

Township of Millburn
Minutes of the Planning Board
January 15, 2020

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, January 15, 2020** at 7:30 PM in Millburn Town Hall.

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

The following members were present for the meeting:

Daniel Baer
Dianne Eglow
Gaston Hauptert
Jorge Mastropietro
Marc Matsil
David Morrow
Tara Prupis
Miriam Salerno
Joseph Steinberg
Beth Zall

Also present:

Edward Buzak, Board Attorney
Eileen Davitt, Zoning Officer/Board Secretary

ORGANIZATION OF THE BOARD

Eileen Davitt asked for a nomination for Chairman of the Planning Board.

A motion to nominate Beth Zall for Chairwoman was made by Joseph Steinberg, seconded by Marc Matsil, and carried with a roll-call vote as follows:

Daniel Baer – yes
Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
David Morrow –yes
Tara Prupis – yes
Joseph Steinberg – yes
Miriam Salerno – yes

The meeting was turned over to Chairwoman Beth Zall who nominated Miriam Salerno for Vice Chairwoman. A second was made by Dianne Eglow and the motion carried with a roll-call vote as follows:

Daniel Baer – yes
Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
David Morrow – yes
Tara Prupis – yes
Joseph Steinberg – yes
Beth Zall – yes

A motion to appoint Edward Buzak as Board Attorney was made by Beth Zall, seconded by Joseph Steinberg, and carried with the following roll-call vote:

Daniel Baer – yes
Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Tara Prupis – yes
Joseph Steinberg – yes
Miriam Salerno – yes
Beth Zall – yes

A motion to appoint Eileen Davitt as Board Secretary was made by Beth Zall, seconded by Miriam Salerno, and carried with the following roll-call vote:

Daniel Baer – yes
Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Tara Prupis – yes
Joseph Steinberg – yes
Miriam Salerno – yes
Beth Zall – yes

*Joseph Steinberg recused and left the meeting.

APPROVAL OF MINUTES

The approval of the minutes of December 4, 2019 was tabled to the February 5, 2020 agenda.

A motion to approve the minutes of December 18, 2019 was made by Miriam Salerno, seconded by Dianne Eglow, and carried with a unanimous voice vote.

MEMORIALIZATIONS

App#19-017, Kings Supermarkets, 778 Morris Turnpike, Short Hills

Upon a motion made by Dianne Eglow, a second by David Morrow, and with a roll-call vote as follows:

- Daniel Baer – yes
- Dianne Eglow – yes
- Gaston Hauptert – yes
- Jorge Mastropietro – yes
- Marc Matsil – yes
- David Morrow – yes
- Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION
PLANNING BOARD
TOWNSHIP OF MILLBURN**

In the Matter of:

**Kings Super Market, Inc.
Application #19-017
Block 1904, Lot 105
Amendment to Condition in Prior Approval**

WHEREAS, Kings Super Market, Inc. ("Applicant") has made application to the Township of Millburn Planning Board ("Board") for the amendment of a condition of site plan approval for Block 1904, Lot 105 on the Official Tax Map of the Township of Millburn, New Jersey, commonly known as 778-800 Morris Turnpike ("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 December 4, 2019; and

WHEREAS, the Applicant was represented by Anthony Cerciello, Esq., and testimony was provided by Frank Cardoso, Store Manager; and

WHEREAS, the Board having considered the testimony and reviewed the exhibits and reports related thereto, together with the application, hereby makes the following findings of fact:

1. The Property is commonly known as Kings Super Market and is located at 778-800 Morris Turnpike, and is formally known as Block 1904, Lot 105 on the Official Tax Map of the Township of Millburn. By resolution dated November 16, 1983, the Board approved a site plan application for the Applicant for the construction of a Kings Super Market, which resolution contained multiple conditions, among them a condition in Paragraph F 10 prohibiting storing, on a 24 hour basis, refrigerated and non-refrigerated trailers in the loading area located behind the store for product inventory.

2. Based upon the record and previous Resolutions, the Board has considered and granted various exceptions to this condition. The most recent exception granted by the Board was by Resolution adopted August 20, 2014, wherein the Board granted an exception to include the storage of three (3) refrigerated (electric) trailers in the rear of the building from November 15 through January 15 each year for a five year period expiring January 16, 2019, subject to a variety of requirements.

3. In the current application the Applicant seeks the following alternative relief (a) the elimination of Condition F 10 from the November 16, 1983 Resolution; (b) the amendment of Condition F 10 to permit two (2) refrigerated trailers in the loading area on a 24 hour per day basis from November 15 through January 15 each year; or (c) an exception to Condition F 10 to permit two (2) refrigerated trailers in the loading area on a 24 hour per day basis from November 15 through January 15 for a reasonable number of years.

4. Testimony was provided by Frank Cardoso, the Store Manager for just over four years. He stated that Kings had been in Millburn for 36 years. He testified that there was insufficient storage space within the premises during the holiday peak season to store various seasonal food products, particularly during the period of November 15 through January 15. That continual annual situation can be remedied in a variety of ways other than with storage trailers on site. For example, in-lieu-of the parking of the trailers in the rear of the Property, the products could be stored off-site and delivered on a more frequent basis to the store, or additional retail space could be rented either on-site or nearby to be utilized for such storage. Mr. Cardoso indicated that there was an attempt to utilize all or a portion of the vacant Walgreen's Drug

Store, but the same did not ultimately work out. While more frequent deliveries of products could be made to the store to maintain adequate supplies of food products during this peak seasonal time, the frequency of such deliveries would create significantly more truck traffic on-site than is currently experienced, leaving the preferable alternative the temporary storage of such products in temporary trailers parked on a 24 hour per day basis at the rear of the store during this peak season.

5. The trailers are refrigerated through electrical means so their operation does not involve the continual running of truck motors or outside motors to maintain the proper temperature for the refrigerated units.

6. Currently, the Applicant seeks permission to allow for no more than two (2) refrigerated trailers to be parked on-site, either at all times, or during the period November 15 through January 15 prospectively, or between November 15 and January 15 for a reasonable number of years prospectively. Products stored in these trailers include pies, turkeys, hams, holiday baked goods, and so forth. The products are accessed through the store loading docks which have access directly to the refrigerated trailer from the inside.

7. Of the alternative relief sought by the Applicant, the Board was of the view, based upon the testimony, that granting relief from the condition to allow the storage of two (2) refrigerated trailers from November 15 through January 15, for a period ending January 16, 2026 would be appropriate. In that way, the impact of the trailers can be revisited by the Board to ensure that the same are being operated and utilized in accordance with the representations made by the Applicant and further, that there is no unanticipated or unintended consequence as a result of allowing the relief sought.

NOW, THEREFORE, BE IT RESOLVED that this Resolution shall serve to memorialize the action of the Planning Board of the Township of Millburn on December 4, 2019, granting an exception to Condition F 10 of the original Resolution adopted on November 16, 1983 to permit the location of two (2) refrigerated trailers in the loading area in the rear of the building on a 24-hour per day basis from November 15 through January 15, retroactive to November 15, 2019 and ending on January 16, 2026, subject to the following conditions:

1. The refrigeration units shall be electrically powered with the electrical supply inside the building.
2. The property around the trailer storage area shall be kept in a neat and clean condition.
3. The Applicant shall continue to maintain the landscaping and fencing as well as the buffer area on the Property.
4. The Applicant shall comply with all municipal ordinances and regulations, as well as all County, State and Federal Laws applicable to this application.

5. The foregoing approval is subject to the review and approval and requirements of such other Federal, State, County and local bodies that have jurisdiction over the project.
6. The Applicant shall remit all outstanding escrow fees as requested by the Township of Millburn.
7. Except as otherwise provided in this Resolution, or except where inconsistent with the terms and conditions of this Resolution, the Applicant shall comply with all conditions of all previous approvals and amendments thereto and the same are hereby incorporated herein.
8. The Applicant shall be bound to comply with all representations made before this Board by the Applicant and Applicant's witnesses during the course of the public hearing on the application held on December 4, 2019 as related to the application 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.
9. 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 December 4, 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 15th day of January, 2020.

APPLICATIONS

APPL#19-016, 40 E. WILLOW, LLC, 30 E. WILLOW STREET, MILLBURN

Michael Kaplonski, attorney for the applicant, stated that the applicant's Engineer was unable to attend tonight's hearing and respectfully requested that the matter be carried to the next available agenda.

A motion to carry the application to the February 5, 2020 agenda was made by Beth Zall, seconded by Jorge Mastropietro, and carried with a unanimous roll-call vote.

Board Attorney, Ed Buzak, announced that Appl#19-016, 40 E. Willow, LLC, was carried to February 5, 2020 with no new notice required.

BUSINESS

Michael Kaplonski, Attorney for 40 E. Willow, LLC, stated that his client received minor subdivision approval by this Board on June 19, 2019, with memorializing resolution dated July 17, 2019. Mr. Kaplonski indicated that several changes were made to the deed, at the suggestion of the Board Attorney. As a result, Mr. Kaplonski is requesting an extension of the 190-day time to file. The 190-day period is set to expire on January 23, 2020 and Mr. Kaplonski is asking the Board for an extension of the 190-day period to expire on February 28, 2020.

A motion to grant the applicant's request for an extension of time to file the minor subdivision deed to February 28, 2020 was made by Beth Zall, seconded by Miriam Salerno, and carried with a unanimous roll-call vote.

ADJOURNMENT

A motion to adjourn was made by Dianne Eglow, seconded by Beth Zall, and carried with a unanimous voice vote. (7:45 PM)

Eileen Davitt
Board Secretary

Motion: MS
Second: DE
Date Adopted: 2/5/2020