

Township of Millburn  
Minutes of the Planning Board  
June 19, 2019

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, June 19, 2019** 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  
Elaine Becker  
Cheryl Burstein  
Dianne Eglow  
Tracy Goldenberg  
Gaston Hauptert  
Jorge Mastropietro  
Marc Matsil  
Joseph Steinberg – arrived at 8:40 PM  
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 May 1, 2019 was made by Elaine Becker, seconded by Dianne Eglow, and carried with a unanimous voice vote.

A motion to approve the minutes of May 15, 2018 was made by Dianne Eglow, seconded by Beth Zall, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Appl#19-003, TNT Fitness, 296 Millburn Avenue, Millburn**

Upon a motion made by Elaine Becker, a second by Joseph Steinberg, and with a roll-call vote as follows:

Daniel Baer – yes  
Elaine Becker – yes  
Joseph Steinberg – yes  
Marc Matsil – yes  
Tracy Goldenberg – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:**

**TNT Fitness One, LLC  
Site Plan Application No. 19-003  
Block 805, Lot 2  
Preliminary and Final Site Plan Approval  
Variance and Waiver**

**WHEREAS**, TNT Fitness One, LLC ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final site plan approval; a variance from the loading space requirement; a waiver request that the Environmental Impact Statement not be submitted; and certain completeness waivers, all as set forth in the application submitted and as set forth in more detail below, in connection with the use as a fitness studio of a portion of the premises on property formally known as Block 805, Lot 2 on the Official Tax Map of the Township of Millburn ("Property") as a fitness studio; and

**WHEREAS**, the Applicant has submitted plans entitled "F45 TRAINING, 296 Millburn Avenue, Millburn, NJ 07041, Preliminary and Final Major Site Plan Approval", prepared by Buchholz Architects, Florham Park, New Jersey, dated March 14, 2019, consisting of 2 sheets ("Plans");

**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 May 1, 2019; and

**WHEREAS**, the Applicant was represented by John Motta, Esq. and testimony was provided by Todd Crispino, Member of Applicant; Michael Lanzafama, PE, LS, PP; and John A. Buchholz, AIA, LEED AP, Architect, 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 Plans, hereby makes the following findings of fact:

1. The Property is located at 296 Millburn Avenue, and is formally known as Block 805, Lot 2 on the Official Tax Map of the Township of Millburn. The Property is located in the B-4 Zone. The entirety of the Property measures approximately 15,255 square feet and contains a two-story mixed use retail and residential building with a rear parking area consisting of 16 spaces and a below grade garage consisting of 17 spaces. The building had been approved by the Millburn Planning Board in 2013 and at that time a variance was granted for the lack of a loading area space. There are 5 residential units on the upper floor and approximately 5,500 square feet of retail space on the ground floor. The retail space is divided into 2 tenant spaces, an area of approximately 3,000 square feet containing a children's indoor play studio known as "Busy Bee" that had been granted use and bulk variance approval by the Millburn Zoning Board of Adjustment in 2018 and the balance of approximately 2,500 square feet to be used by the Applicant. The Property is located on the south side of Millburn Avenue between Whittingham Terrace and Rawley Place. Other properties with frontage on Millburn Avenue are generally commercial or mixed use in nature. The rear parking area is accessed from Millburn Avenue via a two-way drive isle located on Block 801, Lot 1 which is utilized by this Property under a formal ingress/egress easement. Despite access being provided over the adjacent Lot 1, there is no shared parking between Block 805, Lots 1 and 2.

2. The proposed use involves an F45 training studio. The Applicant testified that F45 franchises operate in approximately 1,500 locations in 36 countries. The Applicant has a lease for the remaining approximately 2,500 square feet of retail space in which to site the training studio. The lease is contingent upon the approval of the use of the 2,500 square feet by governmental entities having jurisdiction thereover.

3. F45 training involves 45 minutes of high intensity structured training in formal classes. There are 2 instructors for each class with the average class size being 18 participants and the maximum class size being 24 participants. The hours of operation are anticipated to be 5:30 am to 8:00 pm, Monday through Friday and 7:00 am to 12:00 pm on weekends. Weekday peak times are anticipated to be in the morning between 5:30 am and 9:30 am and in the evening between 5:00 pm and 7:00 pm. On weekends there will likely be 3 or 4 classes of 45 minutes with a 15 minute interval in between each class. There are no motorized treadmills and the studio works through a monthly membership program which could involve unlimited classes during that monthly period or 8 sessions. Participants sign up and pay for classes in advance. There will be 3 employees on premises at any given time, consisting of 1 studio manager and 2 trainers per class. There is a roster of 4 to 6 trainers who will rotate to provide instructions for the classes.

4. There is no food preparation or food sales. Deliveries will be made by UPS or FedEx and will generally consist of clothing such as t-shirts, hats, yoga pants and so forth and other related merchandise, largely promoting the F45 training. It is anticipated that any such

retail sales of merchandise will be ancillary and accessory to the primary training operation of the studio.

5. Refuse will be disposed of in an outside dumpster. The primary refuse will be paper towels from the bathroom facilities. Although there are 2 showers that will be located on premises, cloth towels will not be provided by the facility for the participants. There are no on-site laundry facilities.

6. There will be music that is tempoed to the particular workout. Trainers will not use microphones and the sound will be of a low/medium intensity. Because of the residential use above the ground floor training premises and the hours of operation, the Architect testified that the ceilings in this tenant space will be redone with additional sound proofing to substantially minimize any musical or other sounds from the operation of the training studio which may infiltrate the residential units above.

7. The Engineer and Planner for the Applicant noted that the original approval of this building by the Millburn Planning Board in 2013 provided for the 33 parking spaces which took into account the residential use as well as the non-residential use at ground level. There is no designated parking except to the extent that 10 of the 17 below grade spaces are reserved for the 5 residential units on the second floor and the remaining below grade spaces are to be utilized by employees from the non-residential use. The above ground 16 spaces are to be used for the balance of the parking needs for this mixed use building. He also noted that there were 31 on-street parking spaces in close proximity to the premises as well as multiple off-street public parking facilities.

8. The Engineer and Planner further testified that a variance for the lack of a loading space had been previously granted in 2013 but also testified that because of the limited deliveries that are to be made to these premises which will be done by UPS or FedEx, there was no need to create a loading space for these types of deliveries.

9. The Applicant's Architect reviewed the Plans that he had prepared and walked the Board through the floor plan for these premises, explaining in some detail the efforts that will be made to install soundproofing materials and other muffling material on the ceiling to mitigate any sounds including music from penetrating through to the residential use. The Architect also pointed out that any signage will likely be window signage and will comply with all ordinance requirements, noting that all permits needed will be obtained. The Architect also committed to providing the CAD drawings as required by the Fire Marshal and was of the view that between his testimony, that of the Engineer and of the Applicant adequately addressed the issues raised in the Board's Planner's report as well as the other reports that had been submitted. The Architect also supported the request for a waiver of the Environmental Impact Statement on the basis that there was going to be no outdoor activity or changes made and that all of the work that was being done involved the interior space that had previously received approval from the Planning Board.

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 preliminary and final

site plan approval should be granted; a waiver of the submission of various checklist items and the submission of an Environmental Impact Statement should be granted; and a variance from the need to designate a specific loading space 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 taken on May 1, 2019, granting preliminary and final site plan approval for the use of approximately 2,500 square feet of retail space on the ground floor of the building located at 296 Millburn Avenue as an F45 training/fitness facility; granting a variance from the requirement that a designated loading space on-site be provided and granting a waiver of certain checklist requirements and the submission of an Environmental Impact Statement all as set forth in the application for premises know as 296 Millburn Avenue, 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 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 comply with the requests of the Township Fire Marshal, the Township Engineer and the Township Forester in connection with the proposed use.

6. 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 1, 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 May 1, 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 19th day of June, 2019.

-----

**Appl#19-006, Cartley Associates, 348 Millburn Avenue, Millburn**

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

- Daniel Baer – yes
- Elaine Becker – yes
- Cheryl Burstein – yes
- Dianne Eglow – yes
- Gaston Hauptert – yes
- Jorge Mastropietro – yes
- Marc Matsil – yes
- Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:  
Cartley Associates, LLC  
Application #19-006  
Block 801, Lot 1  
Major Site Plan Approval**

**WHEREAS**, Cartley Associates, LLC ("Applicant") has made application to the Township of Millburn Planning Board for major site plan approval for a change in use to convert the upper two floors of an existing three story commercial building to residential use and for the following: 1) variance relief from the requirements of Land Use Ordinance Section 607.1 whereas one loading space is required, and none are proposed, and 2) a waiver from the requirement to submit an Environmental Impact Statement, in connection with property commonly known as 344-346 Millburn Avenue, and formally known as Block 801, Lot 1 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: "Retail to Apartment Conversion , Second and Third Floor Apartments,

346 Millburn Avenue, Millburn, New Jersey 07041" prepared by Buchholz Architects, consisting of two sheets, Drawings A-0 and A-1, and dated April 3, 2019; and

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

**WHEREAS**, a public hearing was held on the application on May 15, 2019; and

**WHEREAS**, the Applicant was represented by Helen Schultz, Esq., and presented the testimony of John Buchholz, Architect, and Robert Schultz, who is an owner of the building; and

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

1. The Property is located at 344-346 Millburn Avenue and is formally known as Block 801, Lot 1 on the Official Tax Map of the Township of Millburn. The property is located within the "B-4" Central Business Zone. Apartments over stores are permitted in the B-4 Central Business District.

2. The subject property is located at the southwest corner of Millburn Avenue and Main Street. The property measures approximately 5,253 square feet (0.12 acres). The site has 51 feet of frontage on Main Street, and 103 feet of frontage on Millburn Avenue. Land use in the vicinity of the site is made up in part of one to three story commercial and mixed use buildings with retail sales or services on the ground level and residential or professional offices above.

3. The lot is developed with three attached buildings, each of which has a separate entrance. The center building has three stories, and the other two buildings have two stories. Uses on the site consist of first floor retail at the corner; first and second floor retail with third floor storage in the center building and first floor food/retail sales with upper floor office in the westernmost building.

4. The Applicant is proposing to retain a retail sales use on the first floor and convert the second and third floors to residential apartments. The second floor apartment would consist of two bedrooms and two full baths. The third floor apartment would consist of two bedrooms, two full baths, and one half bath. Exterior façade renovations are proposed to shade existing store front windows where necessary, replace the existing glass storefront door and add windows to the upper portion of the building where there is currently a standing seam metal roof. No off street parking exists on the site, nor is any proposed.

5. The Applicant presented the testimony of John Buchholz, Architect, who reviewed Exhibits A-1 (Elevations) and A-2 (Photos of Current Conditions). The Applicant

seeks a variance from the Section 607.1 requirement to locate a loading space on site, as none is provided. The site is already fully developed, leaving no room to locate a loading space. The requested conversion for the upper two floors will be for residential use, and the residences would receive packages via US mail or common carriers (such as FedEx or UPS), so would not require a loading space. Trash will be carted away by a commercial trash hauling company.

6. No new off street parking spaces are proposed. It is noted that the prior use on this site was approved via a Resolution adopted on July 13, 2009 ("2009 Approval"). The 2009 Approval recognized that the site offered no onsite parking, same being preexisting non-conforming conditions, and a variance from the requirement to provide 34 onsite parking spaces and a loading dock was granted therein.

7. Mr. Buchholz addressed the Zoning Compliance Comments at Paragraph 3 of the May 10, 2019 Memorandum prepared by Paul A. Phillips, the Board's Professional Planner. Pursuant to Section 607.4, within the B-4 District, no off street parking is required for a change in use that would not result in any increase in off-street parking requirement pursuant to Section 607.2m. Mr. Buchholz stated that the first floor was previously, and will remain, retail so the parking requirements (7 spaces) will remain the same. The previous use of the second floor was for retail, and nine spaces were required. The proposed residential use for the second floor would require two spaces. The former use of the third floor was for fur storage and one space was required. The proposed use of the third floor is residential and two spaces are required. Therefore, based upon these numbers the prior use required 17 spaces, and the proposed use will require 11 spaces. Therefore, the proposed use requires fewer spaces than did the former use, and as such would require no new off street parking pursuant to Section 607.4. However, since the prior use did not actually provide any on-site parking spaces (rather, a variance from the requirement was granted), the Board requested, and the Applicant agreed, that all residential Leases for the site shall contain a requirement that any Tenant having a car will be required to purchase a parking permit. This also addresses the comments raised in the May 3, 2019 Memorandum from Sergeant Michael G. Fattal of the Millburn Police Department.

8. Mr. Buchholz said the Applicant is seeking a waiver from the requirement to submit an Environmental Impact Statement because the site is already fully developed, and no exterior improvements are proposed. The Board finds that as the site is fully developed and no exterior improvements (except for roofing, door and window modifications) are proposed, the waiver request will be granted.

9. The Fire Marshal issued a Memorandum dated November 2, 2018. It noted that the Applicant must maintain Fire Department access to the structure while undergoing construction; provide a copy of the Auto CAD final approved plans to the Fire Marshal; provide a key for the "Knox Box"; comply with Municipal Ordinance 15-5 regarding premises identification, and meet all Building Code and New Jersey Uniform Fire Code requirements, all of which will be made conditions of this approval. The Fire Marshal also recommends that an NFPA 13 compliant fire sprinkler system be installed throughout the occupancy, and the Applicant agrees that if required by the Uniform Construction Code same will be installed.

10. The Board finds that the site is fully developed, and the site as developed leaves no room to build loading spaces. The deliveries to the proposed residential units will be mail only and will be delivered by conventional carriers, and that no large supply trucks will need to park for prolonged time to make deliveries. The Board finds that the benefits of permitting the proposed use of the now vacant second and third floors in the building, within the B-4 Central Business zone would substantially outweigh any detriment to the Master Plan or Zone Plan. The Board finds that a variance from the requirements of section 607.1 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.

11. The Board is of the view that major site plan approval should be granted; that the variance request from the requirement of 607.1 be granted, and the requested waiver from the requirement to submit an EIS be granted, 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 taken on May 15, 2019 granting major site plan approval for the Property; (i) a variance from the requirement to provide a loading space and ii) a waiver from the requirement to submit an EIS,; 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 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 (and all subsequent building owners) shall include within each residential lease a requirement that each residential occupant owning/leasing a vehicle shall purchase a municipal parking permit which shall be in effect for the entire duration of the Lease term.

6. The Applicant shall comply with requirements 1, 2, 3 and 5 of the Fire Marshal's Memorandum dated May 8, 2019. The Applicant shall install an NFPA 13 compliant fire sprinkler system though out the occupancy if required by the Uniform Construction Code.

7. 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 May 15, 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.

8. 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 May 15, 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 19<sup>th</sup> day of June, 2019.

-----

**Appl#19-007, Brow-Eyed Girl, 55 Main Street, Millburn**

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

- Daniel Baer – yes
- Elaine Becker – yes
- Cheryl Burstein – yes
- Dianne Eglow – yes
- Gaston Hauptert – yes
- Jorge Mastropietro – yes
- Marc Matsil – yes
- Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:**

**Brow Eyed Girl, LLC  
Application #19-007  
Block 801, Lot 16  
Minor Site Plan Approval**

**WHEREAS**, Brow Eyed Girl, LLC (“Applicant”) has made application to the Township of Millburn Planning Board for minor site plan approval for a change in use in an existing vacant commercial unit, and for the following: 1) variance relief from the requirements of Land Use Ordinance Section 600.1 whereas one loading space is required, and none are proposed, and 2) a variance from the requirements of Land Use Ordinance Section 607.2 regarding off street parking requirements in connection with property commonly known as 55 Main Street, and formally known as Block 801, Lot 16 on the Official Tax Map of the Township of Millburn (“Property”); and

**WHEREAS**, the Applicant has submitted an application and exhibit, including, without limitation, the following: “Map of Property, 55-57 Main Street, Township of Millburn, Essex County, New Jersey” consisting of one sheet, prepared by Casey and Keller, Inc., unsigned, undated; and

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

**WHEREAS**, a public hearing was held on the application on May 15, 2019; and

**WHEREAS**, the Applicant was represented by Gary S. Goodman, Esq., and testimony was provided by a principal of the Applicant, Courtney Schreiber;

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

7. The Property is located at and is formally known as 55 Main Street, Block 801, and Lot 16 on the Official Tax Map of the Township of Millburn. The property is located within the “B-4” Central Business Zone.
2. The Applicant is seeking site plan approval for a change of use to a salon/retail service use on the second floor of a mixed-use building. The area is 250 square feet and is currently vacant and was used formerly as office space.
3. The subject property measures approximately 0.12 acres and is located to the southwest of the intersection of Millburn Avenue and Main Street within Millburn’s downtown area. The subject property is developed with a two story commercial building that is located adjacent to Millburn Avenue and a small paved rear parking area. There is no direct access to the parking area on the lot, but it appears to be accessed via a shared driveway on the adjacent lot to the south (Block 801, Lot 15). The first floor of the building is currently occupied by MoonShine Supper Club, a bar/restaurant. The second floor of the building consists of professional office space for several tenants. The Applicant is proposing to use space on the

second floor as a permanent makeup studio. Services that would be performed would include eyebrow micro blading and semi permanent application of eyeliner and lip color.

4. Courtney Schreiber testified that she would be the only employee of the business. She listed the New Jersey State licenses which she holds to operate the proposed business. Ms. Schreiber testified that the Landlord provides one parking space for the unit within the terms of the Lease Agreement. Her clients are by appointment only and she will only have one client at a time on the premises. Hours will be Monday through Saturday from 9 am to 7 pm. No delivery trucks are expected as her supplies arrive by small package or she picks them up as needed. Those items classified as “medical waste” are properly disposed of and she arranges for periodic pick up of those items by a licensed disposal service.

5. The Applicant has requested a Waiver from the requirement to submit an Environmental Impact Statement because no exterior changes are proposed and the site is already fully developed. The Board finds that the waiver request can be granted in that no exterior site improvements will be made in connection with this application, and the site is already developed.

6. No new off street parking spaces are proposed, whereas two spaces would be required pursuant to the Land Use Ordinance at Section 607.2. As stated above, the Applicant has testified that one on site space is provided for this unit pursuant to the Lease terms.

7. The Millburn Police Department has issued a memo dated May 3, 2019 which recommends that the Applicant purchase business parking permits for the employees. However, the Applicant has now provided testimony before this Board that one space on site is provided for this unit and that only one employee will be on site. As a result, the Board finds that an employee space is provided on site and that no permit will be required for this one employee. In the event that more employees are added to the business, the Applicant would need to buy permits for the additional employees.

8. The Fire Marshal issued a Memorandum dated May 8, 2019. It noted that the Applicant must maintain Fire Department access to the structure while undergoing construction; provide a copy of the Auto CAD final approved plans to the Fire Marshal; provide a key for the “Knox Box”; install a carbon monoxide detector, comply with Municipal Ordinance 15-5 regarding premises identification, and meet all Building Code and New Jersey Uniform Fire Code requirements.

9. The Board finds that the site is fully developed, the paved parking lot is a condition existing, and the site as developed leaves no room to build additional parking or loading spaces. The Applicant has explained that the deliveries to the proposed business will be supplies only, and will be delivered 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 one employee will be on site and that there will be only one client at any one time, and that therefore the expected number of persons on site is two at any one time. There is an existing shared parking lot for building tenants, and the applicant has provided testimony that one space

is allocated to her unit pursuant to the Lease terms. The Board finds that the benefits of permitting the proposed use of the now vacant unit in the building, within the B-4 Central Business zone would substantially outweigh any detriment. As a result of the existence of an existing space parking lot for the tenants of the building, that only one employee and one client will be on site at any one time for this use, the Board finds that a variance from the requirements to provide two parking spaces (whereas one is proposed) and to provide a loading space (whereas none is proposed) 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.

10. The Board is of the view that minor site plan approval should be granted; that the variance request from the requirements from Section 607.4 and 607.1, and the waiver request from the requirement to submit an Environmental Impact Statement, be granted in accordance with the requirements as set forth in this Resolution, 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 taken on May 15, 2019 granting minor site plan approval for the Property; (i) a variance from the requirement of Section 607.1 to provide a loading space and (ii) a variance from the parking requirements of Section 607.2, and a waiver from the requirement to submit an Environmental Impact Statement 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 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 comply with all the requirements of the Fire Marshal's Memorandum dated May 8, 2019.

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 May 15, 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 May 15, 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 19<sup>TH</sup> day of June, 2019.

-----  
**Appl#19-008, Anish Khanna, 33 Birch Lane, Short Hills**

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

Daniel Baer – yes  
Elaine Becker – yes  
Cheryl Burstein – yes  
Dianne Eglow – yes  
Gaston Hauptert – yes  
Jorge Mastropietro – yes  
Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:**

**Anish Khanna  
Application #19-008  
Block 2301, Lot 8  
Final Major Subdivision Approval**

**WHEREAS**, Anish Khanna (“Applicant”) seeks final major subdivision approval in connection with property commonly known as 33 Birch Lane and formally known as Block 2301, Lot 8 on the Official Tax Map of the Township of Millburn, with street (“Property”); and

**WHEREAS**, the Applicant has submitted plans and exhibits, including, without limitation, the following: “Final Subdivision Plan, 33 Birch Lane, Tax Lot 8, Block 2301,

Township of Millburn, Essex County, New Jersey” prepared by Casey and Keller, consisting of five drawings dated January 14, 2011 and revised on April 15, 2019; and

**WHEREAS**, the Applicant has provided the requisite notice to property owners and published 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 May 15, 2019; and

**WHEREAS**, the Applicant was represented by Mark T. McMenemy, Esq. and testimony was provided by the Applicant Anish Khanna, and by Michael Lanzafama, P.E., P.P.; and

**WHEREAS**, the Board having considered the testimony and reviewed the application, the Plans and all exhibits, and having opened the meeting for public comment and testimony, hereby makes the following findings of fact:

1. The property is located in the R-3 zone district. The property consists of 72,605 square feet and was previously developed with a single family home. Wetlands are present on site. The Applicant received preliminary subdivision approval to permit the creation of two lots on the site. One lot, proposed Lot 8.01 would measure 37,316 square feet and the second lot, proposed Lot 8.02 would measure 35,289 square feet. The application was fully conforming in terms of lot dimensions and requirements and no variances were required.

2. The Applicant received preliminary subdivision approval to permit the creation of two lots on January 18, 2012 which was memorialized by Resolution for Application #39-11 adopted on March 7, 2012. The Applicant was granted a two-year extension of preliminary approval by Resolution adopted by the Planning Board in June of 2017.

3. The Applicant has submitted a letter dated April 25, 2019 from Richard A. Keller, P.E., P.P. C.M.E. which outlines the conditions required of the Applicant in Resolution #39-11 adopted on March 7, 2012. The Applicant has submitted plans which have been revised to April 15, 2019. The Township Engineer has reviewed same and has issued a Memorandum dated May 9, 2019 and is satisfied that the Applicant has satisfied certain conditions of preliminary approval, with the exception of two recommendations for the Stormwater Management System Maintenance manual, which the Applicant agrees to make and which will be a condition of this approval.

4. The Applicant agreed to comply with the Township Engineers May 9, 2019 letter, and with the Township Foresters Memorandum of May 6, 2019. The Applicant will secure approval from the County Planning Board.

5. Michael Lanzafama, P.E., P.P., testified regarding the plan revisions made. The Board reviewed that items 3, 5, 6, 7, 8, 9, 11, 12, 15 and 17 of the Preliminary Approval remained outstanding and will remain as conditions of this approval. The Board noted that the

maintenance and performance guarantee amounts would be subject to recent legislation (P.L. 2017, C. 312) which amended N.J.S.A.40: 55D-53, and the Township's Ordinance amendments to implement those changes.

6. The Board opened the hearing to the public. Several members of the public testified regarding ongoing issues with property maintenance on site, including landscaping debris and garbage on site, as well as a broken post and rail fence. Stewart Glickman, 20 Adams Avenue introduced Exhibit P-1, which consisted of five photographs showing trash on the property, a broken fence and fallen branches on the site. Carsten Schwarting of 49 Adams Avenue introduced a set of four photographs, marked as Exhibit P-2 showing drainage issues on site.

7. Mr. Khanna testified that he has in the past summoned the police to the site as a result of suspected unlawful dumping by other persons and /or landscapers. Once construction commences, there is a required reforestation plan for the site such that dead and diseased trees will be removed, and also stormwater management measures will be implemented on site. Mr. Khanna agreed to repair the broken fence on site and stated that he has not yet commenced debris pickup on site this year. He agreed to supply his contact information to the neighbors to discuss any future debris and trash issues. The Board finds that the trash and debris issues are more properly Code Enforcement issues over which the Board has no jurisdiction, however encourages the property owner and the affected neighbors to communicate to address future debris issues on site.

8. The Board is of the view that Final Subdivision approval should be granted, 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 taken on May 15, 2019 granting Final Major Subdivision Approval for the property 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 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 secure a tree removal permit and submit a restoration plan, together with the appropriate fee pursuant to the May 6, 2019 Memorandum from the Township Forester.

6. The Applicant shall comply with the May 9, 2019 Memorandum of the Township Engineer and shall make the following amendments to the satisfaction of the Township Engineer:

(a) Revise Part I of the Maintenance Manual for Stormwater Management, Paragraph A. An Overview of the Drainage System, to be more forceful in alerting owners and buyers of the obligations to maintain the stormwater management systems, prepare the inspection forms, and maintenance logs, and submit an annual report to the Township Engineer; and

(b) Amend Part 1- Inspection and Maintenance, Paragraph C. to include a deadline date of March 31 for the submission of the annual report to the Township Engineer.

7. The Applicant shall comply with the May 8, 2019 Memorandum of the Township Fire Marshal, Battalion Chief such that Residential Fire Sprinklers will be installed in the single family dwellings to be constructed on the Lots, which will be a condition of the issuance of building permits for homes to be constructed on the lots. The homes shall meet all Building Codes and New Jersey Fire Code requirements.

8. The Applicant shall comply with Conditions 3, 5,6,7,8,9,11,12, 15 and 17 as required by the Resolution granting Preliminary Approval adopted on March 7, 2012 which shall be continuing obligations of this final approval.

9. The Applicant shall be bound to comply with all representations made before this Board by the Applicant, and Applicant's witness during the course of the public hearing on the application held on May 15, 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.

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 May 15, 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 19<sup>th</sup> day of June 2019.

-----

## **APPLICATIONS**

### **APPL#19-009, 40 E. WILLOW, LLC, 40 EAST WILLOW STREET, MILLBURN**

Michael Kaplonski, Attorney for the applicant, stated his appearance. Michael Lanzafama, P. E., P. P. CLS, appeared and was sworn. He gave a brief description of the applicant's proposal. The applicant is seeking a minor subdivision for a lot line relocation. There will be a reduction in the impervious area and there is additional landscaping proposed. As such, they are respectfully requesting a waiver from the requirement to submit an Environmental Impact Statement.

Upon a motion made by Elaine Becker, seconded by Cheryl Burstein, and with a roll-call vote as follows:

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

the applicant's request for a waiver of an EIS submission was approved.

Michael Kaplonski gave a brief history of the property in question. The applicant is seeking minor subdivision approval for a lot line relocation. Both lots, after subdivision, will be conforming in lot area.

Michael Kohler, CEO of StarCom Fiber, appeared and was sworn. He briefly described the nature of his business as well as the proposed improvements they intend to make to the building. They are currently located at 61 E. Willow and are eager to relocate to 40 E. Willow.

Michael Lanzafama spoke to the existing and proposed conditions of the subject properties.

Entered as A-1: Area map  
Entered as A-2: Title & topographic survey  
Entered as A-3: Minor subdivision plat  
Entered as A-4: Site plan

Mr. Lanzafama indicated that proposed lot 5, after subdivision will have a conforming lot area of 30,000 SF. Lot 4 will have a reduction in lot area but will be conforming at 64,483 SF. Proposed lot 5 will have a lot width closer to the minimum required but will still be non-

conforming at 111.5 feet where the minimum required lot width in the CMO zone is 150 feet. Due to the reduction to the area of lot 4, the lot coverage percentage increases from 82.9% to 86.3%, despite the applicant's removal of approximately 2000 SF of existing lot coverage. The applicant proposes 3 pole mounted LED lights at 20 feet and 6 wall mounted LED lights at between 9 feet and 16 feet. The applicant proposes to remove all existing pavement, curbs and concrete area from lot 5, with no new development proposed at the present time. The existing building on lot 4 will remain and the applicant proposes changes to the parking and circulation on site. The parking area will contain 32 parking spaces as well as a loading area. New security gates are proposed near the driveway entrance. Originally, the gates were proposed to extend beyond the building, thereby necessitating variance relief for front yard location. Those gates were moved back to the building line so that variance relief is no longer required.

The applicant is proposing to plant additional ornamental deciduous trees and evergreen trees along the front façade as well as shrubs and perennials adjacent to the rear building entrance from the rear parking lot.

Mr. Lanzafama indicated that there is no substantial detriment to the public good as a result of any of the variances being requested. In addition, there is no substantial impairment to the Zoning Ordinance and zone plan. He spoke to the professional reports issued in connection with the application and indicated that the applicant will comply with the requirements and recommendations as stated in the reports.

Several Board members had concerns about the increase in the percentage of lot coverage on the newly configured lot 4. They felt the applicant should consider other options in order to reduce the lot coverage further. The applicant proposed a variety of revisions to the plan that ultimately reduced the overall lot coverage to 83% from the originally proposed 86.3%.

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

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

Appl#19-009, 40 E. Willow, LLC, 40 E. Willow Street, minor subdivision/preliminary & final site plan/ waiver of EIS was **APPROVED**.

**BUSINESS**

\*Joseph Steinberg arrived at this time (8:40 PM).

## **2018 Zoning Board of Adjustment Annual Report**

The Board briefly discussed the Zoning Board's annual report. The Board was appreciative of the Zoning Board's summary of applications.

\*Tracy Goldenberg left at this time (9:30).

## **Ord#2537-19 Sections 301 and 606 of Development Regulations**

The Board discussed Ordinance #2537-19, which had a first reading before the Township Committee on June 18, 2019.

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

Daniel Baer – yes  
Elaine Becker – yes  
Cheryl Burstein – yes  
Dianne Eglow – yes  
Gaston Hauptert – yes  
Jorge Mastropietro -- yes  
Joseph Steinberg – yes  
Miriam Salerno – yes  
Beth Zall – yes

the Planning Board recommends TC adoption of Ordinance #2537-19 as not inconsistent with the Master Plan, with the following revisions which it believes are not substantial nor change the intent or purpose of the ordinance as introduced (deletions in ~~strike through~~; additions **bold face/underlined**):

301.27.1 Indoor Commercial Recreation Use  
301.60a. Site plan approval shall not be required for single-family and two-family dwellings...  
301.60b. Building alterations and/or changes of use **and/or changes of tenancy**  
301.60d. Delete in its entirety  
606.6.1b3. ~~Apartments over stores~~ **Residential**, but not on ground floor  
606.7b3 ~~Apartments over stores~~ **Residential**, but not on ground floor  
Re-number/re-letter the section as appropriate due to recommended deletion of 301.60d above

The Planning Board encourages the Township Committee to consider the following issues that were raised as a result of the Planning Board's review of Ord.#2537-19:

\*The proposed increase to 40 feet/3 stories in the B-4 zone with an allowable building/lot coverage of 100% may negatively affect the residential properties that are located directly behind the B-4 zone.

\*Consider an increased front setback for 3<sup>rd</sup> stories in the B-4 zone.

\*Add a definition for “change of tenancy.”

\*Consider whether there are excessive/too diverse uses in the expanded CMO zone.

## **ADJOURNMENT**

A motion to adjourn was made by Cheryl Burstein, seconded by Daniel Baer, and carried with a unanimous voice vote. (10:30 PM)

Eileen Davitt  
Board Secretary

Motion: DE  
Second: BZ  
Date Adopted: 8/14/19