

Township of Millburn  
Minutes of the Planning Board  
April 17, 2019

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, April 17, 2019** at 7:00 PM in Millburn Town Hall.

Vice Chairwoman Miriam Salerno opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Daniel Baer  
Elaine Becker  
Joseph Steinberg  
Marc Matsil  
Miriam Salerno, Vice Chairwoman

Also present:

Edward Buzak, Board Attorney  
Eric Fishman, Court Reporter  
Martha Callahan, Township Engineer  
Eileen Davitt, Zoning Officer/Board Secretary

**APPROVAL OF MINUTES**

A motion to approve the minutes of March 6, 2019 was made by Daniel Baer, seconded by Marc Matsil, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Appl#18-013, Pingry School, 50 Country Day Drive, Short Hills**

Upon a motion made by Joseph Steinberg, a second by Daniel Baer, and with a roll-call vote as follows:

Daniel Baer – yes  
Elaine Becker – yes  
Joseph Steinberg – yes  
Miriam Salerno – yes

the following memorializing resolution was adopted:

RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN

In the Matter of:

The Pingry School  
Application #18-013  
Block 5005, Lot 16  
Preliminary and Final Site Plan Approval  
Conditional Use Approval  
Variance for Fence Height  
Waiver for LED lighting

**WHEREAS**, The Pingry School ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final site plan approval, conditional use approval, and for variance relief for fence height, and for a waiver to allow the installation of LED lights, in connection with property commonly known as 50 Country Day Road and formally known as Block 5005, Lot 16 on the Official Tax Map of the Township of Millburn ("Property"); and

**WHEREAS**, the Applicant has submitted several plans and exhibits, including, without limitation, the following: Preliminary and Final Major Site Plan, revision date December 20, 2018 prepared by Bohler Engineering and consisting of 15 Sheets; Environmental Impact Statement prepared by Michelle Measday, P.W.S., C.F.M. of Bohler Engineering dated July 2018; Stormwater Management Report and Stormwater Management Facilities Operations and Maintenance Manual prepared by Bohler Engineering dated September 2018 and December 2018 Addendum; Limited Pavement and SWM Area Evaluation dated August 15, 2018 prepared by Laurence W. Keller, P.E. of Whitestone Associates, Inc.; February 21, 2019 Acoustical Evaluation of Proposed Parking Lot prepared by Lewis S. Goodfriend and Associate; Revised Lighting Plan dated January 17, 2019 prepared by D.F. Wisotsky of Bohler Engineering consisting of one sheet; Boundary and Topographic Survey prepared by Blue Marsh Associates, Inc. dated May 18, 2018 consisting of four sheets; and Exterior Elevations of the Proposed Gatehouse dated September 20, 2018 prepared by "edm"; and

**WHEREAS**, the Applicant has provided the requisite notice to property owners and published public notice in accordance with the notice requirements of the Municipal Land Use Law and Section 424 of the Development Regulations and Zoning Ordinance of the Township of Millburn; and

**WHEREAS**, public hearings were held on the application on January 16, 2019 and on March 6, 2019; and

**WHEREAS**, the Applicant was represented by Roger Mehner Esq. and testimony was presented by Dave Fahey, a Pingry School representative, Mike Waelz, Director of Facilities at Pingry School, Steve Lydon, P.P., Brad Thompson, P.E., James Catella, P.E., and Jack Zybura, P.E.; and

**WHEREAS**, the Board having considered the testimony and reviewed the exhibits related thereto, together with the application, the Plans and all exhibits, and having heard public comment and testimony, hereby makes the following findings of fact:

1. The Property is located at 50 Country Day Drive and is formally known as Block 5005, Lot 16 on the Official Tax Map of the Township of Millburn. The Property is located in the R-4 zone district which permits single family residential dwellings. Houses of worship and public and private schools are permitted as conditional uses in the zone, subject to specific standards. The applicant meets the standards for conditional use.

2. The Property is developed with buildings and infrastructure associated with the Pingry School. The Applicant seeks to expand the parking area and meet ADA compliance, install a synthetic sports field in an area currently used as a grass sports field, create a new parking area, sidewalks, utility infrastructure, a stormwater mechanical treatment device, underground detention facilities and a guard house structure at the entry way to the site. The Applicant has requested a fence height variance from the requirements of Township Land Use Ordinance Section 609.6a whereas the maximum fence height is 6 feet, and the Applicant proposes a 10-foot fence. The Applicant has requested a waiver to allow the installation of LED lighting fixtures.

3. David Fahey, the Pingry Director of Operations testified that the Applicant desires to replace an existing grass playing field with a field of a synthetic material in order to accommodate multi season recreation for field play. No lighting is proposed for the field and no spectator stadium is proposed for the field. A ten-foot high protective netting fence is proposed to contain balls from traveling into the nearby stream and buffer area and neighboring properties. The parking area is proposed to be expanded to provide additional parking area for drop off and pick up of children. There are two buses, but most of the students are transported by their family in private cars. The new parking lot will also accommodate overflow parking for the school events.

4. Brad Thompson, P.E., of Bohler Engineering presented Exhibit A-1, which is an aerial exhibit dated July 12, 2018, showing existing conditions on site. Exhibit A-2 is a colorized rendering dated January 16, 2018 (which is Sheet C-5 of the plans submitted). Mr. Thompson described the synthetic turf field and stormwater detention system proposed. The Applicant seeks approval for a guardhouse at the entrance of the site, for future construction, as a security feature. The guardhouse would be 15 feet tall, ten feet by 12 feet in size, and the façade will be stone veneer faced, with insulated glass windows as shown on the plans entitled “Exterior Elevations” prepared by “edm” and dated September 20, 2018.

5. Mr. Thompson described the construction of the synthetic turf field below which will be a strata of sand and below that is a stormwater runoff system, which ultimately discharges to Taylor Brook. Mr. Thompson testified that the system meets State stormwater requirements. A discharge detail to Taylor Brook will be submitted to the satisfaction of the Township Engineer.

6. Mr. Thompson described that there are 71 existing parking spaces on site. The existing ADA spaces will be restriped and as a result of the restriping the Applicant will lose one space. The Applicant is increasing the total number of parking spaces by 40 spaces. A double row of evergreen trees will be planted as well as some ornamental trees in the location of the new parking area for a total of 107 new trees. Mr. Thompson testified that the species selected are drought tolerant. Sixty-four trees will be removed, which includes 17 that are dead or dying Ash trees. The Applicant has reviewed the December 11, 2018 report from the Township Forester, and agrees to replace the proposed "Thundercloud" plum trees with a species to the satisfaction of the Forester, and shall implement a deer repellent program for the newly planted trees.

7. Exhibit A-3 is a photograph of proposed fencing. Mr. Thompson testified that the photograph shows spec fencing and the actual fencing has not been selected by the Applicant. However, the fencing will be 10 feet high and consist of black netting, and the poles will be spaced farther apart than shown on A-3. In response to a public inquiry about using telescopic poles in order to lower and raise the netting, Mr. Thompson did not believe that "telescopic" poles would be sufficiently strong because the poles must be strong enough to sustain wind loads. The Applicant originally requested a waiver from the requirement of Township Ordinance to provide a Noise component of the Environmental Impact Statement, however, in response to numerous Board and public questions regarding this issue, the Applicant agreed to secure a noise report and expert for the next public hearing.

8. At the March 6, 2019 public hearing, Mr. Thomson introduced Exhibit A-4 which is the revised lighting plan dated January 17, 2019, entitled "Lighting Exhibit", Sheet 1 of 1 prepared by D.F. Wisotsky of Bohler Engineering. The lighting plan was revised by the Applicant in response to questions raised by the Board and public at the January 16 meeting regarding the location and intensity of the proposed lighting. The revised lighting plan has removed two of the proposed 15-foot high poles. The new lighting layout has a total of 26 fixtures on 23 poles, which are 15 feet tall. The 15-foot height is to allow clearance for emergency vehicles. The average light intensity proposed at the ground level is .97 FC, which complies with Ordinance Section 512.1 which permits 0.5 to 1.0 FC. The lighting intensity at the ground level is 2.8 FC, whereas Section 512.1 permits up to 10.0 FC. Therefore the plan is compliant. LED lights are proposed because they are consistent with current technology, although not permitted by Ordinance, and therefore a waiver for LED lighting is requested. The only lighting proposed for the guardhouse will be security lighting, which will only be on when needed. The Applicant agreed that the lighting which is located upon the 15-foot poles will be turned on only for evening events, and shall be turned off by 9:00 P.M.

9. James Catella, P.E. testified regarding the design and construction of the outdoor recreational field. He addressed the impact of synthetic turf on surface water and any potential negative impact to the environment. He stated that the Applicant would use cryogenic rubber

which will not migrate. He stated that based upon studies conducted by the New Jersey Department of Health and others, the proposed rubber components show no significant threat to the water quality or aquatic life from runoff from the proposed cryogenic rubber. Moreover, Mr. Catella stated that the project is also subject of review by the New Jersey Department of Environmental Protection for runoff and water quality.

10. The Applicant presented the testimony of Jack A. Zydura, P.E. of Lewis S. Goodfriend and Associates, who prepared an acoustical impact assessment of the proposed parking lot which supplements the Environmental Impact Statement dated July 2018 which was prepared by Bohler Engineering. Mr. Zydura testified that he used the Federal Transit Administration (FTA) Transit Noise and Vibration Impact Assessment Manual as a guide. Mr. Zydura reviewed the data contained within his report, and concluded that the typical operations in the proposed parking lot are expected to be within the “no impact” category of the FTA criteria for noise.

11. Steve Lydon, P.P. testified that the application meets all 12 criteria of the Conditional Use standards of R-4 zone district. He provided testimony regarding the Applicant’s request for a C-1 variance to install a 10-foot high fence. The net fence is a black fabric fence on black poles which will reduce visibility of the fence. The adjacent residential lots are deep lots, and the athletic fields will not have lighting therefore the fabric netting will be unobtrusive to residential homes. Taylor Brook is an existing topographic feature nearby the playing field, and the existing field location will not change. The proposed netting will keep the children and stray balls from entering the brook or the buffer between the residential properties. The Township fence ordinance is designed more for residential use and not school use, and there would be no detriment to permit this variance for the school athletic field given the manner in which the proposed fencing has been designed, The poles are black and will be only 4 inches in diameter, the spacing will be between 20 to 50 feet apart and there will only be between 6 to 12 poles erected. Mr. Lydon stated that the Applicant is seeking a waiver to install LED lighting, which is not permitted in the existing Township Land Use Ordinance, but which is more state of the art lighting device and the literal enforcement of the Ordinance is impractical.

12. The Fire Marshal issued a Memorandum dated December 14, 2018. It noted that the Applicant must maintain Fire Department access to all structures while undergoing construction; provide a copy of the Auto CAD final approved plans to the Fire Marshal; verify the property identification and post the identification on the property; provide automatic entry for emergency vehicles; meet the minimum turning radius and curbing requirements; and meet all Building Code and New Jersey Uniform Fire Code requirements. The Applicant agreed to comply with all of the Fire Marshal’s comments.

13. The Board is of the view that preliminary and final site plan approval should be granted, and that conditional use approval should be granted based upon the plans and testimony presented. The Board finds that the waiver for the installation of LED lights should be granted to permit the more current technology on site. The Board finds that the synthetic field will be located in an existing ball field area which is located in an area which is adjacent to a wooded buffer, Taylor Brook and deep residential back yards, and as a result of the proposed location,

the ten foot height will provide protection to retain field balls and players within the field and out of the adjacent areas, and that the proposed height is needed whereas the permitted height of 6 feet would likely be insufficient for the purpose. No lighting is proposed for the field area. The Applicant has designed the fence to utilize black poles and a fence composed of black netting so as to minimize the visual impact of the fencing thereby promoting a desirable visual environment. The location of the fencing between school use and residential use promotes the adequate development of open space and advances the general welfare of adjacent properties. The Board finds that the Municipal Land Use Law would be advanced by granting the height variance and that the benefits associated with granting the variance outweigh any detriments. Any detriment by virtue of a variance from the height restrictions is negated by the coloration of the fencing and the use of netting in order to minimize the appearance of the fence. The Board finds that by reason of the topographic conditions and physical features affecting this particular piece of property, and the current and future proposed use as a playing field, the strict application of the fence height restrictions would work a hardship upon the applicant. The Board further finds that the Municipal Land Use Law would be advanced by granting the requested variance. For the reasons set forth above, the Board finds that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

**NOW, THEREFORE, BE IT RESOLVED** that this Resolution shall serve to memorialize the action of the Planning Board of the Township of Millburn taken on March 6, 2019 granting (i) preliminary and final site plan approval for the Property; (ii) Conditional use approval; (iii) a design waiver to allow the installation of LED building mounted lights as set forth in the Plans and (iv) a variance from the requirements of Ordinance Section 609:6-A to permit the installation of a 10 foot fence, whereas a maximum of 6 feet is permitted under the ordinance; subject to the following conditions:

1. The Applicant shall comply with all applicable municipal ordinances and regulations, as well as all County, State and Federal Laws applicable to this development application.
2. The foregoing is subject to review of, approval by, and requirements imposed by such other Federal, State, County and local bodies having jurisdiction over the development.
3. The Applicant shall remit all outstanding escrow fees as requested by the Township of Millburn.
4. The Applicant shall submit applications to, and obtain approval from, the Essex County Planning Board and the Hudson-Essex-Passaic Soil Conservation District, if applicable.
5. The Applicant shall comply with all the requirements of the Township Engineer's Memorandum dated January 16, 2019. .
6. The Applicant shall comply with all the requirements of the Fire Marshal's Memorandum dated December 14, 2018.

7. The Applicant shall comply with all the requirements of the Township Forester dated December 11, 2018.

8. The lights which are mounted on the 15 foot high poles shall be turned on only for evening/night events, and shall be turned off on those evenings at 9:00 P.M.

9. The Applicant shall be bound to comply with all representations made before this Board by the Applicant, Applicant's counsel and Applicant's witnesses during the course of the public hearings on the application held on January 16, 2019 and March 6, 2019 as related to the application for relief and the same are incorporated herein and are representations upon which this Board has relied in granting the approvals set forth herein and shall be enforceable as if those representations were made conditions of this approval.

10. This Resolution is a memorializing Resolution as set forth pursuant to N.J.S.A. 40:55D-10g(2), memorializing action taken by the Board at its meeting on March 6, 2019.

I, EILEEN DAVITT, Secretary/Clerk to the Planning Board of the Township of Millburn in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the said Planning Board on the 17<sup>th</sup> day of April 2019.

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**Appl#18-016, Jonathan Gordon, 153 Highland Avenue, Short Hills**

Upon a motion made by Daniel Baer, a second by Joseph Steinberg, and with a roll-call vote as follows:

- Daniel Baer – yes
- Elaine Becker – yes
- Joseph Steinberg – yes
- Miriam Salerno – yes

the following memorializing resolution was adopted:

RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN

In the Matter of:

Jonathan Gordon  
Application #18-016  
Block 3104 Lots 2 and 3  
Minor Subdivision Approval  
E.I.S. Waiver

**WHEREAS**, Jonathan A. Gordon seeks minor subdivision approval in order to adjust an existing lot line between two neighboring single family residential properties on Lots 2 and 3 within Block 3104 on the Official Tax Map of the Township of Millburn, with street addresses of 153 and 163 Highland Avenue ("Property"); and

**WHEREAS**, the Applicant has submitted several plans and exhibits, including, without limitation, the following:  
Minor Subdivision Plat for Lot Line Adjustment, 153 and 163 Highland Avenue, consisting of three sheets, prepared by Michael T. Lanzafama, P.E., L.S., P.P. of Casey and Keller, Inc. dated 11/15/2018; and

**WHEREAS**, a public hearing was held on the application on March 20, 2019; and

**WHEREAS**, testimony was provided the Applicant, Jonathan A. Gordon and by Michael T. Lanzafama, PE, LS, PP.; and

**WHEREAS**, the Board having considered the testimony and reviewed the application, the Plans and all exhibits, hereby makes the following findings of fact:

1. The Applicant is seeking a lot line adjustment in order to adjust a lot line between two neighboring residential properties. Both properties are located within the R-3 Single Family Residential Zone. The minor subdivision would transfer 2,827 square feet of land from Block 3104, Lot 2 to Block 3104, Lot 3, and would also transfer 55 square feet of land from Lot 3 to Lot 2. No new lots are proposed to be created, and no variances are required. No new construction is proposed.

2. The subject properties are located on the western side of Highland Avenue, south of Stewart Road and north of Minnisink Road. Both lots are oversized for the R-3 zone, where the minimum required lot area is 29,000 square feet. Block 3104, Lot 2 measures 81,750 square feet in area and Block 3104, Lot 3 measures 59,035 square feet in area.



3. The existing driveway that serves Lot 3 is located near the southerly lot line that is shared with Lot 2 and at some points is located less than a foot from the shared property line. The applicant proposes to adjust the lot line such that the Lot 3 driveway would maintain a setback of at least 10.78 feet from the property line that is shared with Lot 2. Following the lot line adjustment, Lot 2 would measure 79,978 square feet (1.813 acres) and Lot 3 would measure 61,087 square feet (1.419 acres).

4. The proposed new lots would be conforming with regard to the lot area and width. Several preexisting nonconforming conditions would remain on Lot 2, including a reduced rear yard setback (68.4 feet existing, whereas 80.05 feet is required) and a reduced unoccupied rear yard (14.3% existing, 14.4% proposed, 25% required). The previous nonconformity related to the driveway setback from the adjacent lot would be eliminated as a result of the proposed minor subdivision.

5. Mr. Lanzafama testified that an existing non-conforming stone patio on the southern lot (Lot 2) would be removed as shown on Sheet 3 of the Minor Subdivision Plat dated November 15, 2018. No new construction is proposed on either lot. The minor subdivision will move the lot line so that the existing landscaping along the driveway on Lot 3 will now be within Lot 3.

6. The Applicant has requested a waiver from the requirement to submit an Environmental Impact Statement. It was noted that no new construction was proposed in connection with this application, and that both lots are already developed with single family homes and driveways. The Board finds that there is no environmental impact as a result of the proposed lot line adjustment and agrees that the Applicant shall not be required to submit an Environmental Impact Statement.

7. The Board is of the view that minor subdivision approval should be granted; and that the waiver request for the submission of an Environmental Impact Statement should likewise be granted in accordance with the requirements as set forth in this Resolution, subject to the conditions set forth below.

**NOW, THEREFORE, BE IT RESOLVED** that this Resolution shall serve to memorialize the action of the Planning Board of the Township of Millburn taken on March 20, 2019 granting (i) minor subdivision approval for the Property; and (ii) a waiver of the requirement that Applicant submit an Environmental Impact Statement; subject to the following conditions:

1. The Applicant shall comply with all applicable municipal ordinances and regulations, as well as all County, State and Federal Laws applicable to this development application.

2. The foregoing is subject to review of, approval by, and requirements imposed by such other Federal, State, County and local bodies having jurisdiction over the development.

3. The Applicant shall remit all outstanding escrow fees as requested by the Township of Millburn.

4. The Applicant shall submit applications to, and obtain approval from, the Essex County Planning Board and the Hudson-Essex-Passaic Soil Conservation District, if applicable.

5. The Applicant shall submit applications to, and obtain approval from, the Essex County Planning Board and the Hudson-Essex-Passaic Soil Conservation District, if applicable. Pursuant to N.J.S.A. 40:55D-47, the approval of a minor subdivision shall expire 190 days from the date of adoption of the Resolution of Approval, unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, or a deed clearly describing the approved minor subdivision is filed by the Applicant with the County Recording Officer, the municipal engineer and the municipal tax assessor. Any such plat or deed accepted for such filing shall have been signed by the Chairperson and Secretary or the Planning Board. Property descriptions for each of the lots shall be subject to prior approval by the Township Engineer and if Deeds are recorded, same shall be subject to prior approval by the Planning Board Attorney.

6. The Applicant shall be bound to comply with all representations made before this Board by the Applicant, and Applicant's witness during the course of the public hearing on the application held on March 20, 2019 as related to the application for relief and the same are incorporated herein and are representations upon which this Board has relied in granting the approvals set forth herein and shall be enforceable as if those representations were made conditions of this approval.

7. This Resolution is a memorializing Resolution as set forth pursuant to N.J.S.A. 40:55D-10g(2), memorializing action taken by the Board at its meeting on March 20, 2019.

I, EILEEN DAVITT, Secretary/Clerk to the Planning Board of the Township of Millburn in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the said Planning Board on the 17<sup>th</sup> day of April, 2019.

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**Appl#19-001, Jumama Culligan (Paper Ribbon & Wrap), 321 Millburn Avenue, Millburn**

Upon a motion made by Elaine Becker, a second by Joseph Steinberg, and with a roll-call vote as follows:

Daniel Baer – yes  
Elaine Becker – yes  
Joseph Steinberg – yes  
Miriam Salerno – yes

the following memorializing resolution was adopted:

RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN

In the Matter of:  
Jumana Culligan/Paper Ribbon and Wrap, LLC  
Application #19-001  
Block 702, Lot 13  
Minor Site Plan Approval

**WHEREAS**, Jumana Culligan, doing business as Paper Ribbon and Wrap, LLC ("Applicant") has made application to the Township of Millburn Planning Board for site plan approval for a change in use in an existing vacant commercial unit to permit a retail gift shop, and for the following: 1) variance relief from the requirements of Land Use Ordinance Section 670.1 whereas one loading space is required, and none are proposed, and 2) from the requirements of Land Use Ordinance Section 607.2 as no parking spaces are proposed in connection with property commonly known as 321 Millburn Avenue, and formally known as Block 702, Lot 13 on the Official Tax Map of the Township of Millburn ("Property"); and

**WHEREAS**, the Applicant has provided the requisite notice to property owners and published public notice in accordance with the notice requirements of the Municipal Land Use Law and Section 424 of the Development Regulations and Zoning Ordinance of the Township of Millburn; and

**WHEREAS**, a public hearing was held on the application on March 6, 2019; and

**WHEREAS**, the Applicant was represented by Ron Zoller, Esq., and testimony was provided by the Applicant Jumana Culligan, who is the principal of Paper Ribbon and Wrap LLC;

**WHEREAS**, the Board having considered the testimony and reviewed the application, the Plans and all exhibits, as well as professional reports from the Township Forester, Township Engineer, Township Fire Marshal, and Township Planner, hereby makes the following findings of fact:

1. The Property is located at 321 Millburn Avenue and is formally known as Block 702, Lot 13 on the Official Tax Map of the Township of Millburn. The property is located within the "B-4" Central Business Zone.

2. The Applicant is seeking site plan approval to permit a retail gift shop within an existing vacant commercial unit measuring 915 square feet. The proposed use as retail gift shop is permitted in the B-4 zone.

3. The subject property measures approximately 14,849 square feet (0.341 acres). The site has approximately 90 feet of frontage on the north side of Millburn Avenue and is located between Main Street and Lackawanna Place. The two story portion of the structure is a mixed use building that contains several first floor commercial units and second floor office space. A restaurant is located in the rear one story portion of the building. The rear of the site includes brick paved walkways that provide access to the restaurant in the rear and continue through to Essex Street to the north.

4. The Applicant proposes to lease a 915 square foot commercial unit within the two story portion of the building, which is the easternmost commercial unit per the floor plans provided by the Applicant. The retail use will consist of the sale of home goods, gifts, stationary and custom designed items. No changes are proposed to the footprint or exterior of the building. No off street parking or loading areas exist on the site, nor are any proposed. As the site is fully developed and no changes are proposed, the Applicant has requested a waiver from the requirement to provide an Environmental Impact Statement and the Board will grant that waiver.

5. Ms. Culligan testified that the shop will be open seven days per week. Deliveries to the shop are expected to come via UPS and Federal Express delivery which generally deliver during business hours, and therefore there would be no need for a designated loading dock area, and a variance is requested from this requirement because there would be no traditional " truck deliveries" which would need a loading space. There currently exists no loading dock on the site. The site is fully developed and there exists no room to create either a loading dock or parking spaces. The Applicant agrees to comply with the recommendation of the Millburn Police Department and will purchase business parking permits for employees. The Applicant has agreed to purchase permits for all employees, but not less than two. Ms. Culligan testified that she and one other employee will work at the store, and does not believe that this increases the number of employees in the unit from the last tenant. Trash would be minimal and consist generally of supplies and paper trash generated on site

6. Ms. Culligan testified that she had reviewed the Fire Marshall report dated March 1, 2019 and that she will comply with those recommendations. Ms. Culligan testified that no new signage was proposed.

7. The Board's Professional Planner, Paul A. Phillips requested plan clarifications in his March 1, 2019 review memorandum, and the Applicant has provided those clarifications, to the satisfaction of the Board and its professionals.

8. The Board finds that the site is fully developed and the site as developed leaves no room to build parking or loading spaces. The Applicant has explained that the deliveries to the proposed business will be supplies only, and will be delivered by conventional carriers, and that no large supply trucks will need to park for prolonged time to make deliveries. The

Applicant has also provided testimony that only two employees will be on site at any one time. The Applicant has also agreed to purchase two employee parking permits, and additional permits if more employees are added in the future. The Board finds that the benefits of permitting the proposed use of the now vacant unit in the building, within the B-4 Central Business zone would substantially outweigh any detriment. As a result of the small number of proposed employees and customers for this use, that deliveries are confined to supplies and will be by UPS and Federal Express, and that the Applicant has agreed to purchase business parking permits for all employees, the Board finds that a variance from the requirements of 607.1 and 607.2 can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

9. The Board is of the view that site plan approval should be granted; that the variance request from the requirements from Section 607.2 and 607.1 be granted in accordance with the requirements as set forth in this Resolution, subject to the conditions set forth below.

**NOW, THEREFORE, BE IT RESOLVED** that this Resolution shall serve to memorialize the action of the Planning Board of the Township of Millburn taken on March 6, 2019 granting site plan approval for the Property; (i) a variance from the requirement to provide a loading space and ii) a variance from the parking requirements of section 607.2q, as set forth in the Plans; subject to the following conditions:

1. The Applicant shall comply with all applicable municipal ordinances and regulations, as well as all County, State and Federal Laws applicable to this development application.

2. The foregoing is subject to review of, approval by, and requirements imposed by such other Federal, State, County and local bodies having jurisdiction over the development.

3. The Applicant shall remit all outstanding escrow fees as requested by the Township of Millburn.

4. The Applicant shall submit applications to, and obtain approval from, the Essex County Planning Board and the Hudson-Essex-Passaic Soil Conservation District, if applicable.

5. The Applicant shall purchase two business parking permits prior to commencing operations in the business location. The Applicant shall purchase an additional business parking permit for each future employee in excess of two employees.

6. The Applicant shall comply with all the requirements of the Fire Marshal's Memorandum dated March 1, 2019.

7. The Applicant shall be bound to comply with all representations made before this Board during the course of the public hearing on the application held on March 6, 2019 as related to the application for relief and the same are incorporated herein and are representations upon

which this Board has relied in granting the approvals set forth herein and shall be enforceable as if those representations were made conditions of this approval.

8. This Resolution is a memorializing Resolution as set forth pursuant to N.J.S.A.40:55D-10g(2), memorializing action taken by the Board at its meeting on March 6, 2019.

I, EILEEN DAVITT, Secretary/Clerk to the Planning Board of the Township of Millburn in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the said Planning Board on the 17<sup>TH</sup> day of April 2019.

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**Appl#19-002, EPOC Seven, LLC, 290 Millburn Avenue, Millburn**

Upon a motion made by Daniel Baer, a second by Joseph Steinberg, and with a roll-call vote as follows:

- Daniel Baer – yes
- Elaine Becker – yes
- Marc Matsil – yes
- Joseph Steinberg – yes

the following memorializing resolution was adopted:

RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN

In the Matter of:  
EPOC Seven LLC d/b/a Orangetheory Fitness  
Application #19-002  
Block 805, Lot 1  
Preliminary and Final Site Plan Approval  
Waiver for EIS  
Variance for Loading Space

**WHEREAS**, EPOC Seven LLC, d/b/a Orangetheory Fitness ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final site plan approval, and for the following: (i) a waiver of the requirement that the Applicant submit an Environmental Impact Statement and (ii) a variance from the requirement to provide a loading space in connection with property commonly known as 290 Millburn Avenue and formally

known as Block 805, Lot 1 on the Official Tax Map of the Township of Millburn ("Property"); and

**WHEREAS**, the Applicant has submitted plans and exhibits, including, without limitation, the following:

- "Preliminary and Final Major Site Plan" prepared by Michael T. Lanzafama, P.E., P.L. S., P.P. of Casey and Keller, Inc. dated February 21, 2019 and consisting of one sheet ("Plans"); and

**WHEREAS**, the Applicant has provided the requisite notice to property owners and published public notice in accordance with the notice requirements of the Municipal Land Use Law and Section 424 of the Development Regulations and Zoning Ordinance of the Township of Millburn; and

**WHEREAS**, a public hearing was held on the application on March 20, 2019; and

**WHEREAS**, the Applicant was represented by Richard Schkolnick Esq. and testimony was provided by Adam Krell, a principal of the Applicant; and

**WHEREAS**, the Board having considered the testimony and reviewed the exhibits related thereto, together with the application, the Plans and all exhibits, and hearing comment and testimony from the public, hereby makes the following findings of fact:

1. The Property is located at 290 Millburn Avenue and is formally known as Block 805, Lot 1 on the Official Tax Map of the Township of Millburn. The Property is located in the B-4 Zone. Physical Fitness Centers are a use permitted within the B-4 Zone. The Property was previously occupied by a salon, and is currently vacant.

2. The Applicant seeks approval to occupy 4,876 square feet within an existing retail building for use as a fitness studio. The subject property measures 62,429 square feet and is developed with a one story multi-tenant retail building and a rear parking area containing 109 spaces. The existing building has 19,051 square feet of leasable area divided among 6 tenant spaces with an additional 19,051 square foot basement area that is utilized for storage.

3. The Applicant's representative testified that 32 parking spaces within the rear parking area will be dedicated to this tenant. As the Ordinance does not specify a parking requirement for fitness studios, the Applicant has utilized the retail/retail service requirement of 1 space per 200 square feet, where 25 spaces would be required for the proposed use. In the event the parking lot was full, a public parking lot is nearby. The Board has reviewed the March 1, 2019 recommendation of the Police Chief which recommends that the Applicant purchase business parking permits, however the Board finds that the 32 parking spaces which have been allocated to this building tenant satisfy the parking requirements and therefore will not require the purchase of parking permits. Mr. Krell testified that the only deliveries that the facility will receive will be delivered by commercial delivery (UPS, US mail, FedEx, Amazon) and that they

do not require a loading space and none is proposed. The deliveries will consist of some articles of clothing which they sell, as well as bottled water/drinks. There is no food preparation on site. The Applicant is seeking a variance from the requirements of section 607.1 which requires a minimum of one loading space for this space.

4. No signage is proposed with this Application, and Mr. Krell testified that any signage that may be installed will be in compliance with the requirements of Section 609.10, Street Graphics, of the zoning ordinance. Mr. Krell said the trash will be collected by a commercial trash hauler.

5. The Applicant has requested a waiver from the requirement to submit an Environmental Impact Statement as no changes are proposed to the building and the Board will grant the requested waiver.

6. Mr. Krell testified that the Applicant had reviewed the March 15, 2019 report of the Township Fire Marshal and agrees to comply with those recommendations.

7. The Board finds that based upon the testimony of the Applicant that deliveries to the fitness studio will be made by commercial delivery trucks, and consist generally of packages for prepackaged drinks, clothing and miscellaneous supplies such that a loading dock would not be needed for this use. The Board finds that there is an existing parking lot to the rear of the site in which a delivery truck may park, that there is no substantial detriment to the public good, and the intent and the purpose of the zone plan will not be substantially impaired by granting a variance from the requirement to provide a loading space. As such, the Board will grant a variance from the requirements of Section 607.1.

8. The Board is of the further view that preliminary and final site plan approval should be granted; and that the waiver request for the submission of an Environmental Impact Statement should likewise be granted in accordance with the requirements as set forth in this Resolution and subject to the conditions set forth below.

**NOW, THEREFORE, BE IT RESOLVED** that this Resolution shall serve to memorialize the action of the Planning Board of the Township of Millburn taken on March 20, 2019 granting (i) preliminary and final site plan approval for the Property; (ii) a waiver of the requirement that Applicant submit an Environmental Impact Statement; and (iii) a variance from the requirements of Section 607.1, subject to the following conditions:

1. The Applicant shall comply with all applicable municipal ordinances and regulations, as well as all County, State and Federal Laws applicable to this development application.

2. The foregoing is subject to review of, approval by, and requirements imposed by such other Federal, State, County and local bodies having jurisdiction over the development.



3. The Applicant shall remit all outstanding escrow fees as requested by the Township of Millburn.

4. The Applicant shall submit applications to, and obtain approval from, the Essex County Planning Board and the Hudson-Essex-Passaic Soil Conservation District, if applicable.

5. The Applicant shall comply with all the requirements of the Fire Marshal's Memorandum dated March 15, 2019.

6. The Applicant shall be bound to comply with all representations made before this Board by the Applicant, Applicant's counsel and Applicant's witnesses during the course of the public hearing on the application held on March 20, 2019 as related to the application for relief and the same are incorporated herein and are representations upon which this Board has relied in granting the approvals set forth herein and shall be enforceable as if those representations were made conditions of this approval.

7. This Resolution is a memorializing Resolution as set forth pursuant to N.J.S.A. 40:55D-10g(2), memorializing action taken by the Board at its meeting on March 20, 2019.

I, Eileen Davitt, Secretary/Clerk to the Planning Board of the Township of Millburn in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the said Planning Board on the 17<sup>th</sup> day of April, 2019

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**APPLICATIONS**

**APPL#19-004, 188 ESSEX LLC, 184 ESSEX STREET, MILLBURN**

Anthony Cerciello, Attorney for the applicant, stated his appearance. The applicant, 188 Essex LLC, is seeking site plan approval for a change of use, conditional use approval, variance relief from the loading and parking requirements, and a waiver of the requirement to submit an EIS.

Rachel Young, owner of 188 Essex LLC, appeared and was sworn. She indicated that she is proposing to operate a ramen noodle restaurant that will serve lunch and dinner. The proposed hours of operation are 11 AM – 9:30 PM 7 days per week. She anticipates no more than 4 employees on site at any one time and the restaurant will have seating for 18 patrons. There is a dumpster on site and garbage will be picked up by a private carting company approximately 2-3 times per week.

Richard Keller, P. E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the applicant's proposal. The property is located in the B-4 zone district, which conditionally permits restaurants, provided that the closest part of the structure, exclusive of parking and loading areas, is at least 125 feet from the nearest

lot line of a single-family dwelling in a residential district. The applicant meets that requirement and therefore the Planning Board retains jurisdiction over this site plan.

Entered as A-1: aerial photo of subject area

Richard Keller spoke to exhibit A-1 which highlighted the downtown municipal parking lots. He indicated that parking lot 1, located at the intersection of Main Street and Essex Street, has 86 pay station meters that offer 3 hour parking. Parking lot 2, the parking deck located at the intersection of Essex Street and Lackawanna Place has 39 pay stations meters on the 1<sup>st</sup> level that offer 3 hour parking as well as 420 spaces that are available after 6 PM on weekdays and all day on weekends.

Richard Keller spoke to the data table and indicated that the space in question is a 1,085 SF space that will offer 18 seats for patrons. Using the 1 space/3 seats parking requirement, the applicant is required to provide 6 parking spaces for the restaurant. At 1 space per 5000 SF for storage, the basement area results in 1 additional parking space for a total of 7 required parking spaces.

Richard Futter, 335 Millburn Avenue, appeared and was sworn. He stated that he is concerned with the dumpster situation that has developed in the rear of the subject property.

Entered as O-1a/O-1h: photos of subject site

Mr. Futter stated that the dumpsters are strewn all over the property and have become unsightly. He referred to O-1b which shows large drums of grease which he feels should not be kept there. He stated that he is also concerned with the number of vehicles that park along the alley as he feels it is a safety hazard.

Joseph Steinberg indicated that he would like to see a condition of approval that prohibits all loading/unloading deliveries on the side of the building. He feels that fire lane should not be used as a loading area and should remain clear at all times.

Overall, the Board was in favor of the application.

Upon a motion made by Joseph Steinberg, a second by Daniel Baer, and with a roll-call vote as follows:

Daniel Baer – yes  
Elaine Becker – yes  
Tracy Goldenberg – yes  
Marc Matsil – yes  
Joseph Steinberg – yes  
Miriam Salerno – yes

Appl#19-004, 188 Essex LLC, 184 Essex Street, site plan approval/conditional use approval/parking and loading space variance/waiver of EIS was **GRANTED** with the following conditions: 1) the applicant shall comply with the Township Fire Marshal's recommendations; 2) the applicant shall purchase 4 municipal parking permits; 3) there shall be no loading or unloading from the alleyway.

**ADJOURNMENT**

A motion to adjourn was made by Daniel Baer, seconded by Joseph Steinberg and carried with a unanimous voice vote. (8:35 PM)

Eileen Davitt  
Board Secretary

Motion: DB  
Second: JS  
Date Adopted: 5/15/19