

Township of Millburn  
Minutes of the Planning Board  
May 1, 2019

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, May 1, 2019** at 7:00 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  
Dianne Eglow  
Gaston Hauptert  
Jorge Mastropietro  
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 March 20, 2019 was made by Elaine Becker, seconded by Daniel Baer, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Appl#18-015, HHHH Realty, 286 Essex Street, Millburn**

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

Daniel Baer – yes  
Elaine Becker – yes  
Dianne Eglow – yes  
Gaston Hauptert – yes  
Jorge Mastropietro – yes  
Miriam Salerno – yes  
Beth Zall – yes

the following memorializing resolution was adopted:

RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN

**In the Matter of:  
HHHH Realty, LLC  
Application #18-015  
Block 1212, Lot 17  
Site Plan Approval  
Conditional Use  
Variances**

**WHEREAS**, HHHH Realty, LLC ("Applicant") has made application to the Township of Millburn Planning Board for site plan and conditional use approval to add an addition to increase the dining area for the restaurant on the first floor, as well as to add a bedroom on the second floor and for the following: 1) variance relief from the requirements of Land Use Ordinance Section 670.1 whereas one loading space is required, and none are proposed, and 2) a variance from the requirements of Land Use Ordinance Section 607.2m regarding off street parking requirements, a variance from the building height requirements of Land Use Section 606.7E4 whereas 28 feet in height is permitted and 30.62 feet is proposed and 4) a waiver from the requirement to submit an Environmental Impact Statement, in connection with property commonly known as 286 Essex Street, and formally known as Block 1212, Lot 17 on the Official Tax Map of the Township of Millburn ("Property"); and

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

- "Preliminary and Final Site Plan, 286 Essex Street and 27 Main Street, Tax Lot 17, Block 1202, Township of Millburn, Essex County, New Jersey, consisting of three sheets, prepared by Michael T. Lanzafama, P.E., P.L.S., of Casey and Keller, Sheet 1 being dated 8/11/2017 and Sheets 2 and 3 being dated 3/23/2018; Floor Plans, consisting of three sheets, prepared by John A. Buchholz, AIA, LEED AP, dated October 23, 2018, and revised zoning chart prepared by Casey and Keller Inc. dated 2/19/2019.

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

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

**WHEREAS**, the Applicant was represented by Jonathan James Esq., and presented the testimony of John Buchholz, AIA, LEED AP, Richard Keller, P.E., P.P. and of Hoai Vo who is the owner and operator of the business; and

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

1. The Property is located at 286 Essex Street and is formally known as Block 1212, Lot 17 on the Official Tax Map of the Township of Millburn. The property is located within the “B-4” Central Business Zone.

2. The Property is currently occupied by a restaurant with seating on the first floor and a residential unit on the second floor. There is no current on site parking and there is no current on site loading space. The current, and proposed, use is permitted in the B-4 Central Business Zone.

3. The existing building is a two-story frame building with a restaurant on the first floor and a two bedroom residential apartment on the second floor. The current restaurant area has four tables that seat 8 patrons. The Applicant seeks to add an addition to add seating for 32 patrons on the first floor (for a total of 40 seats upon completion of the addition). The current upstairs apartment is proposed to be expanded with an addition to allow for the inclusion of a third bedroom.

4. Hoai Vo, operator of the business testified that the restaurant business currently operates with four employees, as well as Mr. Vo. Most of the business (approximately 70%) is “take-out” because of the limited seating currently available on site. The restaurant is open from 10:30 A.M. to 9 P.M. Tuesday through Sunday and is closed on Monday. The employees generally arrive at 9:30 A.M to prepare to open the restaurant. Mr. VO testified that he contracts with a commercial trash collection company to remove the trash. On Thursdays, a small truck makes deliveries to the restaurant, and Mr. Vo picks up most of the food from commercial vendors and brings it to the restaurant, therefore no large delivery trucks come to the site, and therefore there is not a need to create a “loading space”. No new signage is proposed with this application, however the existing sign will be moved to a new location. He seeks to expand the restaurant for additional seating. Mr. Vo desires to move into the upstairs apartment with his family and seeks a bedroom addition.

5. John Buchholz, the Applicant’s Architect introduced Exhibit A-1 which is a colorized version of the October 23, 2018 proposed first and second floor additions. The rear of the first floor will be expanded to allow for seating for 32 patrons. The kitchen area will remain in the current location. The first floor expansion is within a flood plain area, and therefore it must be raised, making the rear addition three feet higher than the existing front elevation. The

new addition will be constructed over earth (no basement) to comply with floodplain requirements. The second floor will be expanded by 724 square feet to add a new bedroom, and reconfigure the existing space. Mr. Buchholz described Exhibit A-2, which is dated October 22, 2018. The entrance to the new first floor addition is to the rear of the building and will be a covered walkway. Exhibit A-3 shows the building elevation. The apartment ceiling height is 8 feet. As a result of the flood plain, the addition elevation is raised and thus the height of the building becomes higher making it non compliant with the 28 foot height restriction in the B-4 zone. The Applicant is seeking a height variance to permit the building height at 30.62 feet. The trash enclosure will be screened.

6. Richard Keller, P.E., P.P. testified that there is no parking on site. The Applicant owner has a residential parking permit and will agree to purchase parking permits for the four employees. The proposal will result in a decrease to the parking requirements by 6 spaces. The original operation of the restaurant was that of a fast food restaurant which enquired 20 spaces. The additional tables change the classification of the operation to a restaurant which requires one space per each three seats for a total of 14 spaces. The second floor residential area will continue to require two parking spaces and the basement storage area will continue to require one space. Overall, the parking results in a requirement for 17 spaces where the previous operation required 23 spaces. Mr. Keller introduced Exhibit A-4 which is a topographic survey, A-5 which is colorized Sheet 3 of the submitted plans and A-6 a revised zoning table.

7. Mr. Keller said the Applicant is seeking a waiver from the requirement to submit an Environmental Impact Statement because the site is already developed, and the Board concurs and will grant this waiver request.

8. Mr. Keller testified that the Applicant seeks a C-1 variance for relief from the requirement to create a loading dock. The site is already developed and there exists no room on site for a loading dock. Moreover, the Applicant has provided testimony regarding the expected deliveries to the restaurant, which will be a once a week delivery in a small truck and the rest of the food will be procured by the Applicant from outside commercial food purveyors. Mr. Keller stated that there would be no detriment because the number of deliveries will not increase as a result of the building expansion proposed in this application.

9. Mr. Keller testified that the heights variance falls under both the "C-1" and "C-2" (flexible C) variance relief as a result of construction in the unique situation of the flood plain and attendant elevation requirements. The Architect designed the room heights to be within the normally acceptable heights and reasonable, but which causes the roofline to exceed the B-4 height elevations. A "flat" roof would meet the Ordinance height requirements, however the Applicant has designed a peaked roof to be more aesthetically pleasing, however this design exceeds the height requirement. The roof is sloped backwards, and the design is not inconsistent with the neighborhood. The expansion of the restaurant will promote opportunities for business, strengthen opportunities in the "downtown" area, and newly energize this area. Mr. Keller also noted that the Master Plan Reexamination recommended a reexamination of the building heights permitted in the downtown area, and that this proposal is not inconsistent with the zone plan.

10. The Board finds that the site as developed leaves no room to construct parking or loading spaces. The Applicant has explained that the deliveries will be delivered once a week by conventional carriers, and that no large supply trucks will need to park for prolonged time to make deliveries. The Applicant has also provided testimony that only four employees in addition to himself will be on site, and the Applicant has also agreed to purchase parking permits for each employee. The Board finds that a variance from the requirements of s 607.1 and 607.2m can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Board further finds that the Applicant has designed the addition in compliance with flood plain requirements which cause an elevation adjustment for the new addition. The first and second floor additions have been designed with reasonable ceiling heights. The applicant has mitigated the appearance of the roof to blend in with surrounding rooflines, and there is no detriment to the adjacent properties or zone plan as a result of the height variance.

11. The Board is of the view that site plan and conditional use approval should be granted; that the variance request from the requirements from Section 607.2m and 607.1 and Section 606.7e4 be granted in accordance with the requirements as set forth in this Resolution, subject to the conditions set forth below. The Board also will grant the requested waiver from the requirement to submit an EIS for this site.

**NOW, THEREFORE, BE IT RESOLVED** that this Resolution shall serve to memorialize the action of the Planning Board of the Township of Millburn taken on March 20, 2019 granting site plan and conditional use approval for the Property; (i) a variance from the requirement to provide a loading space and ii) a variance from the parking requirements of section 607.2m, and (iii) a waiver from the requirement to submit an EIS, as set forth in the Plans; subject to the following conditions, and (iv) a variance from the height requirement of Section 606.7E4:

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

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

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

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

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

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

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

I, EILEEN DAVITT, Secretary/Clerk to the Planning Board of the Township of Millburn in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the said Planning Board on the 1st day of May, 2019.

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**APPLICATIONS**

**APPL#19-003, TNT FITNESS ONE, LLC, 296 MILLBURN AVENUE, MILLBURN**

John Motta, Attorney for the applicant, stated his appearance. The applicant, TNT Fitness One, LLC, is seeking site plan approval for a change of use as per section 301.60b of the Township Development Regulations. The use proposed is an F45 fitness studio, which is a permitted use in the zone.

Todd Crispino, Principal of TNT Fitness One, LLC, appeared and was sworn. He gave a brief description of the TNT Fitness One philosophy. The anticipated hours of operation are 5:30 AM – 8 PM on weekdays and 7 AM – noon on the weekends. Class size is approximately 18-24 people and the studio training area is 1800 SF in size. The peak hours of operation are 5:30 – 8:30 AM and 6:00 – 8:00 PM. There are usually 3 classes per day on the weekends. The establishment operates on a membership basis and patrons must make a reservation and register so as not to overbook a class. There is 1 studio manager and 2 trainers per class on site at any given time and there are no food services. The schedules are set with 15 minutes open between classes. Deliveries consist of FedEx/UPS approximately once per month. There are no tractor trailer deliveries. Employees will empty the trash on a daily basis and there is a small retail component to sell branded F45 t-shirts, sweatshirts, shorts, etc.

Michael Lanzafama, P.E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the site conditions. The property, 296 Millburn Avenue, is located in the B-4 zone district. The proposed use of the property for a fitness studio is a permitted use in the zone.

Entered as A-1: site plan

Entered as A-2: satellite photo of subject area

There are 33 parking spaces on site. There are 17 spaces in the underground parking which are reserved for the residential units and employees of the tenant building.

John Buchholz, Architect, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the applicant's floor plan.

Entered as A-3: sheet A-1 of submitted plans

The subject site has a 2500 SF area. The entrance to the F45 facility is in the rear of the building directly off the parking lot. The applicant is proposing to install additional soundproofing in the ceiling in order to alleviate any excess noise from negatively impacting the residential units above. Based on a 1/200 sf parking requirement, the use proposed requires 13 parking spaces. The applicant is seeking a variance from the requirement to provide a loading space as well as a waiver from the requirement to submit an EIS as this is a fully developed site.

John Motta thanked the Board for their time and asked for a favorable vote on the application.

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

Daniel Baer – yes  
Elaine Becker – yes  
Dianne Eglow – yes  
Gaston Hauptert – yes  
Jorge Mastropietro – yes  
Miriam Salerno – yes  
Beth Zall – yes

Appl.#19-003, TNT Fitness One, LLC, 296 Millburn Avenue, site plan approval was **GRANTED**.

### **ADJOURNMENT**

A motion to adjourn was made by Daniel Baer, seconded by Dianne Eglow, and carried with a unanimous voice vote. (8:10 PM)

Eileen Davitt  
Board Secretary

Motion: EB  
Second: DE  
Date Adopted: 6/19/19