

Township of Millburn  
Minutes of the Planning Board  
June 19, 2019

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, June 19, 2019** at 7:30 PM in Millburn Town Hall.

Chairwoman Beth Zall 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  
Cheryl Burstein  
Dianne Eglow  
Tracy Goldenberg  
Gaston Hauptert  
Jorge Mastropietro  
Marc Matsil  
Joseph Steinberg – arrived at 8:40 PM  
Beth Zall, 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 May 1, 2019 was made by Elaine Becker, seconded by Dianne Eglow, and carried with a unanimous voice vote.

A motion to approve the minutes of May 15, 2018 was made by Dianne Eglow, seconded by Beth Zall, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Appl#19-003, TNT Fitness, 296 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  
Marc Matsil – yes  
Tracy Goldenberg – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:**

**TNT Fitness One, LLC  
Site Plan Application No. 19-003  
Block 805, Lot 2  
Preliminary and Final Site Plan Approval  
Variance and Waiver**

**WHEREAS**, TNT Fitness One, LLC ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final site plan approval; a variance from the loading space requirement; a waiver request that the Environmental Impact Statement not be submitted; and certain completeness waivers, all as set forth in the application submitted and as set forth in more detail below, in connection with the use as a fitness studio of a portion of the premises on property formally known as Block 805, Lot 2 on the Official Tax Map of the Township of Millburn ("Property") as a fitness studio; and

**WHEREAS**, the Applicant has submitted plans entitled “F45 TRAINING, 296 Millburn Avenue, Millburn, NJ 07041, Preliminary and Final Major Site Plan Approval”, prepared by Buchholz Architects, Florham Park, New Jersey, dated March 14, 2019, consisting of 2 sheets (“Plans”);

**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 May 1, 2019; and

**WHEREAS**, the Applicant was represented by John Motta, Esq. and testimony was provided by Todd Crispino, Member of Applicant; Michael Lanzafama, PE, LS, PP; and John A. Buchholz, AIA, LEED AP, Architect, all in support of the application; and

**WHEREAS**, the Board having considered the testimony offered on behalf of the Applicant and the interested parties and having reviewed the exhibits related thereto, together with the application and Plans, hereby makes the following findings of fact:

1. The Property is located at 296 Millburn Avenue, and is formally known as Block 805, Lot 2 on the Official Tax Map of the Township of Millburn. The Property is located in the B-4 Zone. The entirety of the Property measures approximately 15,255 square feet and contains a two-story mixed use retail and residential building with a rear parking area consisting of 16 spaces and a below grade garage consisting of 17 spaces. The building had been approved by the Millburn Planning Board in 2013 and at that time a variance was granted for the lack of a loading area space. There are 5 residential units on the upper floor and approximately 5,500 square feet of retail space on the ground floor. The retail space is divided into 2 tenant spaces, an area of approximately 3,000 square feet containing a children's indoor play studio known as "Busy Bee" that had been granted use and bulk variance approval by the Millburn Zoning Board of Adjustment in 2018 and the balance of approximately 2,500 square feet to be used by the Applicant. The Property is located on the south side of Millburn Avenue between Whittingham Terrace and Rawley Place. Other properties with frontage on Millburn Avenue are generally commercial or mixed use in nature. The rear parking area is accessed from Millburn Avenue via a two-way drive isle located on Block 801, Lot 1 which is utilized by this Property under a formal ingress/egress easement. Despite access being provided over the adjacent Lot 1, there is no shared parking between Block 805, Lots 1 and 2.

2. The proposed use involves an F45 training studio. The Applicant testified that F45 franchises operate in approximately 1,500 locations in 36 countries. The Applicant has a lease for the remaining approximately 2,500 square feet of retail space in which to site the training studio. The lease is contingent upon the approval of the use of the 2,500 square feet by governmental entities having jurisdiction thereover.

3. F45 training involves 45 minutes of high intensity structured training in formal classes. There are 2 instructors for each class with the average class size being 18 participants and the maximum class size being 24 participants. The hours of operation are anticipated to be 5:30 am to 8:00 pm, Monday through Friday and 7:00 am to 12:00 pm on weekends. Weekday peak times are anticipated to be in the morning between 5:30 am and 9:30 am and in the evening between 5:00 pm and 7:00 pm. On weekends there will likely be 3 or 4 classes of 45 minutes with a 15 minute interval in between each class. There are no motorized treadmills and the studio works through a monthly membership program which could involve unlimited classes during that monthly period or 8 sessions. Participants sign up and pay for classes in advance. There will be 3 employees on premises at any given time, consisting of 1 studio manager and 2 trainers per class. There is a roster of 4 to 6 trainers who will rotate to provide instructions for the classes.

4. There is no food preparation or food sales. Deliveries will be made by UPS or FedEx and will generally consist of clothing such as t-shirts, hats, yoga pants and so forth and other related merchandise, largely promoting the F45 training. It is anticipated that any such retail sales of merchandise will be ancillary and accessory to the primary training operation of the studio.

5. Refuse will be disposed of in an outside dumpster. The primary refuse will be paper towels from the bathroom facilities. Although there are 2 showers that will be located on premises, cloth towels will not be provided by the facility for the participants. There are no on-site laundry facilities.

6. There will be music that is tempoed to the particular workout. Trainers will not use microphones and the sound will be of a low/medium intensity. Because of the residential use above the ground floor training premises and the hours of operation, the Architect testified that the ceilings in this tenant space will be redone with additional sound proofing to substantially minimize any musical or other sounds from the operation of the training studio which may infiltrate the residential units above.

7. The Engineer and Planner for the Applicant noted that the original approval of this building by the Millburn Planning Board in 2013 provided for the 33 parking spaces which took into account the residential use as well as the non-residential use at ground level. There is no designated parking except to the extent that 10 of the 17 below grade spaces are reserved for the 5 residential units on the second floor and the remaining below grade spaces are to be utilized by employees from the non-residential use. The above ground 16 spaces are to be used for the balance of the parking needs for this mixed use building. He also noted that there were 31 on-street parking spaces in close proximity to the premises as well as multiple off-street public parking facilities.

8. The Engineer and Planner further testified that a variance for the lack of a loading space had been previously granted in 2013 but also testified that because of the limited deliveries that are to be made to these premises which will be done by UPS or FedEx, there was no need to create a loading space for these types of deliveries.

9. The Applicant's Architect reviewed the Plans that he had prepared and walked the Board through the floor plan for these premises, explaining in some detail the efforts that will be made to install soundproofing materials and other muffling material on the ceiling to mitigate any sounds including music from penetrating through to the residential use. The Architect also pointed out that any signage will likely be window signage and will comply with all ordinance requirements, noting that all permits needed will be obtained. The Architect also committed to providing the CAD drawings as required by the Fire Marshal and was of the view that between his testimony, that of the Engineer and of the Applicant adequately addressed the issues raised in the Board's Planner's report as well as the other reports that had been submitted. The Architect also supported the request for a waiver of the Environmental Impact Statement on the basis that there was going to be no outdoor activity or changes made and that all of the work that was being done involved the interior space that had previously received approval from the Planning Board.

10. After considering the testimony, the recommendations of the Board's Professionals, and the advice of its counsel, the Board is of the view that preliminary and final site plan approval should be granted; a waiver of the submission of various checklist items and the submission of an Environmental Impact Statement should be granted; and a variance from the need to designate a specific loading space should be granted, all 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 May 1, 2019, granting preliminary and final site plan approval for the use of approximately 2,500 square feet of retail space on the ground floor of the building located at 296 Millburn Avenue as an F45 training/fitness facility; granting a variance from the requirement that a designated loading space on-site be provided and granting a waiver of certain checklist requirements and the submission of an Environmental Impact Statement all as set forth in the application for premises know as 296 Millburn Avenue, 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 requirement 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 the requests of the Township Fire Marshal, the Township Engineer and the Township Forester in connection with the proposed use.

6. The Applicant shall be bound to comply with all representations made before this Board by the Applicant and the Applicant's witness during the course of the public hearing on the application held on May 1, 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 May 1, 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 19th day of June, 2019.

**APPLICATIONS**

**APPL#19-009, 40 E. WILLOW, LLC, 40 EAST WILLOW STREET, MILLBURN**

Michael Kaplonski, Attorney for the applicant, stated his appearance. Michael Lanzafama, P. E., P. P. CLS, appeared and was sworn. He gave a brief description of the applicant's proposal. The applicant is seeking a minor subdivision for a lot line relocation. There will be a reduction in the impervious area and there is additional landscaping proposed. As such, they are respectfully requesting a waiver from the requirement to submit an Environmental Impact Statement.

Upon a motion made by Elaine Becker, seconded by Cheryl Burstein, and with a roll-call vote as follows:

- Daniel Baer – yes
- Elaine Becker – yes
- Cheryl Burstein – yes
- Dianne Eglow – yes
- Gaston Hauptert – yes
- Jorge Mastropietro – yes
- Marc Matsil – yes
- Miriam Salerno – yes
- Beth Zall – yes

the applicant's request for a waiver of an EIS submission was approved.

Michael Kaplonski gave a brief history of the property in question. The applicant is seeking minor subdivision approval for a lot line relocation. Both lots, after subdivision, will be conforming in lot area.

Michael Kohler, CEO of StarCom Fiber, appeared and was sworn. He briefly described the nature of his business as well as the proposed improvements they intend to make to the building. They are currently located at 61 E. Willow and are eager to relocate to 40 E. Willow.

Michael Lanzafama spoke to the existing and proposed conditions of the subject properties.

- Entered as A-1: Area map
- Entered as A-2: Title & topographic survey
- Entered as A-3: Minor subdivision plat
- Entered as A-4: Site plan

Mr. Lanzafama indicated that proposed lot 5, after subdivision will have a conforming lot area of 30,000 SF. Lot 4 will have a reduction in lot area but will be conforming at 64,483 SF. Proposed lot 5 will have a lot width closer to the minimum required but will still be non-conforming at 111.5 feet where the minimum required lot width in the CMO zone is 150 feet. Due to the reduction to the area of lot 4, the lot coverage percentage increases from 82.9% to 86.3%, despite the applicant's removal of approximately 2000 SF of existing lot coverage. The applicant proposes 3 pole mounted LED lights at 20 feet and 6 wall mounted LED lights at between 9 feet and 16 feet. The applicant proposes to remove all existing pavement, curbs and concrete area from lot 5, with no new development proposed at the present time. The existing building on lot 4 will remain and the applicant proposes changes to the parking and circulation on site. The parking area will contain 32 parking spaces as well as a loading area. New security gates are proposed near the driveway entrance. Originally, the gates were proposed to extend beyond the building, thereby necessitating variance relief for front yard location. Those gates were moved back to the building line so that variance relief is no longer required.

The applicant is proposing to plant additional ornamental deciduous trees and evergreen trees along the front façade as well as shrubs and perennials adjacent to the rear building entrance from the rear parking lot.

Mr. Lanzafama indicated that there is no substantial detriment to the public good as a result of any of the variances being requested. In addition, there is no substantial impairment to the Zoning Ordinance and zone plan. He spoke to the professional reports issued in connection with the application and indicated that the applicant will comply with the requirements and recommendations as stated in the reports.

Several Board members had concerns about the increase in the percentage of lot coverage on the newly configured lot 4. They felt the applicant should consider other options in order to reduce the lot coverage further. The applicant proposed a variety of revisions to the plan that ultimately reduced the overall lot coverage to 83% from the originally proposed 86.3%.

Upon a motion made by Dianne Eglow, seconded by Dan Baer, and with a roll-call vote as follows:

- Daniel Baer – yes
- Elaine Becker – yes
- Cheryl Burstein – yes
- Dianne Eglow – yes
- Gaston Hauptert – yes
- Jorge Mastropietro – yes
- Marc Matsil – yes
- Miriam Salerno – yes
- Beth Zall – yes

Appl#19-009, 40 E. Willow, LLC, 40 E. Willow Street, minor subdivision/preliminary & final site plan/ waiver of EIS was **APPROVED**.

**BUSINESS**

\*Joseph Steinberg arrived at this time (8:40 PM).

**2018 Zoning Board of Adjustment Annual Report**

The Board briefly discussed the Zoning Board’s annual report. The Board was appreciative of the Zoning Board’s summary of applications.

\*Tracy Goldenberg left at this time (9:30).

**Ord#2537-19 Sections 301 and 606 of Development Regulations**

The Board discussed Ordinance #2537-19, which had a first reading before the Township Committee on June 18, 2019.

Upon a motion made by Cheryl Burstein, a second by Miriam Salerno, and with a roll-call vote as follows:

- Daniel Baer – yes
- Elaine Becker – yes
- Cheryl Burstein – yes
- Dianne Eglow – yes
- Gaston Hauptert – yes
- Jorge Mastropietro -- yes
- Joseph Steinberg – yes
- Miriam Salerno – yes
- Beth Zall – yes

the Planning Board recommends TC adoption of Ordinance #2537-19 as not inconsistent with the Master Plan, with the following revisions which it believes are not substantial nor change the intent or purpose of the ordinance as introduced (deletions in ~~strike through~~; additions **bold face/underlined**):

- 301.27.1 Indoor Commercial Recreation Use
- 301.60a. Site plan approval shall not be required for single-family and two-family dwellings...
- 301.60b. Building alterations and/or changes of use **and/or changes of tenancy**
- 301.60d. Delete in its entirety
- 606.6.1b3. ~~Apartments over stores~~ **Residential**, but not on ground floor
- 606.7b3 ~~Apartments over stores~~ **Residential**, but not on ground floor

Re-number/re-letter the section as appropriate due to recommended deletion of 301.60d above

The Planning Board encourages the Township Committee to consider the following issues that were raised as a result of the Planning Board's review of Ord.#2537-19:

\*The proposed increase to 40 feet/3 stories in the B-4 zone with an allowable building/lot coverage of 100% may negatively affect the residential properties that are located directly behind the B-4 zone.

\*Consider an increased front setback for 3<sup>rd</sup> stories in the B-4 zone.

\*Add a definition for "change of tenancy."

\*Consider whether there are excessive/too diverse uses in the expanded CMO zone.

### **ADJOURNMENT**

A motion to adjourn was made by Cheryl Burstein, seconded by Daniel Baer, and carried with a unanimous voice vote. (10:30 PM)

Eileen Davitt  
Board Secretary

Motion: DE  
Second: BZ  
Date Adopted: 8/14/19