

Township of Millburn  
Minutes of the Planning Board  
March 4, 2020

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, March 4, 2020** 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  
Dianne Eglow  
Gaston Hauptert  
Marc Matsil  
Jorge Mastropietro  
Joseph Steinberg  
Tara Prupis  
David Morrow, Alt. #1  
Shaunak Tanna, Alt. #2  
Miriam Salerno, Vice Chairwoman  
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 February 5, 2020 was made by Joseph Steinberg, seconded by Dianne Eglow, and carried with a unanimous voice vote.

**BUSINESS**

Appl#19-009, 40 E. Willow Street, 40 E. Willow Street

Michael Kaplonski, Attorney for the applicant, stated his appearance. He indicated that the applicant received minor subdivision approval from this Board on June 19, 2019 with a memorializing resolution approval dated July 17, 2019. The applicant then had 190 days from the day of the resolution approval to perfect the subdivision. Due to some delays, the applicant

was not going to be able to meet that 190-day timeframe and the Board, at its February 5, 2020 meeting granted an extension of time to perfect the subdivision until February 28, 2020.

As outlined in his letter dated February 28, 2020, Mr. Kaplonski stated that further delays and requested revisions to the deed have resulted in the applicant's inability to perfect the subdivision by the February 28, 2020 deadline. He indicated that the required revisions have been sent to the Board Attorney and upon his approval, the approval of the Township Engineer, as well as the signatures of the Planning Board Chair and Secretary, the deed will be filed. He respectfully requested a 1-week extension of time to perfect the subdivision.

The Board discussed the request and agreed to an extension of time to perfect the subdivision, with such extension to expire on March 20, 2020.

A motion to grant the applicant's request for an extension of time to perfect the subdivision, to expire 3/20/20, was made by Dianne Eglow, seconded by Beth Zall, and carried with the following roll-call vote:

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

**MEMORIALIZATIONS**

Appl#19-016, 40 E. Willow, LLC, 30 E. Willow Street, Millburn

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

- Dianne Eglow – yes
- Jorge Mastropietro – yes
- Marc Matsil – yes
- David Morrow – yes
- Miriam Salerno – yes
- Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:  
40 East Willow, LLC  
Application #19-016  
Block 1004, Lot 5  
Preliminary and Final Site Plan Approval  
Variances  
Exceptions/Waivers**

**WHEREAS**, 40 East Willow, LLC ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final site plan approval, and certain variances and exceptions/waivers as set forth in more detail below, in connection with property commonly known as 30 East Willow Street and formally known as Block 1004, Lot 5 on the Official Tax Map of the Township of Millburn ("Property"); and

**WHEREAS**, the Applicant has submitted the following plans and designs: (i) Plans entitled "Preliminary & Final Major Site Plan: 30 East Willow Street, Tax Lot 5, Block 1004, Township of Millburn, Essex County, New Jersey", prepared by Casey & Keller Incorporated, Millburn, New Jersey, consisting of 7 sheets, dated 2-11-2019, latest revision, 12-05-19 ("Plans"); and (ii) Plans entitled "Preliminary Plans Proposed Medical Office Bldg, 30 East Willow Street, Millburn, N.J.", prepared by James Weill & Associates, Millburn, New Jersey, consisting of one sheet, dated 9-27-2019, latest revision 10/21/2019 ("Architectural 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**, an initial public hearing was held on the application on November 6, 2019; but the application was reheard in its entirety on February 5, 2020 without regard to any of the testimony that was previously provided at the November 6, 2019 meeting; and

**WHEREAS**, at the hearing the Applicant was represented by Michael L. Kaplonski, Esq., and testimony in support of the application was provided by James Weill, Architect and Planner and Michael Lanzafama, Engineer and Planner; and

**WHEREAS**, the Board having considered the testimony 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 30 East Willow Street and is formally known Block 1004, Lot 5 on the Official Tax Map of the Township of Millburn. The Property is located within the CMO (Commercial/Medical Office) Zone and is currently vacant. The Property measures 30,000 square feet and is L-shaped, extending toward the rear of the site. It is located on the south side of East Willow Street, south of the Rahway River and east of Main Street. Surrounding uses generally consist of commercial and industrial uses within the CMO Zone.

2. The Property as currently configured was created by a minor subdivision application approved by the Board at its meeting on June 19, 2019 through a lot line adjustment between this lot and the contiguous Lot 4. At that time, the Planning Board granted variance relief to permit the Property to have a lot width of 111.52', whereas 150' is required in the CMO Zone.

3. The Applicant is proposing to construct a 7,953 square foot medical office building set back 24.9' from East Willow Street. While the Applicant anticipates the use of the building as medical offices, there is no tenant and there is no assurance that the Property will only be utilized for medical offices. The front portion of the building will consist of two stories, where both floors would serve as an elevator lobby area and contain storage/trash rooms and mechanical rooms. The majority of the building would consist of a one story elevated building supported by columns above a surface parking area. The first floor lobby area would also lead to the parking area under the building, while the second floor lobby would lead to the proposed offices.

4. The Applicant proposes to install 21 parking spaces under the building, including two ADA compliant spaces. An additional 22 surface off-street parking spaces are proposed in the rear portion of the site with all parking spaces measuring 9' x 19'. The site would be accessed by a one-way 20' wide drive aisle from East Willow Street located on the west side of the building, with circulation continuing along the under building parking toward the rear of the site, where the rear aisle would then allow for two-way traffic to access the surface parking areas. Egress from the site would be through a second one-way access drive toward East Willow Street on the east side of the building along the under-building parking.

5. The Architectural Plans reflect that the building would be clad in stone veneer and a stucco finish with metal access panels and accent windows along the front elevation, with the rear portion of the building over the under-building parking area being open and supported by columns. The building will be 30' in height. HVAC equipment will be placed on the top of the building with adequate screening that will not exceed 6' in height.

6. The Property slopes front to back starting at approximately elevation 95' at the front to elevation 90' in the rear. The flood hazard elevation is 94.8'. The proposed building

and improvements will meet all New Jersey Department of Environmental Protection requirements, including the zero net fill requirement. The building complies with all of the bulk standards (except for the minimum width requirements for which a variance was previously granted). Maximum lot coverage will be at 74.71%, below the maximum 75% requirement. The floor area ratio will be at 26.51%, whereas a maximum 50% is permitted.

7. The Applicant seeks three variances. First, Section 606.9f does not allow off-street parking under a building in the CMO Zone. The Applicant is proposing to locate 21 parking spaces under the building. Second, Section 607.5 requires that the under-building ground level parking shall be completely hidden from public streets, whereas a portion of the under-building parking will be visible from East Willow Street. Third, the Applicant, while originally proposing an aggregate 44 parking spaces is now proposing 43 parking spaces, whereas 53 parking spaces are required. In the Plans currently before the Board, the Applicant has provided a loading space in compliance with the Ordinance and thus, contrary to the original submission, no variance is required for these purposes.

8. The Applicant's Architect/Planner, James Weill, testified regarding the under-building parking. Because the building had to be elevated in order to meet the flood hazard requirements (albeit not to the degree proposed), given the size and configuration of the lot, including the reduced width for which the Applicant previously received a variance, parking requirements for a reasonably sized building could only be accommodated by placing some of the parking under the building. Thus, the narrowness of the lot and the ingress and egress therefrom creates a hardship that could be relieved by allowing under-building parking. Given the flood hazard elevation of 94.5', it is not appropriate to enclose the under-building parking which would impede the free flow of water if a flood event occurred. Further, enclosing the under-building parking would create access difficulty to the under-building parking spaces and create additional design problems to access the building itself. Given the width of the building and the landscaping proposed, there will be minimum visual impact and sight of the under-building parking from East Willow Street. Allowing the under-building parking and eliminating any screen of that under-building parking will have no substantial detriment to the public good as the building is surrounded by non-residential uses and will have no substantial impairment to the Zoning Ordinance or Zoning Plan.

9. The Applicant also seeks a variance for the reduction in the required number of parking spaces from 53 parking spaces to the 43 provided. The Applicant's Engineer/Planner contended that the lobby area consists of about 1,200 square feet and as such, does not actually generate any required parking. Thus, the number of parking spaces required under the Ordinance was more than necessary because the entirety of the building square footage is utilized for the calculation. Further, he testified that the standards promulgated by the Urban Land Institute would result in a parking requirement of 36 spaces, as opposed to the 43 provided (and the 53 parking spaces as required under Township Ordinances). Given the narrowness of the lot, its shape and the constraints involving the placement of the building, ingress to and egress from the Property, in general, and the parking spaces in particular all supported the proposition that there is both a hardship created by the physical characteristics of the Property and that the purposes of the Municipal Land Use Law would be advanced without any detriment. In general, similar to

the Architect/Planner's testimony, there would be no substantial detriment to the public good for the same reasons as provided by the Architect/Planner nor would there be any substantial impairment of the Zoning Ordinance and Zoning Plan by granting the parking variance.

10. The Applicant seeks two exceptional design waivers. First, lighting plans were revised to add more pole lighting and to eliminate building mounted lights. In addition, the color temperature of all exterior lighting was changed to 3,000 K from its originally proposed 4,000 K. With the revised lighting plan, all Township requirements would be met except for a minimal exceedance of the maximum average foot candles (fc), where the Applicant is providing a maximum average 1.4 fc, whereas a maximum average 1.0 fc is required under the Ordinance. The exceedance is *de minimis* and further reduction of lighting intensity would be impracticable given the nature of the use of the building and therefore a design exception is appropriate. The lighting will be on timers so that except for security lighting, the overall lighting on the site will be extinguished at night after the building is no longer occupied.

11. Section 516 of the Code requires that the center lines of the access drive be a minimum 30' from each side yard Property line. The location of the access aisles and the circulation pattern will allow emergency vehicles to completely navigate the parking area. The Applicant seeks an exception/waiver from this design requirement on the basis that it would be impracticable to locate the center lines of the drive aisles at least 30' from the side Property lines because of the narrowness of the lot and the configuration of the parking that is being proposed.

12. The Applicant provided a revised Landscape Plan which included more native species plantings. Non-native alien invasive plants are not utilized in the Landscape Plan. The Board raised the possibility of providing a rain garden in the front of the building. The Applicant's Engineer/Planner suggested that the rain garden should actually be located in the rear graveled area of the parking lot as shown on the Plans and agreed that there could be an adequate transfer of the run-off to the rain garden to capture a minimum of 1¼" of rain per storm event. The Board also raised the possibility of the Applicant providing an electric charging station somewhere accessible to the underground parking and the Applicant agreed to furnish one electric charging station. Finally, the Board requested, and the Applicant agreed that the contractor selected for the construction of the improvements be directed to follow Best Management Practices for the disposal of all construction debris.

13. The Board is of the view that preliminary and final site plan approval should be granted along with the variances and design exceptions set forth in more detail 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 5, 2020, granting (i) preliminary and final site plan approval; (ii) a variance to allow 43 parking spaces, whereas 53 parking spaces are required; (iii) a variance to allow under-building parking as set forth on the Plans and the Architect Plans, whereas Section 606.9f prohibits under-building parking; (iv) a variance to allow for the under-building parking to not be enclosed as required under Section 607.5 of the Code; (v) a design exception/waiver to allow a maximum average fc

lighting intensity of 1.4 fc, whereas a maximum average of 1.0 fc is permitted; and (vi) a design exception/wavier to allow the center line of the access drives to be less than 30' from the side yard Property lines, all 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. The Applicant shall comply with the requests of the Township Forester in his 10/30/2019 Memorandum.

5. The Applicant shall install a rain garden in the graveled area of the rear parking spaces that will capture at least 1 1/4" of rain per storm event. The Applicant shall monitor/clean/maintain the rain garden every six months--or as needed, to remove trash and monitor for compaction and infiltration, and make necessary repairs as needed.

6. The Applicant shall install at least one electric charging station accessible to the parking spaces below the building.

7. The Applicant shall direct any contractor installing the improvements on the site to adhere to Best Management Practices for the disposal of construction debris.

8. The Applicant shall comply with any requirements imposed by the Fire Marshal.

9. 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 February 5, 2020 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.

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 February 5, 2020.

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 4th day of March, 2020.

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## **APPLICATIONS**

**Appl#20-002  
Perspirology II, LLC  
515 Millburn Avenue  
Block 1707, Lot 4, B-3 zone  
Site plan approval**

James Turteltaub, Attorney for the applicant, states his appearance. The applicant is seeking site plan approval with a parking variance to establish an exercise studio at 515 Millburn Avenue.

The Board discussed the applicant's request for several checklist waivers. The applicant is seeking waivers from the requirement to submit an EIS, as well as several Landscape and Facility Plan waivers.

A motion to grant the applicant's request for checklist waivers was made by Dianne Eglow, seconded by Gaston Hauptert, and carried with a unanimous voice vote.

Joseph Steinberg questioned if the applicant has had an opportunity to review the professional reports, specifically with regard to the recommendations of the Fire Marshal and the Police Department. Mr. Turteltaub stated that the applicant will comply with all recommendations.

Robert Verrengia, Architect for the applicant, appeared and was sworn. He gave a brief description of the applicant's proposal

Entered as A-1: sheet T001 of submitted plans  
Entered as A-2: sheet A101 of submitted plans  
Entered as A-3: sheet A201 of submitted plans

Mr. Verrengia explained the floor plans. He indicated that the basement is proposed to be used for storage and laundry facilities. There is no proposal that the basement will be used for exercise purposes. The proposed facility will be a trampoline-based and aerobic workout. There will be 1 instructor on site as well as a receptionist. The facility can accommodate up to 30 clients at one time. However, that is at maximum capacity.

The parking requirement for this use, instructional studio, is 1 parking space per 100 SF. Based on that requirement, the proposed use requires 36 parking spaces; 18 for the ground floor and 18 for the basement. He indicated that the basement is not open to the public and is used for storage only.

Jason Yachanin, Owner/Principal of Perspirology, appeared and was sworn. He gave a brief description of the business. He stated that all the fitness exercises are done on individual trampolines. He has 1 business currently operating in Sea Bright, New Jersey and is eager to bring this exercise facility to Millburn/Short Hills. He stated that there is very little trash generated by this use. They have no deliveries since they shop for and bring their own supplies. Mr. Yachanin stated that they typically offer classes at 6 AM, 8:15 AM, 9:30 AM and 10:45 AM. They reserve the mid-afternoon for private sessions and do not usually offer classes during that time frame. Evening classes are only scheduled if the demand is there.

Justin Taylor, Traffic Expert, appeared and was sworn. He spoke to the traffic plan prepared and indicated that he has been to the site and there is ample available municipal parking in the AM hours. He stated that the peak demand of this use in the morning. This is in direct opposition to the demand of many of the neighboring restaurant businesses, who typically require parking during the evening hours.

Joseph Steinberg asked Mr. Taylor if he prepared the report or took part in the preparation of any of the report. Mr. Taylor stated that he did not. He stated that he works in tandem with Lee Klein, the preparer of the report. Mr. Klein was not able to make the meeting tonight and they often cover Board hearings for each other. He stated that he is not a member of Mr. Klein's firm.

Board Attorney, Edward Buzak, stated that he is troubled by this type of testimony. A written report is here say without the preparer available to speak to it and be questioned. Mr. Taylor did not prepared the report and is not part of the firm that prepared the report. Mr. Buzak stated that he would like to have the preparer of the report available to speak to the information contained in it.

It was noted that the traffic report that was prepared focused on 6 AM – Noon hours. The testimony given from the owner is that evening classes would be conducted. It appears as though the traffic consultant was told that this was an AM operation and that is what was reflected in the report. It was suggested that the traffic consultant provide data on the evening rush time, as well.

Prosperina Nemerov, 25 Athens Road, appeared and was sworn. She stated that she is the owner of POE Yoga/Fitness, which is located less than 1 block away at 531 Millburn Avenue. She indicated that she objects to the proposed establishment. She stated that Millburn is saturated with fitness studios and that there are more than 12 in town at this time; 3 are located in this area alone. She feels this will add to an already difficult parking situation.

The matter was carried to April 1, 2020, 7:30 PM at Millburn Town Hall.

## **BUSINESS**

### **Proposed amendment to the Land Use Element of the Master Plan**

Chairwoman Beth Zall stated that the proposed amendment to the Land Use Element of the Master Plan was presented by the Township Planner, Paul Phillips, to this Board on February 5, 2020. The Board made comments and based on the Board's comments, revisions were made. The purpose of tonight's meeting is to offer members of the public an opportunity to ask questions and/or voice concerns. At the conclusion of the public input, the Board will discuss the amendment and vote on the matter.

Board Attorney, Ed Buzak, stated that notice of tonight's meeting was served upon the necessary parties and published according to statute. All procedural requirements have been met.

The Board took public questions and comments at this time.

Vishal Garg, 52 Silver Spring Road, appeared and was sworn. He asked if Millburn has a Master Plan with a vision. He asked if the township is looking to the future or just reacting to the applications coming from the builders. We are a built-out town. Why do we have to provide so much affordable housing?

Beth Zall stated that Millburn Township has a Master Plan as required. It was updated as recently as 2018. This Board also adopted a fair share housing plan to the Land Use element of the Master Plan.

Ed Buzak stated that part of the Master Plan is a housing element and fair share plan. It sets up a general standard by which the township intends to satisfy its affordable housing obligation. The general conclusion is that the township has insufficient vacant land available to satisfy what is proposed to be its affordable housing obligation. We are seeking approval to adjust our obligation because of that fact. However, when opportunities become available for affordable housing to be constructed, the township needs to consider those opportunities very seriously.

Debra Nevas 65 Knollwood Road, questioned the large density proposed in this amendment. She indicated that the Fair Share Housing Plan prepared as part of the Master Plan sets forth a 6 units per acre density. The density proposed in this amendment is 35 units per acre. She asked why there is such a huge discrepancy in these numbers.

Paul Phillips, Township Planner, explained that the 6 units per acre is part of the exercise the Township had to do. They had to assign a density based on the zoning of the property. The 2018 study found isolated lots in single-family zone districts. Thus we assigned the minimum standards. If there had been vacant land available in the B-4 zone, a much higher standard would have been used.

Chairwoman Beth Zall closed the public portion of the meeting and the Board discussed the amendment to the Land Use Plan Element of the Master Plan. Board Attorney, Ed Buzak, indicated that until we get a plan approved, any reasonable request for development that comes forward with an affordable housing component, has to be entertained by the Millburn Township. Approval of this plan shows good faith on the part of the Township and this is a step forward in the Township's effort to reach their statutory obligation.

A motion to approve the Amendment to the Land Use Plan Element of the Millburn Master Plan was made by Joseph Steinberg, seconded by Dianne Eglow, and carried with the following roll-call vote:

Daniel Baer – yes  
Dianne Eglow – yes  
Gaston Hauptert – yes  
Jorge Mastropietro – no  
Marc Matsil – yes  
Tara Prupis – yes  
Joseph Steinberg – yes  
Miriam Salerno – yes  
Beth Zall – yes

**ADJOURNMENT**

A motion to adjourn was made by Joseph Steinberg, seconded by Shaunak Tanna, and carried with a unanimous voice vote. (10:00 PM)

Eileen Davitt  
Board Secretary

Motion: DE  
Second: JM  
Date Adopted: 5/20/20