

Township of Millburn  
Minutes of the Planning Board  
March 2, 2022

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, March 2, 2022** at 7:30 PM via Zoom webinar.

Chairwoman Beth Zall opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Gaston Hauptert  
Marc Matsil  
Maggee Miggins  
Sujatha Shanmugasundaram  
Dianne Thall Eglow  
Debra Nevas  
Daniel Baer, Vice Chairman  
Beth Zall, Chairwoman

Also present:

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

**APPROVAL OF MINUTES**

A motion to approve the minutes of January 19, 2022, was made by Maggee Miggins, seconded by Gaston Hauptert, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**App#21-007, Essex 281, LLC, 378-380 Millburn Avenue**

Upon a motion made by Beth Zall, seconded by Dianne Thall Eglow, and with a roll-call vote as follows:

Gaston Hauptert – yes  
Marc Matsil – yes  
Maggee Miggins – yes  
Debra Nevas – yes

Sugatha Shanmugasundaram – yes  
Dianne Thall Eglow – yes  
Daniel Baer – yes  
Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

In the Matter of:

Essex 281, LLC  
Application #21-007  
378-380 Millburn Avenue  
Block 801, Lots 6 & 7  
Preliminary and Final Major Site Plan Approval  
Parking, Signage Variances  
Design Waivers

**WHEREAS**, Essex 281 LLC ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final major site plan approval, variance relief for the number of parking spaces and certain signage, as well as certain site plan checklist and design waivers as set forth in more detail below, in connection with the development of a mixed-use building containing retail space, office space, and residential units, at premises commonly known as 378 -380 Millburn Avenue, Millburn, New Jersey, and formally known as Block 801, Lots 6 and 7 on the Official Tax Map of the Township of Millburn ("Property"); and

**WHEREAS**, the Applicant has submitted the following plans and designs: (i) "Preliminary and Final Site Plan, 378-380 Millburn Avenue, Tax Lot 6 & 7, Block 801", prepared by Casey and Keller, Inc. dated 11/4/21, consisting of nine sheets (the "Plans"); and (ii) "378-380 Millburn Avenue Mixed Use Project" architectural plans, prepared by Nancy Dougherty, AIA, of Studio 1200, LLC dated 11/4/21, consisting of eight sheets A-1 to A-8 (the "Architectural Plans"); (iii) Environmental Impact Assessment Statement ("EIS") dated 12/20/21 prepared by Casey and Keller, Inc.; (iv) Storm Water Management Report dated 11/4/21 prepared by Casey and Keller, Inc.; (v) Parking Evaluation report dated 12/22/21 prepared by Harold K. Maltz, P.E., of Hamal Associates, Inc.; 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 as modified for the purposes of conducting the meeting remotely through the Zoom platform wherein members of the public were able to participate by joining the meeting utilizing

the invitational link set forth in the notice or by telephone using the invitational telephone number as set forth in the notice; and

**WHEREAS**, public hearings were held on the application on January 5, 2022 and February 16, 2022; and

**WHEREAS**, at the hearing the Applicant was represented by Anthony Cerciello, Esq., and testimony in support of the application was provided by Nancy Dougherty, AIA (Architect); Richard Keller, P.E., P.P., . (Site Plan Engineer/Planner); and Harold K. Maltz, P.E., . (Traffic Engineer); and

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

1. The Property is commonly known as 378 Millburn Avenue and 380 Millburn Avenue, Millburn, New Jersey, and formally known as Block 801, Tax Lots 6 & 7 on the Official Tax Map of the Township of Millburn. Lot 6 and Lot 7 consist of approximately 7,013 sq. ft. and 3,615 sq. ft., respectively, for a total approximate site area of 10,628 sq. ft.

2. The Applicant's Engineer/Planner, Richard Keller, P.E., P.P., utilized the Plans to give an overview of the Property's existing conditions. Mr. Keller noted that the site is approximately .24 acres, is relatively level and is not impacted by steep slopes, wetlands, riparian zones, or flood zones. The Property was previously developed but the structures and improvements thereon have since been demolished except for a portion of the existing driveway on Lot 6. The Property therefore is essentially a vacant site located in the Township's B-4 Central Business Zone in the western area of downtown Millburn. It is bound by small businesses to the west, an indoor swimming center to the south, the School House Plaza office building to the east, and a municipal parking across Millburn Avenue to the north. The Millburn Train Station is nearby, approximately 1,700 sq. ft. away from the site.

3. The Applicant is seeking preliminary and final major site plan approval to consolidate Lots 6 and 7 into one lot and construct thereon a 3-story building with 2 retail spaces on the first floor, 3 office spaces on the second floor, and 3 residential apartments on the third floor. The Applicant proposes to provide 10 parking spaces (one of which is ADA accessible) in the rear of the building. The building will overhang a driveway providing access to the rear parking lot via the existing driveway curb cut.

4. The B-4 Central Business District Zone permits retail sales and services use, residential use provided same is not on the ground floor, and office use provided same is not on street-floor level. The Applicant's proposal, which contemplates ground level retail sales and services, residential units on the third floor, and offices on the second floor, complies with use requirements for the district. However, the project requires variance relief from the Township Development Regulations and Zoning Ordinance ("DRZ") for the following:

(i) Number of off-street parking spaces: 10 proposed whereas 32 are required under DRZ Section 607.2; and

(ii) Signage – Wall Graphic mounted height: 35 sq. ft. building name sign proposed to be mounted over the driveway and above the second-floor line, which is not permitted under DRZ Section 606.10(d)(4)(b).

The Applicant also initially sought variance relief for a building directory sign proposed to be mounted on the west driveway elevation under the overhanging portion of the building. However, said variance request was subsequently withdrawn as it was represented that the Applicant no longer intends to install the directory sign.

5. In addition, the Applicant seeks design waiver relief for its project, as follows:

(i) Handicapped Accessible Parking Space Dimensions: 18' wide x 19' long space proposed, whereas minimum dimension of 12' wide by 20' long is required under DRZ Section 516.5(c);

(ii) Off-street Loading Space: A loading space is proposed to be provided within the footprint of the driveway egress lane with a vertical clearance of 12.5', a length of 45' and a width of 11', whereas a minimum vertical clearance of 15' and a minimum length of 60' are required under DRZ Sections 516.5(b) and 516.5(b)(1), respectively;

(iii) Tree Replacement: There are 8 existing trees on the Property ranging from 5" to 33" in diameter. Trees greater than 10" in diameter require replacement tree plantings or a payment to the Township of \$250 per required replacement tree under DRZ Section 11.15(b), whereas the Applicant proposes no replacement trees nor payment to the Township; and

(iv) Lighting: An average footcandle level of 1.6 footcandle is proposed, whereas an average sustained footcandle level of 0.5 – 1.0 footcandles is required in the B-4 Zone under DRZ Section 512.1(a).

6. Applicant's Architect, Nancy Dougherty, AIA, testified that the project site was treated as an infill development whereby the proposed mixed-use building was designed to fit within the context of the existing neighborhood and to reinforce the pedestrian scale and walkability of same. Her aim was to create a building with a timeless but modern look, and at a height proportionate to surrounding structures to respect the scale and rhythm of the downtown area. The existing driveway on Lot 6 will be maintained so as not to impact current traffic circulation. To provide context for the Property and its location, Ms. Dougherty presented two "street view" photos of same from the south and north sides of Millburn Avenue which were marked as Exhibits A-1 and A-2, respectively. She noted the general streetscape, drawing attention to building fronts, heights and materials, cornice lines, and lighting, all of which she stated were considered in designing the subject mixed-use building.

7. Next, Applicant's Architect presented the Architectural Plans. Sheet A-1 was shown to depict the proposed Ground Floor Plan, and was marked as Exhibit A-3. Two retail spaces each with an individual front entrance will occupy the first floor, the easterly space consisting of 1,199 sq. ft., and the westerly space 1,399 sq. ft. Behind the easterly retail space is a residential lobby with two ingress/egress doors – one to the east and a second to the south that leads to the rear parking area – and an interior door that provides access to an adjacent stairwell that leads to upper floors. There is also an elevator, small storage/package room, and a refuse room. Behind the westerly retail space in the southern corner of the building is another stairwell to the upper floors, a meter room, a small bike-storage room, and a second refuse room. The ground floor will have a total building square footage of 3,792 sq. ft. The building will be constructed on grade, with no basement. To the rear of the building is a 10-space parking area, which will be accessible from the existing driveway off of Millburn Avenue. A line of bollards will run along the rear of the building to protect same from vehicles utilizing the parking lot. A side alleyway runs along the westerly side of the building, which will allow access to the small alcove that will house exterior gas meters.

8. The proposed Second Floor Plan was shown on Sheet-2 of the Architectural Plans, which was marked as Exhibit A-4. The Applicant's Architect stated that there will be three separate office spaces. Office space #1 will consist of 1,282 sq. ft. and be constructed over the existing driveway access on the easterly side of the Property thereby creating a "covered" driveway. There will be a 13 ft. clearance between the driveway and the building overhang. The office space will have a width of 28 ft. 8 inches and a length of 48 ft. 6 inches. Office spaces #2 and #3 will be located above the easterly and westerly retail spaces, and measure 1,277 sq. ft. and 1,385 sq. ft., respectively. Behind the two office spaces will be the afore-referenced elevator and two stairwells. There will also be two small utility rooms, a janitor's closet and shared restrooms. Office spaces #2 and #3 will extend 6 ft. further out into the Millburn Avenue frontage than Office #1, creating a 6 ft. setback on the portion of the building that overhangs the access driveway to the rear parking lot.

9. The proposed Third Floor Plan was shown in Sheet A-3 of the Architectural Plans, and marked as Exhibit A-5. The third floor contains three apartments, each with two bedrooms, two bathrooms, a den/office space, and an outdoor space. The den/office space will not contain a closet. The units range from 1,200 to 1,300 sq. ft. The easterly apartment will have both a front balcony facing Millburn Avenue accessible from the master bedroom and living room, and a terrace off of the kitchen that faces east. The center and westerly apartments will have front terraces that face Millburn Avenue. The three apartments will be accessible by the afore-referenced rear elevator and stairwells.

10. The Applicant's Architect also presented the proposed Roof Plan, Sheet A-4 of the Architectural Plans, which was marked as Exhibit A-6. Five (5) HVAC units will be located on the roof which will be enclosed with mechanical screening (5 ft. above roof level) in the same color as the upper portion of the mixed-use building. There is also an elevator overrun and a roof hatch. Ms. Dougherty testified the roof will be of a reflective material, which is recommended for sustainability. There will be no tenant access to the roof.

11. Next, the Applicant's Architect introduced into evidence a color rendering of the proposed mixed-use building, dated January 1, 2022, which was marked as Exhibit A-7. Ms. Dougherty utilized same to show that the lower portion of the building will employ cement stucco panels that come up to the terraces of the center and westerly apartment units and wrap around 6 ft. on the western side of the building. After 6 ft. and into the rear of the building, only stucco will be used, not stucco panels. The Board Planner noted that if stucco will be employed that the Applicant use only true concrete stucco materials. The infill between the stucco panels on the front façade are Azek panels with double-hung windows with traditional lights in them at the top. Planters are also proposed in front of the retail spaces to add some greenery. Ms. Dougherty testified that the aforesaid design, which is also shown in the exterior building elevations in Sheets A-5 and A-6 of the Architectural Plans, in her view aligns with the existing Millburn Avenue streetscape. On questioning by a Board member as to whether LEED certification will be obtained, she replied that the intention is to provide the highest efficiency building without going through the LEED process. Ms. Dougherty further stated that the height of the mixed-use building to the top of the roof parapet will be 40 ft., as calculated from the average grade of the site. As such, she noted that same will comply with the Zone criteria's maximum allowable building height. Richard Keller, P.E., P.P., the Applicant's Engineer/Planner, also confirmed during his testimony that the building height will not exceed 40 ft. He explained that any discrepancy in the Architectural Plans where heights are shown in excess of 40 ft. is because under the Township Ordinances, building height is measured from the average grade of the site and the west side of the Property grades slightly higher than the east side.

12. With regard to signage, three (3) building-mounted signs are proposed for the project: two (2) retail storefront signs and one (1) building name sign. As was illustrated in the building elevations and details in Sheets A-5 and A-8 of the Architectural Plans, the retail signs will each have a panel area of 20 sq. ft., a letter height of 12", and mounted above the retail entrances at a height of 12' 3". The more prominent building name sign will be located on the easterly overhang portion of the building above the entrance driveway at a height of 15' 10", and will have a 35 sq. ft. panel area and 18" lettering. The mounted height of said sign will extend 10" above the second-floor line, and thus require variance relief.

13. In support of the requested variance for the (easterly) building sign to be mounted above the second floor line, the Applicant's Planner/Engineer, Richard Keller, P.E., P.P., opined that the criteria for the flexible "c" variance was met [N.J.S.A. 40:55D-70c(2)]. With regard to the positive criteria, he testified that the proposed height of the building sign slightly into the second-floor level advances various purposes of the Municipal Land Use Law, specifically N.J.S.A. 40:55D-2a which purpose is to encourage municipal action to guide the appropriate use of development of lands in a manner which promotes the public health, safety, morals and general welfare, and subsection -2i which purpose is to promote a desirable visual environmental through creative development techniques and good civic design and arrangement. Mr. Keller indicated that the sign cannot be placed any lower due to the design of the easterly portion of the mixed-use building that covers the entrance driveway and the need to maintain the 13 ft. clearance between the driveway and the second floor. The Planner/Engineer stated that the slightly elevated building sign presents a logical distinction between same and the two first-floor

retail signs, and because it will sit back on 6 ft. massing will indicate that the office/residential portion of the building is separate from the retail portion of the building. With regard to the negative criteria, Mr. Keller stated that there would be no substantial detriment to the public good nor any substantial impairment of the Zoning Ordinance or Zone Plan by virtue of granting the variance because the building sign as proposed to be located would be discrete, in a place that is architecturally appropriate, and aid visitors in easily identifying the main building office and residential apartments. Moreover, the Applicant's Planner/Engineer referenced multiple goals and objectives enumerated in the Township's Master Plan as well as the Township's 2021 Vision Plan which will be advanced by virtue of the proposed development which incorporates residential, retail and office uses, and the granting of the requested sign variance. Said goals and objectives include promoting opportunities for high quality retail and commercial activity in all business districts; maintaining a pedestrian scale in all appropriate business districts; leveraging opportunities for new commercial development or redevelopment of existing properties where appropriate; strengthening existing business centers including the Downtown core; maintaining and enhancing business vitality; meeting the unmet demand for downtown retail sectors; and growing the Township's downtown retail area. During the course of discussions about proposed signage, the Board noted the absence in the Plans of a street number for the proposed mixed-use building. The Applicant therefore was directed to include a clearly visible street name and number for the building.

14. For lighting, four sconces will be located at the front of the building by the first-floor retail space entrances. Six additional smaller down-lit sconces will run along the top of the building, and likewise be focused on the face of the building. The Architect for the Applicant testified that the lighting on the front of the building would be on from dusk to dawn, 6PM to 6AM, and the two ceiling-mounted down lights beneath the easterly portion of the building overhang illuminating the covered driveway would stay on 24 hours for security purposes. The pole lights in the parking lot will be on at full power until about 11 PM and then will go to a lower level. However, they will also be on motion sensors so that if someone comes into the parking lot at night they will go back on.

15. The Applicant's Engineer/Planner Richard Keller, P.E., P.P., referred to Sheet 5 of the Plans to show a photometric plan with illumination levels and uniformity ratios. All parameters conform with the Township's DRZ Ordinance Section 512, with the exception of the light intensity average for the rear parking lot and security lights, which will exceed the maximum allowable by 0.6 foot candles (1.6 foot candles average is proposed, whereas 0.5 – 1.0 footcandle average required). Mr. Keller opined that a design waiver for said exceedance should be granted as the proposed 1.6 footcandles average will provide uniformity of light intensity across the site, and the Applicant's proposed 3.2 footcandles maximum is well under the 10.0 footcandle maximum permitted in the B-4 Central Business Zone. He indicated that the exceedance is due primarily to the illumination levels in the easterly building canopy, which in his view is appropriate given that the main building entrance is in that area. Mr. Keller further noted that existing landscaping along the property boundary line will capture and contain much of the illumination and therefore there will be minimal light spillage onto the adjacent driveway.

16. With regard to landscaping, the Applicant's Architect stated that the existing street tree along Millburn Avenue will be retained. As for screening the eastern side of the rear parking lot from the Millburn Avenue frontage, Ms. Dougherty noted that there is existing and mature landscaping on the adjacent parcel to the east, which she anticipated will adequately limit the view of the parking lot from Millburn Avenue. However, the Board Planner commented that any existing vegetation on the adjoining parcel is not under the Applicant's control. He therefore directed the Applicant to install landscaping or other buffering on its own site along the easterly property line, such as between the columns supporting the building overhang over the access driveway, to screen the easterly portion of the rear parking lot from Millburn Avenue. In response to the Board Planner's input, the Applicant's Engineer/Planner represented that the Applicant will work with the Township Forester to install appropriate and sufficient screening.

17. With regard to the requested design waiver for tree replacement, the Engineer/Planner for the Applicant testified that all trees on the Property were exempted from a replacement requirement under the demolition permit previously obtained for the site. The Applicant accordingly does not propose any replacement trees or payment to the Township Tree Replacement Fund. Nonetheless, Mr. Keller represented that in addition to maintaining the existing single shade tree along Millburn Avenue, the Applicant will install a new street tree such that there will be two street trees in front of the mixed-use building.

18. The Engineer/Planner for the Applicant testified that the proposed 5,512 sq. ft. mixed-use building and 4,438 sq. ft. of rear parking area will increase the impervious coverage on the site by 2,794 sq. ft. Said increase in site coverage requires the construction of a stormwater management system under the Township's DRZ. The Applicant therefore will install a stormwater detention system for the project. Mr. Keller noted that stormwater runoff on the site currently either migrates toward Millburn Avenue or towards the adjacent parcel to the east. There is a trench drain across the existing driveway on the site that is connected to the public storm sewer system in Millburn Avenue. Said trench drain will remain in place. The proposed detention system will consist of four 30" diameter, 80 ft. long, perforated HDPE pipes in a large gravel filled trench that will collect stormwater from the rear parking area as well as the building roof leaders. The outlet control on the detention system will allow the overflow of water to be routed through the existing trench drain and into the Millburn Avenue storm sewer system. The capacity of the proposed system meets the requirements of the Township's DRZ Ordinance. Mr. Keller further stated that the stormwater management analysis undertaken for the project demonstrates that the post-development peak runoff rates from the site will be significantly reduced for the 2-, 10- and 100- year storms, which satisfies the requirements of the NJDEP, although the Applicant was not required to meet said NJDEP standards since the project is not by definition a major development. The Township Engineer concurred with the aforesaid testimony given by Mr. Keller and with the proposed design for stormwater detention. She noted that the existing trench drain that will be utilized for overflow from the detention system is in good repair but is clogged with debris, and therefore said drain should be cleared. The Township Engineer further recommended that a soil percolation test be conducted to confirm the assumption made in the Applicant's stormwater report that the infiltration rate is 0.5 inches/hour.

19. The rear ground level parking lot is proposed to consist of 10 parking spaces, including 1 ADA accessible space. There will be 3 electric vehicle charging stations that will provide charging capability for 6 vehicles. The Applicant's Engineer/Planner, Richard Keller, P.E., P.P., testified that three parking spaces will be assigned to the apartment units; two spaces will be assigned to each of the three office spaces (for a total of 6 parking spaces); and one parking space would remain open. The parking lot will not be open to the general public. There will be lift arm gates at the driveway access that will be operated by key fob and code pads. The Board Planner recommended that the lift arm gates be connected to the proposed building's fire system so that the gates automatically raise during a fire emergency. The Board Planner further noted that the Applicant should provide wheel stops or another mechanism to protect the electrical vehicle charging stations. The Applicant's Engineer/Planner replied that either a wheel stop or a bollard would be installed for each electrical vehicle charging station.

Pursuant to Section 607.2 of the Township's DRZ Ordinance, the minimum required parking for Applicant's proposed mixed-use building's retail, office and residential uses is 35 spaces (retail: 13 spaces; office: 16 spaces; residential: 6 spaces). However, under State Law P.L. 2021, c. 171, "[a] parking space prepared with electric vehicle supply equipment or Make-Ready equipment... shall count as at least two parking spaces for the purpose of complying with a minimum parking space requirement. This subsection shall result in a reduction of no more than 10% of the total required parking." The Applicant's Engineer/Planner noted that the installation of the 3 electric vehicle charging stations therefore reduces the parking requirement for the proposed project by 3 spaces, to 32 parking spaces. The Board Planner concurred.

The Board noted that the calculation of the 32-parking space requirement for Applicant's project is based in part on proposed retail uses whereby for retail up to 25,000 sq. ft. one parking space is required for every 200 sq. ft. of gross floor area. Therefore, should there be any future change in the permitted uses from the proposed retail uses that under the Township's DRZ would generate parking in excess of 1 parking space per 200 sq. ft., the Applicant would be required to return to the Board to seek approval for same.

20. In support of the parking variance to allow for 10 spaces when 32 spaces are required, the Applicant presented testimony by both its Traffic Engineer, Harold K. Maltz, P.E., and its Planner/Site Engineer, Richard Keller, P.E., P.P. Mr. Maltz, referring to the Parking Evaluation report dated 12/22/21 that he had prepared on the subject application, opined that a variance for the 22-parking space shortfall should be granted because said shortfall can be more than adequately accommodated by nearby, localized parking areas. He testified that he performed parking occupancy surveys of the municipal on and off-street parking (permit and non-permit) within a defined and reasonable walking distance of the Property. The surveys were performed on November 18, 2021 and on November 20, 2021. Parking areas near the site that were studied included: (a) Millburn Avenue from Douglas Street to Main Street; (b) Municipal Lot #4 (Taylor Street); (c) Municipal Lot #5 (east side of Municipal building); (d) Municipal Lot #6 (west side of Municipal building); (e) one-way drive on west side of Municipal building between Essex Street and Millburn Avenue; (f) Spring Street west side between Millburn Avenue and Taylor Street; and (g) Spring Street east side between Millburn Avenue and Essex Street. The Traffic Engineer stated that the results of the parking occupancy surveys indicate

that the total municipal on-street and parking lot spaces within the survey area are 215 spaces (221 spaces after 6pm) Monday through Friday, and 224 spaces on Saturday. In short, Mr. Maltz opined that based on the surveys and analyses performed, the 22-parking space variance required for the proposed mixed-use building site is more than adequately accommodated by the nearby, vacant on and off-street municipal parking in the survey area. Furthermore, the surveys of the localized parking areas, which showed an excess of 100 vacant spaces during all time periods, alone had more than sufficient vacant parking spaces to satisfy the 22 parking space variance. Additionally, the permit only parking in Municipal Parking Lots #4 and #6 had more vacant spaces available in all time periods than the parking variance requires. Mr. Maltz further noted that the calculation of the Property's 32 parking space requirement did not even reflect any reduction for use of the nearby Millburn train station.

The Applicant's Planner/Site Engineer, Richard Keller, P.E., P.P., testified that he was of the view that the "c(1)" criteria [N.J.S.A. 40:55D-70c(1)] for variance relief for the proposed 22 parking space deficiency was satisfied because the Property has a relatively small lot size that cannot accommodate the 32 parking spaces required under the Township's DRZ Ordinance. He stated that the project is an in-fill development on a site that simply is not large enough to contain both a viable building and all the required parking. Citing the prior testimony given by Mr. Maltz, Mr. Keller further opined that variance relief is warranted under the "flexible c" [N.J.S.A. 40:55D-70 c (2)] criteria because the purposes of the MLUL would be advanced by the subject application and the benefits of granting a deviation for the number of parking spaces substantially outweighs any detriment. With regard to the positive criteria, he testified that the proposed mixed-use building project as an in-fill development consisting of three different uses (retail, office, and residential) comports with the purposes of the Municipal Land Use Law, specifically N.J.S.A. 40:55D-2a which purpose is to encourage municipal action to guide the appropriate use of development of lands in a manner which promotes the public health, safety, morals and general welfare; subsection -2e which purpose is to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; subsection -2(g) which purpose is to provide sufficient space in appropriate locations for a variety of uses; and subsection -2i which purpose is to promote a desirable visual environmental through creative development techniques and good civic design and arrangement. With regard to the negative criteria, Mr. Keller stated that there would be no substantial detriment to the public good nor any substantial impairment of the Zoning Ordinance or Zone Plan by virtue of granting the parking variance. To the contrary, the proposed project will serve as a benefit with a new stormwater management system that post development will reduce current rates of run-off and the provision of electric vehicle charging stations.

21. With regard to the requested design waiver for the length of the ADA accessible space (19 ft. provided vs. 20 ft. required.), Mr. Keller opined that a waiver for same is reasonable as the proposed length of the ADA accessible space complies with Residential Site Improvement Standards ("RSIS") and will not pose a navigation or safety problem.

22. The Applicant proposes to locate a 11 ft. x 45 ft. loading space within the egress aisle of the two direction two aisle driveway on the east side of the mixed-use building. The

loading space to be provided in the egress lane will have a vertical clearance of 12.5' due to the easterly building overhang and a length of 45', whereas a minimum vertical clearance and minimum length of 15' and 60', respectively, are required. Said proposed loading space therefore requires design waiver relief. In support of the aforesaid design waiver, the Engineer/Planner for the Applicant opined that relief should be granted because locating a loading space in the driveway access in the dimensions proposed will pose no harm. Mr. Keller opined that same will not impact or limit the accessibility to the rear of the building for ambulances or private refuse haulers since the proposed 12.5' vertical clearance will be sufficient for such vehicles to clear the building overhang to gain access to the rear parking lot. The Engineer/Planner indicated that refuse haulers will be advised to back into the parking lot. He further stated that fire trucks will not need to utilize the proposed loading area or clear the 12.5' vertical clearance, as there will be hookups in the front of the mixed-use building. Mr. Keller also testified that the intensity of use of the proposed loading area is expected to be minimal, and generally limited to move-in/move-outs for the residential apartments. A standard moving van would be able to park in the loading space in the egress lane and still leave ample space for another vehicle to ingress to the rear parking lot. Additionally, Mr. Keller noted that the easterly portion of the mixed-use building will be set back approximately 6 to 8 ft. and therefore will provide good sight lines in the area of the driveway access. The Board remarked that for safety and circulation reasons the loading space/area should be clearly designated since it will occupy a portion of the egress lane of the two-way driveway. The Applicant agreed to do so with appropriate pavement markings, which will be subject to the review and approval of the Board Engineer.

23. With regard to utilities, the Engineer/Planner for the Applicant testified that electrical connection for the mixed-use building will be underground service. The electrical feed to the new building will be routed underground to the meter location on the west side of the building.

24. The Township Engineer opined that the Soil Erosion and Sediment Control Plan should call for an inlet filter on the inlet located in the parking lot of the adjacent (easterly) property. Additionally, because the land disturbance exceeds 5,000 sq. ft., the Applicant shall obtain a permit from Hudson-Essex-Passaic Soil Conservation District. Dust control measures must also be utilized during construction when necessary.

25. The application was reviewed by various professionals of the Township. The Township Engineer, by Memorandum dated January 3, 2022, had a variety of comments, concerns and requests with which the Applicant agreed to comply. The Township Planner, by review letter dated December 31, 2021, also had various comments or concerns on the application, with which the Applicant agreed to comply. The Township Fire Marshal by Memorandum dated December 13, 2021 had a variety of comments and requests with which the Applicant agreed to comply. The Millburn Police Department, by Memorandum dated December 22, 2021 had various comments and requests with which the Applicant agreed to comply. The Township Forester, by Memorandum dated February 16, 2022 had various comments.

26. After considering the testimony and exhibits of the Applicant and the recommendations of the Board's Professionals, the Board is of the view that preliminary and

final major site plan approval; variances for building signage and off-street parking spaces; as well as certain site plan checklist waivers as was set forth in detail above, 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 on February 16, 2022, granting: (i) preliminary and final major site plan approval; (ii) a variance to allow for signage with a 35 sq. ft. panel area and 18” lettering to be mounted in the easterly overhang portion of the mixed-use building above the entrance driveway at a height of 15’ 10””; (iii) a variance to allow for only 10 parking spaces; (iv) Multiple design waivers related to (a) Handicap accessible parking spaces dimensions; (b) Loading space vertical distance, loading space length and lack of a dedicated loading space; (c) Lack to tree replacement or monetary contribution in lieu thereof; and (d) higher average footcandle level overall than permitted in the ordinance; and (v) s certain site plan checklist waivers as was set forth in more detail above, in connection with the construction of a mixed-use building development at premises commonly known as 378 and 380 Millburn Avenue, Millburn, New Jersey, and formally known as Block 801, Lots 6 and 7 on the Official Tax Map of the Township of Millburn ("Property"); subject to the following conditions:

1. The Applicant shall comply with all 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 that shall have jurisdiction over the project.
3. The Applicant shall remit all outstanding escrow fees as requested by the Township of Millburn.
4. Only true concrete stucco materials shall be used in the construction of the mixed-use building.
5. The mixed-use building shall be identified with a clearly visible street name and number.
6. The existing street tree along Millburn Avenue shall be retained and the Applicant shall plant a street tree along the Millburn Avenue frontage such that there will be a minimum of at least two street trees on said frontage.
7. The Applicant shall install landscaping or other buffering along the easterly property line to screen the easterly portion of the rear parking lot from Millburn Avenue, and said screening shall be subject to the review and approval of the Township Forester.
8. The existing trench drain that will be utilized for overflow from the stormwater management detention system shall be cleared of debris.

9. The Applicant shall undertake a soil percolation test to confirm that the site's infiltration rate is 0.5 inches/hour and shall provide the results of said test to the Township Engineer for review.
10. Three parking spaces shall be reserved for the residential apartment units; two parking spaces reserved for each of the three office spaces; and one parking space shall remain open, and the aforesaid shall be marked accordingly. Signage shall also be installed to convey that the rear parking lot is not open to the general public.
11. The driveway access lift arm gates shall be connected to the building's fire system so that the gates will automatically raise during a fire emergency.
12. Either a wheel stop or a bollard shall be installed for each electrical vehicle charging station.
13. In the event that there is any change of a permitted use from the proposed retail uses that would generate parking in excess of 1 space per 200 sq. ft. under the Township's DRZ, the Applicant shall return to the Board to obtain approval for same.
14. The loading space in the driveway egress lane shall be clearly delineated with appropriate pavement markings which shall be subject to the review and approval of the Board Engineer.
15. All utility services shall be provided via underground connection to the extent allowed by utility companies.
16. The Soil Erosion and Sediment Control Plan shall be revised to call for an inlet filter on the inlet located in the parking lot of the adjacent (easterly) property.
17. The Applicant shall obtain required permits from the Hudson-Essex-Passaic Soil Conservation District.
18. Dust control measures shall be utilized during construction when necessary.
19. There shall be no storage of any item, other than patio/outdoor furniture, on the residential balconies.
20. The Applicant shall comply with the comments and recommendations of the Board's professionals and Township Officials as set forth in the following reports by: (i) the Township Engineer in her Memorandum dated January 3, 2022; (ii) the Township Planner in his review letter December 31, 2021; (iii) the Township Fire Marshal by Memorandum dated December 13, 2021; (iv) the Millburn Police Department by Memorandum dated December 22, 2021; and (v) the Township Forester by Memorandum dated February 16, 2022.

21. If applicable, the Applicant shall remit the residential developer fee in accordance with any Developer Fee Ordinance enacted by the Township of Millburn in accordance with its terms.

22. 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 hearings on the application held on January 5, 2022 and February 16, 2022 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.

23. 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 February 16, 2022.

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 2nd day of March, 2022.

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## **APPLICATIONS**

### **APPL#21-008, STONE MOUNTAIN ASSOCIATES, 830 MORRIS TURNPIKE**

Andrew Lane, Attorney for the applicant, stated his appearance. The applicant is seeking preliminary and final site plan approval with variance relief and design waivers.

Anthony Facchino, 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 a 3.29 acre parcel in the B-2 zone. It is occupied with a 4-story office building with ground floor parking. The applicant proposes to install three solar array panels in the parking area at the subject property.

The Board addressed the applicant's request for a waiver of the submission of an EIS. Mr. Facchino indicated that the site is fully developed and no impacted by flood zones, wetlands or streams. He also stated that there will be no increase in stormwater runoff because the arrays are being erected over existing asphalt surfaces. It was his professional opinion that an EIS submission was not necessary.

A motion to grant the applicant's request for a waiver of an EIS submission was made by Dianne Thall Eglow, seconded by Daniel Baer, and carried with a unanimous voice vote.

Entered as A-1: sheet 1 of submitted plans  
Entered as A-2: sheet 2 of submitted plans

Entered as A-3: sheet 3 of submitted plans  
Entered as A-4: sheet 4 of submitted plans  
Entered as A-5: sheet 5 of submitted plans  
Entered as A-6: sheet 6 of submitted plans  
Entered as A-7: sheet 7 of submitted plans  
Entered as A-8: aerial photo from Nearmap.com (7/22/20)  
Entered as A-9: photoboard of 9 photos (3/1/22)

Mr. Facchino spoke to exhibit A-8 and the existing conditions on the property. He indicated that the site is bordered on the west by Benihana Restaurant; on the east by an office building; on the north by an apartment complex; on the south by Morris Turnpike.

Mr. Facchino stated that the applicant proposes to install solar arrays over existing parking spaces on the west side and north side of the property. The arrays have a clearance height of 14 feet. However, the arrays are not a permitted accessory structure and will require a variance relief. The applicant also proposes to re-stripe the parking lot with the exception of the east side and a portion of the west side.

There are currently 324 parking spaces on site and there will be 311 spaces after the re-striping. 295 spaces are required based on the use of the building. Mr. Facchino stated that the parking stalls on the north side are only 14 feet long. This is proposed to be increased to 17 feet which is still non-compliant with the ordinance required of 19 feet. However, there is a 2 foot overhang which will result in an overall length of 19 feet.

There are 7 dual electric charging stations proposed; 6 on the west side parking spaces and 1 under the building. The applicant also proposes to replace old railroad tie walls with 5 foot tall block tiered walls. In addition, a 12 foot by 12 foot refuse enclosure is proposed in the western parking area, approximately 280 feet from Morris Turnpike. Based on comments from the Township Planner, the applicant agreed to install solid fencing around the enclosure with the exception of the easterly side, which will be chain link in order to provide for ease of access to the dumpster. Mr. Facchino spoke to the proposed lighting and stated that the external lights will be on full power until 10 PM and then dimmed to 50% until dawn.

Mr. Facchino spoke to the variance relief being requested by the applicant. He indicated that variance relief is required for the solar arrays which are not a permitted accessory use in the B-2 zone as per section 606.6c. Total lot coverage will exceed the allowable 65% as per section 606.6e2c. Existing lot coverage is 84% and that is proposed to be increased to 84.5% in order to re-configure the parking stalls. The expansion of the rear northerly parking area locates parking within the 50 foot buffer which requires variance relief as per 609.3a. In addition the installation of the solar array, which overhang the rear northerly parking area results in a reduction of the buffer zone from 13.6 feet to 11 feet, where a 50 foot buffer is required. Finally, a 2-tiered modular block wall, consisting of a 6 foot lower wall and a 5 foot upper wall, is proposed to replace the existing railroad tie walls. This requires variance relief from the maximum 6 foot height permitted in section 609.6b. Mr. Facchino stated that the variance relief being requested advance the purpose of the MLUL and the benefits of granting the deviations substantially

outweigh the detriment. He also indicated that there is no substantial detriment to the public good and no substantial impairment to the zone plan or zoning ordinance.

Anthony Facchino spoke to the design waivers being requested. He stated that an average footcandle of 1.6 is proposed and the B-2 zone permits an average sustained level of 0.5 – 1.0 footcandles as per section 512.1a. Also, a maximum to minimum ratio of 11.8:1 is proposed. The applicant is also seeking a design waiver from section 516.5a to permit 28 parking spaces of 9 feet by 17 feet with a 2 foot where 9 feet by 19 feet is required.

Mr. Facchino stated that 3 trees are proposed to be removed but only one has a diameter of over 10 inches. Based on concerns express by Board member, he stated that the applicant would agree to work with the Township Forester to determine suitable replacement trees and feasible locations.

Jeff Chavkin, GeoScape Solar representative, appeared and was sworn.

Entered as A-10: photoboard of solar array example

Mr. Chavkin stated that GeoScape will be supplying and installing the solar arrays. He indicated that the arrays will not cast a glare because they are designed to absorb sunlight. H also indicated that the arrays will be pitched and the higher elevation of the residential zone to the north will make the arrays barely visible to the residents of the complex.

Andrew Lane thanked the Board for their time and respectfully requested a favorable vote.

Upon a motion made by Dianne Thall Eglow, a second by Daniel Baer, and with a roll-call vote as follows:

Gaston Hauptert – yes  
Marc Matsil – yes  
Maggee Miggins – yes  
Debra Nevas – yes  
Sujatha Shanmugasundaram – yes  
Dianne Thall Eglow – yes  
Daniel Baer – yes  
Beth Zall – yes

Appl#21-008, Stone Mountain Associates, 830 LLC, 830 Morris Turnpike, site plan approval with variance/design waivers was **GRANTED** subject to the following conditions: 1) proposal shall be limited to lot coverage not to exceed 84.5%; 2) plans shall be revised to reflect a minimum 14 foot clearance for all solar panels; 3) applicant shall research the feasibility of 17 additional EV stations on site; 4) plans shall be revised to include details for the new light poles; 5) applicant shall provide a phasing plan, not to exceed 3 years, for the milling and paving of the asphalt area; 6) applicant shall provide a phasing plan, not to exceed 3 years, for the block

retaining wall installation; 7) fence along the northern property line shall be a neutral taupe color; 8) applicant shall work with the Township Engineer to determine the feasibility of bioswales in the buffer areas; 9) applicant shall comply with the comments and recommendations noted in the reports of the Board's professionals.

**APPL#21-009, BEAHIVE PROPERTIES, 397 MILLBURN AVENUE, MILLBURN**

Bartholomew Sheehan, Attorney for the applicant, stated his appearance. The applicant is seeking to amend a previously approved site plan. He indicated that the applicant is also seeking variance relief for an additional sign.

The matter was carried to March 16, 2022.

**ADJOURNMENT**

A motion to adjourn was made by Beth Zall, seconded by Marc Matsil, and carried with a unanimous voice vote. (10:40 PM)

Eileen Davitt  
Board Secretary

Motion: BZ  
Second: DN  
Date Adopted: 4/6/22