area and 50 foot lot width. Both properties have several pre-existing nonconforming conditions, including front yard setbacks, side yard setbacks and combined side yard setbacks. Also, 53 Elmwood Place has pre-existing nonconforming building coverage and floor area ratio conditions, while 51 Elmwood Place received variance relief in 2010 to permit a rear one-story addition resulting in 40.2% floor area ratio and 23.8% building coverage. The proposed demolition of the dwelling at 53 Elmwood Place and the merger of the two lots would result in a conforming lot which exceeds the minimum lot area and minimum lot width required in the R-6 zone district. However, the proposed new addition on the enlarged lot would utilize and extend the pre-existing 29.91 foot front yard setback of the existing dwelling at 51 Elmwood Place. The proposed front portico which connects the existing dwelling to the proposed addition would maintain a slightly deeper setback to provide architectural interest to the front façade. In

addition, the second story of the proposed addition would also maintain a deeper front yard setback to minimize the massing of the dwelling on the streetscape. Although a minimum 40 foot front yard setback is required in the zone district, the average front yard setback along the street is 31.84 feet, so the proposed 29.91 foot front yard setback of the home with the proposed addition would not be out of keeping with other homes on the street.

7. Various objectors expressed concerns regarding drainage issues, the size and scale of the proposed home, and the precedent set by the merger of adjacent lots. Anne and James Russotto of 82 Wellington Avenue described existing drainage issues and a concern with the proposed size and scale of the dwelling. David and Jamie Ehrenfried of 87 Wellington Avenue and Susan Edmond of 43 Elmwood Place expressed concerns regarding the size of the home on the larger lot and its impact on the streetscape, as well as the precedent set by a merger of adjacent lots. Other neighbors on Elmwood Place testified in support of the application, including Carol and Frank D'Alessio, the adjacent neighbors at 55 Elmwood Place and Paul Hansen, whose home is diagonally across the street from the subject property at 48 Elmwood Place.

8. The Applicants' architect testified that under the Millburn Township Ordinance, the proposed addition would require the submission of a lot grading and drainage plan for the approval of the Township Engineer to ensure no increase in off-site drainage would result from the proposed improvements to the property. Golda Speyer, the Applicants' planner testified that although the proposed addition could be pushed back to meet the minimum front yard setback, to do so would have a greater impact on the rear neighbors whose homes front on Wellington Avenue because the addition to the dwelling would be much closer to the shared rear property line. Ms. Speyer also testified that the Applicants' revised plans eliminate a number of pre-existing nonconforming conditions affecting 51 and 53 Elmwood Place and, with the exception of the proposed front yard setback, the home with the proposed addition and pool would satisfy all other zoning requirements. As a result, the Applicants' planner testified that the home with the proposed addition provides a conforming massing and scale and it is a better planning alternative with less impact on the surrounding neighborhood than an addition to the dwelling with a conforming front yard setback.

9. The Board concludes that the variance relief requested by the Applicants may be granted. The Board is satisfied that the need for variance relief is the result of the placement of the existing dwelling at 51 Elmwood Place with its pre-existing nonconforming front yard setback. The Board is satisfied that this condition is an exceptional circumstance which results in undue hardship and practical difficulties to the Applicants. The Board finds that the proposed placement of the addition is a better alternative for the property than an addition with a conforming front yard setback, which would have a much greater impact on the neighboring lots to the rear of the Applicants' property which front on Wellington Avenue. The Board is satisfied that the proposed placement of the addition to the dwelling will be a better alternative for the Elmwood Place streetscape because it will result in greater symmetry with the existing dwelling than an addition that is offset by 10 feet to provide a conforming front yard setback. The Board is satisfied that the home with the addition will continue to reflect the character of the neighborhood. Therefore, the Board further concludes that the granting of variance relief can be

done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 1st day of June, 2020 that variance relief to permit the construction of an addition to the existing dwelling located at 51 Elmwood Place, resulting in a 29.91 foot front yard setback, granted by this Board on March 2, 2020 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Klesse Architects consisting of five sheets, BOA-1 through BOA-5, dated October 21, 2019 with Sheets BOA-1 and BOA-2 revised through February 19, 2020.

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

Prior to the issuance of a building permit to permit the construction of the proposed addition, the Applicants shall submit for the review and approval of the Township Attorney and Township Engineer, a proposed Deed of Consolidation, in recordable form, merging the two lots comprising the property into one lot. Prior to submission of the draft Deed of Consolidation to the Township Attorney and Township Engineer, the Applicants shall obtain, in writing from the Township Tax Assessor, the new designation for the consolidated lot. After approval of the form of Deed, the Applicants shall record the approved and executed Deed in the Essex County Register's Office and provide the Township Attorney and Board Secretary with a certified true copy of the Deed of Consolidation, which bears the County recording information.

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

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

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

CLERK CERTIFICATION

I, Eileen Davitt, Secretary of the Zoning Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, hereby certify that the foregoing is a true and exact copy of a Resolution adopted at the meeting of the Zoning Board of Adjustment of the Township of Millburn held on the 1st day of June, 2020.

Cal#3737-19, Giuseppe & Antonina Martino, 264-266 Main Street, Millburn

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

Mary McNett – yes
Craig Ploetner – yes
Jyoti Sharma – yes
Steve Togher – yes
Wolfgang Tsoutsouris – yes
Jessica Glatt – yes
Joseph Steinberg – yes

the following memorializing resolution was adopted:

**GIUSEPPE AND ANTONINA MARTINO
BLOCK 1004, LOT 15**

**CALENDAR NO. 3737-19
JUNE 1, 2020**

Mr. Chairman, I move the adoption of the following resolution granting variance relief pursuant to N.J.S.A. 40:55D-70d(2) to the Applicants, Giuseppe and Antonina Martino, in Calendar Number 3737-19 to permit the construction of a one-story addition to a two-family residential dwelling on property located at 264-266 Main Street, Millburn, New Jersey; known and designated as Lot 15, Block 1004 on the Tax Map of the Township of Millburn; and

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 2, 2020 in Calendar No. 3737-19, filed by Giuseppe and Antonina Martino (hereinafter referred to as the "Applicants") for permission to construct a one-story addition to a two-family dwelling on property located at 264-266 Main Street, Millburn, New Jersey; and

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

1. The application and service of notice were found to be in order. Applicant Antonina Martino appeared without counsel. Joseph Scicchitano of 270 Main Street, Unit A, Millburn, New Jersey, and Sylvester DeMonget of 217 Main Street, Unit C, Millburn, New Jersey, appeared at the hearing as interested parties.

2. The subject property is located in the CMO Zone District, which permits a variety of nonresidential uses. The Applicants seek approval to construct a one-story addition to an existing two-family residential dwelling on the property, which is not a principal permitted use in

the CMO Zone District. As a result, the Applicants require variance relief pursuant to N.J.S.A. 40:55D-70d(2a) to permit an expansion of a pre-existing nonconforming use. In addition, the CMO zone requires a minimum 12 foot side yard setback. The Applicants' proposed addition would result in 2.7 and 8.1 foot side yard setbacks. Therefore, bulk variance relief is also required.

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

A. Plans prepared by Klesse Architects, consisting of four sheets, BOA-1 through BOA-4, dated October 25, 2019;

B. A survey of the property prepared by William Held Associates, Inc., dated April 28, 1997, which was marked up by the Applicants' Architect to depict the proposed addition;

C. An aerial photograph of the property and neighboring properties from March 28, 2019, prepared by Casey & Keller, Inc., which was admitted into evidence as A-1;

D. Photo board #1 prepared by Casey & Keller, which was admitted into evidence as A-2;

E. A zoning calculation sheet prepared by Klesse Architects, dated November 14, 2019 and revised through March 2, 2020 by Casey & Keller, Inc., which was admitted into evidence as A-3;

F. A marked up copy of Sheet BOA-2 of the Klesse plans, which was admitted into evidence as A-4.

4. Applicant Antonina Martino, Richard Keller, Professional Engineer and Professional Planner, and Timothy Klesse, Registered Architect, testified in support of the application.

5. The Applicants have owned the property since 1994. Although they presently reside in Springfield Township, they purchased the subject property with an intent to reside in the dwelling unit on the left side of the property upon retirement. Currently, the dwelling unit on the left contains a living room, small kitchen and bedroom on the first floor but there is no first-floor bathroom. Mr. Martino has serious health issues, which necessitate a bathroom on the first floor to provide him with a one-level living space during his illness. The proposed addition would allow the Applicants to reconfigure the internal space of the unit to provide a full bathroom on the first floor, as well as a larger kitchen, dining area and laundry area, which would result in one-level living.

6. The subject property, located on the east side of Main Street, is a pre-existing nonconforming lot in the CMO zone because it has a 12,769 square foot lot area and 49.91 foot

lot width, whereas the CMO zone requires a minimum 30,000 square foot lot area and 150 foot lot width. The two-family residential dwelling on the property is a pre-existing nonconforming use as it is not a permitted use in the CMO zone. In addition, the existing structure has pre-existing nonconforming side yard setbacks of 2.7 feet and 8.1 feet instead of the minimum 12 feet required and a pre-existing nonconforming 21.4 foot front yard setback instead of the required minimum 24 foot front yard setback.

7. The current two-family residential dwelling consists of two side-by-side two-story units. The Applicants propose a one-story rear addition to the unit on the left facing the property from the street. The proposed addition to the dwelling would extend the pre-existing nonconforming 2.7 foot northerly side yard setback farther to the rear of the property. The unit on the right side of the dwelling already extends farther into the rear yard than the unit on the left and it has a pre-existing 8.1 foot southerly side yard setback which would remain unchanged.

8. The properties on either side of the subject property are fully developed lots. Neither has a conforming lot area which would be large enough to allow the Applicants to purchase land and eliminate the need for side yard setback variance relief. However, the unit with the proposed rear addition would be buffered from view from the adjacent lot to the north by a row of hedges, which currently exists on the property. The Applicants planted the existing row of hedges many years ago to buffer their view of the numerous cars on the adjacent lot to the north. The Applicants propose to temporarily remove the hedge row and ball, burlap and stockpile the hedges until after construction of the proposed addition, at which time they would be replanted to maintain the buffer between the subject property and its neighbor to the north. The proposed addition would be located at the rear of the existing dwelling so it would not impact on the streetscape.

9. The subject property is located on a block where there are other residential dwellings on the east side of Main Street. Immediately to the north of the subject property, Lot 14 contains a single-family residential use and Lot 13 contains a two-family residential structure. Lot 12 contains a building housing the offices of Casey & Keller, which was converted from residential use in 1978. Lot 11 contains a two-family and four-family residential structures. In addition, two-family homes are a permitted use on the west side of Main Street, which is in the R-8 zone district. As a result, the home with the proposed one-story addition would remain compatible with the aesthetics of the existing neighborhood. The Applicants have no plans to construct a second-floor addition or to extend the dwelling unit on the right. The proposed one-story rear addition to the dwelling on the left side of the home would not impact the views of the neighboring properties. Although the proposed addition would not have a basement, the proposed impervious coverage would require the installation of a drywell and a grading and drainage plan would be submitted to the Township Engineer for review and approval.

10. The Applicants' planner, Richard Keller, testified that it was his professional opinion that the subject property satisfies the statutory criteria for variance relief pursuant to N.J.S.A. 40:55D-70d(2) for expansion of a pre-existing nonconforming use as required by Burbridge v. Mine Hill Tp., 117 N.J. 376 (1990). He testified that the property is a significantly undersized lot and it is not suitable for a principal use permitted in the CMO zone because the

property would not be able to provide adequate ingress/egress or on-site parking required for a commercial use. Mr. Keller stated that the subject property is an isolated lot in an area of residential uses that date back to the 1940's and 1950's. As a result, it is not likely the subject property would convert to a conforming CMO use, which would be more disruptive of the neighborhood than the continuation of the existing two-family residential use of the property. Mr. Keller testified that the existing residential dwelling is in a well-maintained condition. The proposed one-story addition to the northerly dwelling unit would promote the general welfare, a purpose of zoning, as it would provide a first-floor bathroom, helpful for older residents, allow for the upgrade of the interior residential amenities of the dwelling unit, and provide a more desirable visual environment by improving the rear façade of the dwelling without any negative impact on the neighbors or the views from their properties.

11. The Board concludes that there are adequate special reasons for the granting of variance relief pursuant to N.J.S.A. 40:5D-70d(2) to permit the construction of the proposed one-story addition to the existing two-family residential dwelling on the property. The Board finds that the lot area and lot width of the property are significantly undersized for the CMO zone and it is surrounded by fully developed lots, which makes it unlikely the subject property would be converted to a permitted principal use in the CMO zone. Moreover, the existing two-family residential use of this property is more compatible with the surrounding uses than a permitted CMO use, which would be more disruptive to the neighborhood, which is primarily residential in character along this section of Main Street. Based on the testimony presented and the findings set forth herein, the Board is satisfied that the proposed use will not result in any detriment to the public good. The property is already used for a residential purpose, as there is a lawful pre-existing nonconforming two-family structure on the property. The Board is satisfied that the proposed one-story addition to the northerly dwelling unit will benefit the general welfare and it will be an aesthetic improvement to the property without any negative impact on the streetscape. In addition, the Board finds that the proposed addition to the northerly dwelling unit will not result in any substantial detriment to the zone plan or zoning ordinance as the pre-existing nonconforming two-family structure on the property is compatible with the surrounding neighborhood. In balancing the benefits of the proposed addition to the pre-existing residential use against the detriments, the Board concludes that the benefits of the proposed addition to the residential use of the property substantially outweigh any detriment.

NOW, THEREFORE, BE IT RESOLVED, on this 1st day of June, 2020, that variance relief pursuant to N.J.S.A. 40:55D-70d(2) requested by the Applicants to permit the construction of a one-story rear addition to the northerly dwelling unit of the existing two-family residential dwelling, resulting in 2.7 foot and 8.1 side yard setbacks on property located in the CMO zone at 264-266 Main Street, approved by this Board on March 2, 2020, 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 Klesse Architects, consisting of four sheets, BOA-1 through BOA-4, dated October 25, 2019.

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

3. Prior to the issuance of a Certificate of Occupancy/Approval, if the existing hedge row was temporarily removed during construction, the Applicants shall reinstall the existing hedge row along the northerly property line, or install a new hedge row of a height and species similar to the existing hedge row.

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 Applicant 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.

CERTIFICATION

I, Eileen Davitt, Clerk of the Board of Adjustment of the Township of Millburn, County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and exact copy of a resolution adopted at the meeting of the Board of Adjustment of the Township of Millburn held on the 1st day of June, 2020.

Cal#3740-19, Kathula Bodepudi, 87 Great Hills Road, Short Hills

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

- Mary McNett – yes
- Craig Ploetner – yes
- Jyoti Sharma – yes
- Wolfgang Tsoutsouris – yes
- Jessica Glatt – yes

the following memorializing resolution was adopted:

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicants, Sudharani Bodepudi and Kiran Bathula, in Calendar No. 3740-20 for permission to construct a new single family dwelling on property located at 87 Great Hills Road, Short Hills, New Jersey, known and designated as Lot 7, Block 4002 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 2, 2020 in Calendar No. 3740-20 filed by Sudharani Bodepudi and Kiran Bathula (hereinafter referred to as the “Applicants”) for permission to construct a new single family dwelling on property located at 87 Great Hills Road, Short Hills, New Jersey, known and designated as Lot 7, Block 4002 on the tax map of the Township of Millburn; and

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

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

2. The Applicants are the owners of the subject property which is located in the R-4 zone district. The R-4 zone requirements include the following: minimum 57.02 front yard setback from Farbrook Drive based upon the average front yard setback within 500 feet on the same side of the street, maximum 30% front yard coverage, minimum 80 foot accessory structure corner lot setback and garages facing and opening onto a public street are prohibited. The proposed new single-family dwelling would result in a 40 foot front yard setback from Farbrook Drive, 32.84% front yard coverage at Great Hills Road, a 58 foot accessory structure corner lot setback from Farbrook Drive and a three-car garage facing and opening onto Great Hills Road. Therefore, the Applicants require variance relief.

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

A. Plans prepared by Klesse Architects consisting of five sheets, BOA-1 through BOA-5, dated December 15, 2019;

B. Plans prepared by L2A Land Design LLC, consisting of nine sheets, C-01 through C-09 dated July 24, 2019 and revised through December 16, 2019;

C. A survey of the property prepared by Lakeland Surveying, dated July 12, 2016;

D. A photo board which was admitted into evidence as A-1.

4. Applicant Sudharani Bodepudi and Timothy Klesse, Registered Architect, testified in support of the application.

5. The subject property is a corner lot with a conforming lot area, located at the intersection of Great Hills Road and Farbrook Drive. Because the property is a corner lot, it has two front yards and two side yards. In addition, the southwesterly portion of the property is constrained by two 20 foot wide easements, and there is a ten foot difference in elevation between the southwesterly side of the property and the northeasterly side of the property. The existing dwelling fronts on Great Hills Road, but the attached garage fronts on Farbrook Drive. In addition, the existing front yard setback from Farbrook Drive is 36.8 feet.

6. The Applicants propose to demolish the existing dwelling and construct a larger two-story single-family dwelling to accommodate the needs of the Applicants' family. The proposed dwelling would require four variances. The proposed dwelling would result in a 40 foot front yard setback from Farbrook Road, whereas the required front yard setback based upon the average front yard setback within 500 feet on the same side of the street is 57.02 feet. The average front yard setback is the result of the front yard setbacks of the two adjacent dwellings on Farbrook Drive which exceed 70 feet, while the remaining properties on this block of Farbrook Drive maintain 49.1 and 50.3 foot front yard setbacks. Both of those neighboring homes are located on properties with lot depths much larger than the 100 foot lot depth of the Applicants' property when measured from Farbrook Drive. Without those two properties, the average front yard setback on this block would be 45.4 feet. While the proposed home would still require front yard setback variance relief, the proposed front yard setback from Farbrook Drive would be much closer to the average front yard setback because only the central portion of the proposed home would maintain a 40 foot front yard setback. The front façade of the dwelling on either side of the central portion has been stepped back to provide a deeper front yard setback of no less than 47 feet. The proposed home has been designed with a hip roof which would minimize its massing.

7. The proposed dwelling would also result in a three-car garage facing and opening onto Great Hills Road. The proposed garage placement results in the need for variance relief to permit the garage to face and open onto Great Hills Road, as well as front yard coverage for the paved parking area. The proposed parking area would result in a 32.84% front yard coverage at Great Hills Road, which is 2.84% greater than the 30% front yard coverage permitted in the zone district. The proposed placement of the garage and parking area takes advantage of the lower elevation of the northeast side of the lot in relation to the elevation of Great Hills Road. The proposed garage and parking area would be three feet below the level of the street with the result that the garage doors and parking area would be partially concealed from the street. The Applicants are also willing to plant evergreens along the Great Hills Road front yard to further conceal the garage doors and parking area from view from the street. The proposed front facing garage placement on the northeast side of the property fronting on Great Hills Road also avoids any negative impact on the existing easements on the opposite side of the property and it preserves the southwesterly portion of the property which has a more level elevation for use as a backyard.

8. The Applicants also propose the installation of a patio on the southwest side of the property which would be accessible from the family room and kitchen. The proposed patio would result in a 58 foot accessory structure corner lot setback from Farbrook Drive instead of the minimum 80 foot accessory structure corner lot setback. Because the property is only 100 feet deep when measured from Farbrook Drive, it would be impossible to construct a patio adjacent to the dwelling with a conforming accessory structure corner lot setback. The Applicants' architect testified that the proposed home with the garage facing and opening onto a public street and accessory patio would be more in keeping with the other homes in this R-4 zone district than the existing dwelling and it would be an aesthetic improvement to the streetscape.

9. The Board concludes that the variance relief requested by the Applicants may be granted. The Board is satisfied that the need for variance relief is the result of the corner lot placement of the property, its shape and topography, as well as the constraints imposed by two existing easements 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 Board notes that the proposed dwelling will satisfy the minimum 40 foot front yard setback, but the placement does not meet the 57.02 foot average front yard setback from Farbrook Drive due to the oversized front yard setbacks of the two adjacent dwellings. But for the oversized setbacks of those two neighboring dwellings, the proposed front yard setback would be in keeping with the front yard setbacks of the remaining homes on the block. The Board is also satisfied that the need for variance relief to permit the proposed three-car garage facing and opening onto Great Hills Road together with the associated paved parking area is also the result of the topography of the lot and the existing easements. The shallow depth of the lot when measured from Farbrook Drive precludes the installation of a patio with a conforming accessory structure corner lot setback. The Board is satisfied that the proposed single-family dwelling will be in keeping with the other homes in this established residential neighborhood. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED on this 1st day of June, 2020 that variance relief to permit the construction of a new single-family home resulting in a front yard setback from Farbrook Drive of no less than 40 feet, 32.84% front yard coverage at Great Hills Road, a 58 foot accessory structure corner lot setback from Farbrook Drive and a three-car garage facing and opening onto Great Hills Road, granted by this Board on March 2, 2020 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Klesse Architects consisting of five sheets, BOA-1 through BOA-5, dated December 15, 2019 and the plans prepared by L2A Land Design LLC, consisting of nine sheets, C-01 through C-09 dated July 24, 2019 and revised through December 16, 2019.

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 install in the Great Hills Road front yard a sufficient number of evergreens with a height of six feet above the root ball at the time of planting to screen the proposed front facing garage doors from view from both directions of Great Hills Road, and maintain such evergreens in perpetuity. Such maintenance shall include the replacement of any dead, dying or diseased evergreens which serve to screen the garages from view from the street.

4. Prior to the issuance of a Certificate of Occupancy/Approval, the Applicants shall record a copy of this Resolution as a deed restriction in the Essex County Register's Office and provide the Board Secretary with a conformed copy of the document which bears the recording information.

5. 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.

6. 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.

7. 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 1st day of June, 2020.

Cal#3741-20, Daniel Mayo, 17 Thackeray Drive, Short Hills

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

Mary McNett – yes
Craig Ploetner – yes

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

the following memorializing resolution was adopted:

**DANIEL MAYO
BLOCK 5103, LOT 10**

**CAL. NO. 3741-20
JUNE 1, 2020**

Mister Chairman, I move the adoption of the following resolution memorializing the granting of variance relief requested by the Applicant, Daniel Mayo, in Calendar No. 3741-20 for permission to construct a patio and additions to the dwelling on property located at 17 Thackeray Drive, Short Hills, New Jersey, known and designated as Lot 10, Block 5103 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 2, 2020 in Calendar No. 3741-20 filed by Daniel Mayo (hereinafter referred to as the “Applicant”) for permission to construct a patio and additions to the existing single family home located at 17 Thackeray Drive, Short Hills, New Jersey, known and designated as Lot 10, Block 5103 on the tax map of the Township of Millburn; and

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

1. The application and service of notice were found to be in order. The Applicant appeared without counsel. No objectors or interested parties appeared or testified at the hearing.
2. The Applicant is the owner of the subject property which is located in the R-5 zone district. The R-5 zone requirements include the following: 18% building coverage, minimum 40 foot front yard setback and minimum 80 foot accessory structure corner lot setback. The proposed patio and additions to the dwelling would result in an 18.4% building coverage, 36.01 foot front yard setback and 47.4 foot accessory structure corner lot setback from Wordsworth Road. Therefore, the Applicant requires variance relief.
3. The Board received and considered the following in support of the application:
 - A. Plans prepared by Dubinett Architects, LLC, consisting of two sheets, Sheets V-1 and V-2, dated August 8, 2019 and revised through January 13, 2020;

B. A survey of the property prepared by JMH Associates, dated June 9, 2007, and marked up by the Applicant's Architect to depict the proposed addition and patio;

C. A colorized version of the marked up JMH survey, which was admitted into evidence as A-1;

D. Two simulated photo renderings of the subject property with the proposed addition, patio and landscaping, which were admitted into evidence as A-2.

4. The Applicant, Daniel Mayo, and Danial Dubinett, Registered Architect, testified in support of the application.

5. The subject property is a corner lot at the intersection of Thackeray Drive and Wordsworth Road. The Applicant wishes to construct an addition to the dwelling which includes first floor and second floor components as well as a proposed front porch. The proposed first floor addition would extend along the rear of the existing dwelling and provide an expanded kitchen, home office, bathroom and mudroom, as well as an expansion of the existing garage to provide a new internal connection and a fire door to the proposed new mudroom. The proposed addition would result in an 18.4%, or 2,992.74 square foot building coverage, which is 66.62 square feet greater than the maximum 18% or 2926.12 square foot building coverage permitted in the zone. Despite the proposed deviation from building coverage, the home with the proposed addition would maintain a 23.46 foot side yard setback to the side property line closest to the adjacent dwelling to the west, which is nearly twice the required side yard setback in the zone district. The proposed second story component of the addition over the existing garage does not require variance relief as it would not result in an increase in building coverage. The proposed additions to the dwelling also provide for a front porch along the central portion of the front façade of the dwelling, which faces Thackeray Drive. Because of the placement of the existing dwelling in relation to the Thackeray Drive property line, which tapers towards the north, a triangular portion of the front portico would be located within the required front yard setback from Thackeray Drive. Specifically, the proposed deviation from the required minimum 40 foot front yard setback would range from a nearly conforming front yard setback at the southerly corner of the proposed portico to a deviation of 3.99 feet at the northerly corner of the proposed portico. As for the placement of the proposed patio, the proposed location would allow for ingress and egress between the patio and kitchen, while a patio in a conforming location would be on the opposite side of the home behind the first-floor bathroom and new mudroom. The proposed addition and patio will be an aesthetic improvement to the dwelling, while remaining in keeping within stylistic norms of the neighborhood.

6. The Board concludes that the variance relief requested by the Applicant may be granted. The Board is also satisfied that the variances are the result of the irregular shape of this corner lot and the placement of the existing dwelling. The Board is satisfied that these conditions are exceptional circumstances that result in undue hardship and practical difficulties to the Applicant. The first-floor addition will provide the Applicant with an expanded kitchen and breakfast nook, as well as a mudroom, office space and first floor bathroom. The proposed

increase in building coverage will be located at the rear of the existing dwelling, where it will not have any impact on the streetscape. Although a triangular portion of the proposed front porch would be located in the Thackeray Drive front yard, the proposed porch would add architectural interest and balance to the front façade of the dwelling and the deviation from the required minimum front yard setback is less than four feet. The proposed patio location with its 47.4 foot accessory structure setback from Wordsworth Road would be screened from view from the street by proposed landscaping. In addition, the proposed patio location would have less impact on the adjoining neighbors than a patio in a conforming location. The home with the proposed improvements will not result in any substantial negative impact on the light, air or open space of the adjoining neighbors. The Board is satisfied that the home with the additions and new patio will be in keeping with the other homes in the neighborhood. Therefore, the Board further concludes that the granting of variance relief can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT **RESOLVED** on this 1st day of June, 2020 that variance relief to permit the construction of a patio and additions to the dwelling which result in an 18.4% building coverage, 36.01 foot front yard setback and 47.4 foot accessory structure corner lot setback from Wordsworth Road, granted by this Board on March 2, 2020 is hereby memorialized pursuant to the provisions of N.J.S.A. 40:55D-10(g) subject to the following conditions:

1. Construction shall be in accordance with the testimony at the hearing and the plans prepared by Dubinett Architects, LLC, consisting of two sheets, Sheets V-1 and V-2, dated August 8, 2019 and revised through January 13, 2020 and the survey of the property prepared by JMH Associates, dated June 9, 2007, and marked up by the Applicant's Architect to depict the proposed additions and patio.

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

3. Prior to the issuance of a Certificate of Occupancy, the Applicant shall install six (6) Green Giant Arborvitae with a height of six feet above the root ball at the time of planting to screen the proposed patio from view from Wordsworth Road and the property to the west, and maintain such evergreens in perpetuity. Such maintenance shall include the replacement of any dead, dying or diseased evergreens which serve to screen the patio from view from the street and the adjacent neighbor.

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

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

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

6. 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 1st day of June, 2020.

APPLICATIONS

There were no applications scheduled.

BUSINESS

The Board discussed the need to retain a traffic expert for the matter of Cal #3675-19, NJ Energy Corp., 132 Millburn Avenue. A motion to retain the services of McDonough & Rea Associates, Inc, was made by Craig Ploetner, seconded by Jyoti Sharma, and carried with a unanimous voice vote. Wolfgang Tsoutsouris abstained from voting.

The Board also discussed the desire to obtain a report from Paul Phillips, Township Planner, for the matter of Cal #3675-19, NJ Energy Corp., 132 Millburn Avenue. A motion to request a report from Paul Phillips was made by Mary McNett, seconded by Joy Siegel, and carried with a unanimous voice vote. Wolfgang Tsoutsouris abstained from voting.

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 Mary McNett, and carried with a unanimous voice vote. (7:49 PM)

Eileen Davitt
Board Secretary

Motion: CP
Second: JSh
Date Adopted: 6/15/20