

Township of Millburn
Minutes of the Planning Board
May 20, 2020

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, May 20, 2020** at 7:30 PM via Zoom webinar format.

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 Haupt
Jorge Mastropietro
Marc Matsil
Tara Prupis
Joseph Steinberg
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 March 4, 2020 was made by Dianne Eglow, seconded by Jorge Mastropietro, 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 his client received an extension of time to perfect the subdivision until March 20, 2020. Due to the current Covid-19 related issues, he has been unable to perfect the subdivision. All necessary documents have been approved and it is now a matter of getting the necessary signatures and filing with the County.

Board Attorney, Ed Buzak indicated that all documents are in order and ready for signatures and filing.

A motion to grant an extension of time to perfect the subdivision until July 17, 2020 was made by Beth Zall, seconded by Miriam Salerno and carried with the following roll-call vote:

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

APPLICATIONS

Appl#20-001

JCP&L

101 JFK Parkway

Block 5302, Lot 4, OR-1 zone

Site plan approval

John Beyel, Attorney for the applicant, stated his appearance. The applicant is before the Board seeking site plan approval with a variance to exceed the allowable fence/wall height. Mr. Beyel indicated that the substation is not visible from the street. The applicant is proposing the installation of flood walls with a flood gate. The applicant is also proposing the installation of a 4 foot wall with a 7 foot fence and 1 foot of barb wire on top of the fence. There will be no change to the equipment on site. The proposal will provide for enhanced reliability during heavy rains.

The Board discussed the applicant's request for several checklist waivers. The applicant is seeking 7 checklist waivers, specifically with regard to existing covenants, easements and restrictions, a sustainability checklist, location and description of existing and proposed monuments, streams and ponds, parking and loading spaces and existing structures to be removed or altered. The applicant's attorney indicated that the checklist requirements indicated were not relevant to this application. A motion to grant the applicant's request for checklist waivers was made by Joseph Steinberg, seconded by Jorge Mastropietro, and carried with a unanimous roll-call vote.

Juan Alvarado, JCP&L representative, appeared and was sworn. He provided the Board with his educational background indicating that he is in charge of the development and implementation of flood mitigation projects for JCP&L.

Mr. Alvarado gave a brief description of the project stating that the improvements proposed will make the substation less susceptible to storm related damage. He stated that JCP&L proposes to construct flood walls, fencing and a flood gate system around the perimeter of the Canoe Brook substation. There is currently an 8-foot high perimeter fence around the substation, consisting of 7 feet of chain link fencing topped with 1 foot of barb wire. JCP&L proposes to remove and replace a portion of the perimeter fence with a 4 foot high concrete wall with a 3 foot chain link fence and 1 foot of barb wire for a total of 8 feet in height. The substation serves approximately 311 residential and commercial customers. The site has sustained recurring flooding due to the overflowing of the nearby Passaic River.

Molly O'Connor, P. E., appeared and was sworn. She gave a brief description of the current "Hesco" barriers on site. She indicated that there is currently a "Hesco" barrier along the perimeter of the substation, which was put there as a temporary attempt to mitigate the flooding. The barrier is deteriorating and failing due to flood events and is not adequate to control and mitigate future flood damage to the substation.

Entered as 001 – photo of 4 foot wall/3 foot fence/1 foot barb wire
Entered as 002 – photo of tapered concrete

Denis Keenan, P. E., appeared and was sworn. His credentials were presented and accepted by the Board. He indicated that he prepared the site plan drawings for the application. The property is located in a flood and wetlands transition area. The applicant has requested the required flood zone and wetlands transition related permits necessary from NJDEP.

Entered as 003 – sheet 1 of 3 with revision date of 3/9/20

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

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

Appl#20-001, JCP&L, 101 JFK Parkway, site plan approval with "c" variance for wall/fence height was **GRANTED**.

Appl#20-003
R. Bosselman/B. Schwab
11 Denman Court/232 Hartshorn Drive
Minor subdivision

*Chairwoman Beth Zall, Vice Chairwoman Miriam Salerno and Dianne Eglow recused and left the meeting. Daniel Baer assumed the role as Chairman of the Board.

Richard Schkolnick, Attorney for the applicant, stated his appearance. The applicants are seeking minor subdivision approval to transfer 1,083 SF of property from lot 33 (232 Hartshorn Drive) to their lot 5 (11 Denman Court). There are no new parcels being created and the transfer of property will provide a more functional rear yard area.

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 applicants' proposal.

Entered as A-1: Minor subdivision plot dated 3/13/20

Mr. Lanzafama stated that the topography on the site make it appear as though the parcel being transferred belongs on lot 5 (11 Denman).

Upon a motion made by Joseph Steinberg, seconded by Shaunak Tanna, and with a roll-call vote as follows:

Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
David Morrow – yes
Tara Prupis – yes
Joseph Steinberg – yes
Shaunak Tanna – yes
Daniel Baer – yes

Appl#20-003, R. Bosselman/B. Schwab, 11 Denman Court/232 Hartshorn Drive, minor subdivision approval was **GRANTED** with the following conditions: 1) the zoning table shall be revised to show the accurate building coverage calculation; 2) the application be corrected to reflect the transfer of 1,083 SF of property; 3) a supplemental submission with the signatures of both owners of the property at 232 Hartshorn Drive as consenting to the application shall be submitted to the Board Secretary.

Richard Schkolnick approached the Board with a request that the resolution be adopted tonight due to the applicants' personal circumstances.

Berylin Schwab appeared and was sworn. She stated that the area in question was always thought to be part of 11 Denman Court and has been used by 11 Denman Court since 1985. She

stated that she discovered, when they tried to sell the house, that this was not the case. They are in a sale process at this time and time is of the essence due to personal circumstances.

Board Attorney, Ed Buzak, stated that he has had numerous conversations with the applicants' attorney, Richard Schkolnick and has a prepared resolution on the matter. He indicated that it would be up to the Board as to whether they wanted to proceed on a vote on the resolution.

A motion to vote on the resolution of approval was made by Shaunak Tanna, seconded by Tara Prupis and carried with a roll-call vote as follows:

Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
David Morrow – yes
Tara Prupis – yes
Joseph Steinberg – no
Shaunak Tanna --- yes
Daniel Baer – no

*Joseph Steinberg left the meeting at this time (10:30 PM)

Board Attorney, Ed Buzak, read the resolution of approval into the record.

Upon a motion made by Gaston Hauptert, seconded by Shaunak Tanna, and with a roll-call vote as follows:

Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
David Morrow – yes
Tara Prupis – yes
Shaunak Tanna – yes
Daniel Baer – yes

the following resolution of approval was adopted:

**RESOLUTION
PLANNING BOARD
TOWNSHIP OF MILLBURN**

In the Matter of:

**Robert Bosselman/Berylin Schwab
Stuart M. and Judith S. Colton
Application No. 20-003
Block 3802, Lots 5 and 34;
Minor Subdivision Approval
Waiver**

WHEREAS, Robert Bosselman and Berylin Schwab ("Applicant") has made application to the Township of Millburn Planning Board ("Board") for minor subdivision approval, and a waiver of the requirement that an Environmental Impact Statement be submitted, all as set forth in the application filed and as set forth in more detail below, in connection with the adjustment of lot lines between Lot 5 (owned by Applicant) and Lot 33 (owned by Stewart M. and Judith S. Colton), both in Block 3802 as shown on the Official Tax Map of the Township of Millburn (respectively, "Lot 5"; "Lot 33"; collectively "Property"); and

WHEREAS, one of the two owners of Block 3802, Lot 33 has consented to the application; and

WHEREAS, the Applicant has submitted the following plans in connection with the application:

- "Minor Subdivision Plat, 11 Denman Court & 232 Hartshorn Drive, Tax Lots 5 & 33, Block 3802, Township of Millburn, Essex County, N.J.", prepared by Casey & Keller, dated 3-13-20 consisting of one sheet ("Plans");
- "Land Title Survey, 11 Denman Court & 232 Hartshorn Drive, Tax Lots 5 & 33, Block 3802, Township of Millburn, Essex County, N.J.", prepared by Casey & Keller, dated 3-13-20, consisting of one sheet ("Survey").

; 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 can 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, a virtual and remote public hearing in accordance with the notice was held on the application on May 20, 2020; and

WHEREAS, the Applicant was represented by Richard S. Schkolnick, Esq. and testimony was provided by Applicant Berylin Schwab and Michael T. Lanzafama, P.E., L.S. and P.P. all in support of the application; and

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

1. Lot 5 is located at 11 Denman Court and is formally known as Lot 5, Block 3802 on the Official Tax Map of the Township of Millburn. Lot 33 is located at 232 Hartshorn Drive and is formally known as Lot 33, Block 3802 on the Official Tax Map of the Township of Millburn. Lot 5 is located in the R-4 Zone which requires a minimum lot size of 20,000 square feet. Lot 33 is located in the R-3 Zone which requires a minimum 29,000 square feet. The Properties are both within residential neighborhoods.

2. The Applicant seeks minor subdivision approval to adjust the lot lines between Lot 5 and Lot 33. Both lots conform as to lot area within their respective zones.

3. More specifically, Lot 5 currently consists of 23,162 square feet and is developed with a two-story single-family home with multiple accessory structures thereon. Lot 33 currently consists of 133,462 square feet and is also developed with a two-story single-family home with multiple accessory structures thereon. A portion of the backyards of Lots 5 and 33 are contiguous to each other. The Applicant proposes to adjust the lot line between Lots 5 and 33 by appending to Lot 5 an irregularly shaped portion of Lot 33 consisting of 1,083 square feet.

If the subdivision is approved, the newly configured Lot 5 will consist of 24,245 square feet and the newly configured Lot 33 will consist of 132,379 square feet. Both lots will continue to remain conforming as to lot size.

4. The purpose of the proposed lot line adjustment is to reflect the historical use of the rear portion of the property and to make the rear portion of Lot 5 more functional than it currently is without impacting Lot 33 and the improvements thereon.

5. There are three existing non-conforming conditions on Lot 5. One of the non-conforming conditions will not be impacted by the granting of the minor subdivision and the other two existing non-conforming conditions will be slightly mitigated by the granting of the subdivision, but will still not bring Lot 5 into conformity. More specifically, first, there is a *de minimis* non-conformity with regard to front yard set-back on Lot 5. The front yard set-back in the R-4 Zone is a minimum 40', whereas Lot 5 currently has a front yard set-back of 39.30'.

Because the lot line adjustment affects the rear of Lot 5, this pre-existing, non-conforming condition shall remain. Second, the R-4 Zone requires a rear yard set-back equal to 20% of the lot depth. Currently, the rear yard set-back of Lot 5 is 21.17' or 13.5% of lot depth. If the subdivision is approved, the rear yard set-back for Lot 5 will be 23' or 14.7%, an improvement over the existing 13.5%, but still non-conforming. A conforming rear yard set-back for Lot 5 would be 31.33'. The third and final existing non-conformity involves accessory coverage. In the R-4 Zone 20% of the rear yard may have accessory structure coverage. Currently, Lot 5 has 22.98% accessory structure coverage and if the subdivision is approved, that coverage will be reduced to 21%, still in excess of the 20%.

6. Currently, there are no pre-existing non-conformities on Lot 33 in connection with these bulk requirements and if the subdivision is approved, no new non-conformities will be created.

7. It is noted that there is inconsistency between the application submitted and the Plans, as well as an inconsistency between the Zoning Table for Lot 5 on the Plans and the information contained on the actual subdivision plat. More specifically, the application seeks to transfer 1,099 square feet from Lot 33 to Lot 5, whereas the Plans on the lot configurations themselves reflects that only 1,083 square feet is being appended by Lot 5 from Lot 33, and the Zoning Table for Lot 33 indicates a reduction in size of only 1,083 square feet. . The Zoning Table for Lot 5, however, demonstrates an increase of lot size of 1,099 square feet. In addition, it has been confirmed by the Applicant that the proper size of the parcel being appended to Lot 5 is 1,083 square feet and therefore the Applicant shall revise the Zoning Table for Lot 5 on the Plans to reflect the correct size of the parcel (1,083 square feet) from Lot 33 being appended to Lot 5. In addition, in the Zoning Table for Lot 33 on the Plan, building coverage decreases from 2% to 1.98%, However, because the size of Lot 33 is being reduced by 1,083 square feet, the amount of building coverage should be increased from the existing 2% rather than decreased and therefore the Zoning Table for Lot 33 should likewise be corrected.

8. The Applicant sought a waiver from the requirement that an Environmental Impact Statement be provided. The Applicant's Engineer and Planner testified that there is no new construction being proposed on the Property in connection with this application and that both lots are already developed with single family homes, driveways and accessory improvements. Thus, there will be no change from existing conditions in terms of improvements. For these reasons, the Applicant's Engineer and Planner supported the waiver of the submission of an Environmental Impact Statement. The Board notes that an Environmental Impact Statement is not required for a minor subdivision and therefore no waiver is necessary.

9. There were a number of professional reports issued in connection with this application. Specifically, the Township Planner submitted a report dated May 18, 2020. The Planner's Report pointed out the discrepancy with regard to the area to be removed from Lot 33 and appended to Lot 5 and also noted that if there is any fencing proposed along the rear lot line, the same shall be installed in accordance with Section 609.6 of the Township Land Development Regulations and Zoning Ordinance. Additionally, the Township Engineer issued a report, dated May 15, 2020. The Applicant has agreed to comply with all requirements set forth in the reports

of the Township Planner and the Township Engineer. No reports were issued by the Fire Marshal, the Police Department, the Zoning Officer, or the Township Forester.

10. After considering the testimony, the recommendations of the Board's Professionals, and the advice of its counsel, the Board is of the view that minor subdivision approval to reconfigure a the rear common boundary between Lots 5 and 33 in Block 3802 on the Official Tax Map of the Township of Millburn, should be granted, subject to the conditions as set forth below.

NOW, THEREFORE, BE IT RESOLVED that this Resolution shall serve to memorialize the actions of the Planning Board of the Township of Millburn taken on May 20, 2020, granting minor subdivision approval as set forth in the Plans and in this Resolution, all as set forth in the application for this Property, formally known as Lots 5 and 33, Block 3802 on the Official Tax Map of the Township of Millburn, subject to the following conditions:

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

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

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

4. The Applicant shall provide proof of exemption or approval from the Essex County Planning Board and/or proof of exemption or approval from the Hudson-Essex-Passaic Soil Conservation District.

5. The Applicant shall comply with the reports of each of the professionals and/or Township staff as set forth previously in this Resolution.

6. The Applicant shall correct the application submitted to reflect the area to be conveyed from Lot 33 to Lot 5 to be 1,083 square feet.

7. The Applicant shall modify the minor subdivision Plans to correct the Zoning Table for Lot 5; to insert the correct size of the newly configured Lot 5; and to correct the Zoning Table on the Plans for Lot 33 to correct the building coverage of proposed Lot 33.

8. The Applicant shall obtain and submit to the Planning Board Secretary the written consent of Judith S. Colton inasmuch as only Stewart M. Colton consented to the application.

9. In the event that fencing is installed along the rear lot line, the same shall comply with Section 609.6 of the Township Development Regulations and Zoning Ordinance.

10. The Applicant shall provide an appropriate metes and bounds description for the newly configured Block 3802, Lot 5 and the newly configured Block 3802, Lot 33 for review and approval by the Township Engineer prior to the perfection of this subdivision.

11. The Applicant shall perfect this minor subdivision in accordance with N.J.S.A. 40:55D-47d by filing a Plat in conformity with the approval and the provisions of the "Map Filing Law", P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9, et seq.) or Deeds clearly describing the approved minor subdivision, signed by the Chairman and Secretary of the Planning Board, and filed within 190 days after the adoption of the instant Resolution, pursuant to N.J.S.A. 40:55D-47d with the County Recording Officer, the municipal engineer and the municipal tax assessor. The minor subdivision deeds shall be submitted for review and approval by the Planning Board Engineer and the Planning Board Attorney.

12. To the extent required, the Applicant shall submit revised Plans to reflect the changes to which the Applicant agreed and/or those modifications that are required by the Board in this resolution or by the Board's experts.

13. The Applicant shall be bound to comply with all representations made before this Board by the Applicant and the Applicant's witness during the course of the public hearing on the application held on May 20, 2020 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.

14. This Resolution shall take effect immediately upon its adoption.

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 20th day of May, 2020.

ADJOURNMENT

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

Eileen Davitt
Board Secretary

Motion: DE
Second: GH
Date Adopted: 6/17/20