

Township of Millburn
Minutes of the Planning Board
January 17, 2018

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, January 17, 2018** at 7:30 PM in Millburn Town Hall.

Chairman Kenneth Leiby opened the meeting by reading section 5 of the Open Public Meetings Act.

The following members were present:

Marilyn Atlas-Berney
Daniel Baer
Elaine Becker
Cheryl Burstein
Dianne Eglow
Roger Manshel
Miriam Salerno
Joseph Steinberg
Beth Zall, Vice Chairwoman
Kenneth Leiby, Chairman

Also present:

Ed 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 January 3, 2018 was made by Elaine Becker, seconded by Daniel Baer, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Appl#17-022, New Jersey American Water, 185 JFK Parkway, Short Hills

Upon a motion made by Roger Manshel, seconded by Joseph Steinberg and with the following roll-call vote:

Daniel Baer – yes
Elaine Becker – yes

Cheryl Burstein – yes
Roger Manshel – yes
Joseph Steinberg – yes
Kenneth Leiby – yes

the following resolution was approved:

In the Matter of:

**New Jersey American Water, Inc.
Application #17-022
Block 5302, Lot 5
Preliminary and Final Site Plan Approval
Variance
Waiver**

WHEREAS, New Jersey American Water, Inc. ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final site plan approval, and for the following: (i) a "c" variance to permit the construction of a building with a height of 34.8 feet, whereas 32 feet is the maximum height permitted in the zone; (ii) a waiver of the requirement that the Applicant submit an Environmental Impact Statement; and (iii) a design waiver to permit the installation of 8 LED wall luminaire lights on the proposed building; as set forth in more detail below, in connection with property commonly known as 185 JFK Parkway and formally known as Block 5302, Lot 5 on the Official Tax Map of the Township of Millburn ("Property"); and

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

* "Preliminary and Final Major Site Plan, New Jersey American Water, Millburn Township, Essex County, New Jersey Canoe Brook WTP VOC Treatment System, consisting of 13 sheets, prepared by Mott MacDonald, dated October 20, 2017 ("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, a public hearing was held on the application on December 20, 2017; and

WHEREAS, the Applicant was represented by Niall O'Brien, Esq. and testimony was provided by Michael Polito, Jr., P.E., by Joseph Stanley, P.E., P.P. and by Frank Marascia (Production Manager at New Jersey American Water, Inc.); 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 185 JFK Parkway and is formally known as Block 5302, Lot 5 on the Official Tax Map of the Township of Millburn. The Property is located in the Conservation-Recreation Zone. Utility facilities related to the protection or distribution of regional water supplies is a permitted principal use in the Conservation-Recreation Zone. The Property consists of 558.42 acres and is located to the north of JFK Parkway.

2. The Property is developed with the Canoe Brook water treatment plant which produces and treats water from wells and surface waters from the Canoe Brook Reservoirs. The buildings and infrastructure associated with the treatment plant are generally located in a cluster proximate to the JFK Parkway side of the Property. The remainder of the Property contains two reservoirs, wetlands and forested lands. Land use in the vicinity of the Property is comprised of the Canoe Brook Country Club and Golf Course, East Orange Golf Course, office campuses, the Hilton at Short Hills hotel, and the Short Hills Mall.

3. The Applicant proposes to demolish an existing two-story masonry building ("Building C"). Building C measures approximately 8,370 square feet and is used primarily for storage. The Applicant proposes to construct a new, slightly smaller building of approximately 6,834 square feet within the demolished footprint of Building C. The application also includes four outdoor aluminum or stainless steel aeration/packed air stripper towers which are 26 feet tall. The proposed construction will contain facilities to treat drinking water containing volatile organic compounds (VOCs) that have been found in several of its supply wells.

4. The proposed new building will contain blowers for the air stripper towers and a new treatment building, including new vertical turbine pumps. It will also contain storage areas, a pump area, electrical room, blower room, future UV electrical room, a meeting room, restroom and a shower room. The exterior of the building will match the appearance of the surrounding buildings on the site.

5. The Applicant's Engineer testified that the blowers for each tower will have a 15 hp motor and will generate a sound level of 75 decibels within the building. The sound of the proposed new facility will be at or below 30 decibels at the property line. Due to the land use in the vicinity the sound is not anticipated to impact any neighboring properties.

6. The height of the building is 34.8 feet above the grade whereas 32 feet is the maximum height permitted in the zone. The Applicant's Engineer testified that this height is driven by the height of the "treatment vessels", including 22-foot tall charcoal filters. In addition, the Applicant's Engineer testified that the location of the proposed new facility is within a flood hazard zone, and that its design is above the New Jersey Department of Environmental Protection ("NJDEP") flood hazard elevation which causes it to exceed the maximum height limit.

7. In response to questions from the Board the Applicant stated that the proposed facility will not be visible from JFK Parkway.

8. There will be no signage on the building or facility except for a small sign displaying the building number.

9. The Applicant's Plans include 8 LED lights, model TWH LED, which are to be located on the proposed building along the access ways. LED lights are not permitted pursuant to Section 512.1 of the Township Code.

10. In response to questions from the Board the Applicant stated that air emissions of regulated substances from the facility will be de minimus, and will be below the level that triggers the need for a permit from regulatory authorities.

11. The Applicant's Planner testified in support of the Applicant's request for a height variance. As set forth in paragraph 6, the location of the Property within a flood hazard zone necessitates that the facility be designed above the NJDEP flood hazard elevation. In addition, the height of the facility must accommodate the 22-foot tall charcoal filters for the water treatment. The water quality and the reliability of the water supply in the service area, known as the Short Hills Service Area, will benefit from the proposed project. The project will protect the public health.

12. In support of the application for the waiver of the submission of an Environmental Impact Statement, it was noted that the construction is within the footprint of the existing building and that there should be no impact otherwise from the construction. In support of the request for a design waiver to allow the use of LED building mounted lighting it was noted that LED lighting is a more modern design and that its location would be limited to the access ways on the building.

13. The Township Engineer issued a Memorandum dated November 29, 2017 setting out that approval is required from the Hudson-Essex-Passaic-Soil Conservation District, that the approval, or a Letter of No Interest, is required from the County of Essex, and that the application should also be submitted to the NJDEP for a jurisdictional determination.

14. The Fire Marshal issued a Memorandum dated November 29, 2017. 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"; and number the Property as set out in the Memorandum.

15. Because the replacement facility is located within a flood hazard area and must be constructed at a specified flood hazard elevation, coupled with the need to accommodate the height of the "treatment vessels" as set forth in Paragraph 6, the Board found that for the reasons set forth herein that there are extraordinary and exceptional circumstances uniquely affecting the property, that the strict application of the maximum height permitted in the zone under the

Township Code would result in peculiar and exceptional practical difficulties, or hardship, to the Applicant, and that granting the variance would advance the purposes of the zoning plan. The Board further found that the proposed project is beneficial to the public and 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.

16. The Board is of the view that preliminary and final site plan approval should be granted; that the height variance set forth above should be granted; and that the waiver request for the submission of an Environmental Impact Statement should likewise be granted 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 December 20, 2017 granting (i) preliminary and final site plan approval for the Property; (ii) a height variance permitting a building 34.8 feet above the grade whereas 32 feet is the maximum height permitted in the zone, as set forth herein; (iii) a waiver of the requirement that Applicant submit an Environmental Impact Statement; and (iv) a design waiver to allow the installation of 8 LED building mounted lights, model TWH LED, along the access ways as set forth in the Plans; 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 Township Engineer's Memorandum dated November 29, 2017.

6. The Applicant shall comply with all the requirements of the Fire Marshal's Memorandum dated November 29, 2017.

7. The Applicant shall be bound to comply with all representations made before this Board by the Applicant, Applicant's counsel and Applicant's witnesses during the course of the public hearing on the application held on December 20, 2017 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 December 20, 2017.

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 17th day of January, 2018.

APPLICATIONS

APPL#18-001, 35 BLAINE STREET, LLC, 35 BLAINE STREET, MILLBURN

Michael Sullivan, Attorney for the applicant, stated his appearance. He stated that the applicant, 35 Blaine Street, LLC is seeking preliminary and final site plan approval to subdivide a lot into 2 lots. The Planning Board granted preliminary and final subdivision approval by resolution adopted July 5, 2017, which subdivision created 2 conforming single-family lots. Mr. Sullivan indicated that the subdivision was not perfected and the applicant subsequently chose to seek preliminary and final subdivision approval to create one conforming 2-family lot and 1 non-conforming single-family lot.

Michael Lanzafama, P. E., P. P., P. L. S., appeared and was sworn. His credentials were presented and accepted by the Board. He gave testimony with regard to the applicant's request for a waiver from an Environmental Impact Statement. He stated that there are no wetlands on site and the property is not located in a flood zone. The subdivision of this lot will have no negative impact on the environment.

The Board discussed the applicant's waiver from checklist requirements. A motion to grant the applicant's request for waivers from checklist requirements, with the exception of an EIS submission, was made by Beth Zall, seconded by Roger Manshel, and carried with the following roll-call vote:

- Daniel Baer – yes
- Elaine Becker – yes
- Cheryl Burstein – yes
- Dianne Eglow – abstain
- Roger Manshel – yes
- Miriam Salerno – yes
- Joseph Steinberg – yes
- Beth Zall – yes
- Kenneth Leiby – yes

Mr. Lanzafama stated that the property is located in the R-7 zone which permits single and two-family dwellings.

Entered as A-1: cover sheet of submitted plans (dated 10/1/17)

Entered as A-2: sheet #3 of submitted plans (dated 10/1/17)

Mr. Lanzafama stated that proposed lot 19.01 will be a 6,491 SF single-family lot with frontage of 37.8 feet. This lot will require variance relief for lot width and lot frontage. The ordinance requires a lot width and lot frontage of 40 feet. Lot 19.02 will be a 9,446 SF two-family lot that will be fully conforming to the zone standards for a two-family lot. The granting of subdivision approval will advance the purpose of the MLUL in that the subdivision will provide an appropriate density and will provide space for a variety of residential uses.

Michael Lanzafama spoke to the professional reports received from the Township Forester, Township Police and Township Planner.

Daniel Cannizzo, 37 Blaine Street, appeared and was sworn. He stated that he is excited about this proposal. There are several smaller single-family dwellings in this area. He stated that any redevelopment in this area will be a benefit.

Overall, Board members felt that the granting of preliminary and final subdivision approval could be granted with lot width and lot frontage variances.

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

Daniel Baer – yes
Elaine Becker – yes
Cheryl Burstein – no
Dianne Eglow – no
Roger Manshel – yes
Miriam Salerno – yes
Joseph Steinberg – yes
Beth Zall – yes
Kenneth Leiby – yes

Appl#18-001, 35 Blaine Street, LLC, 35 Blaine Street, preliminary and final major subdivision approval, lot width and lot frontage variance relief and waiver of EIS submission was **GRANTED** with the following conditions: 1) the application is subject to review and approval by applicable Federal, State, County and local bodies; 2) the applicant shall obtain approval from Essex County Planning Board and Hudson-Essex-Passaic Soil Conservation District, if applicable; 3) the applicant shall comply with the requirements as set forth in the Police Department report dated 1/17/18, Forester report dated 1/10/18 and Township Planner report

dated 1/17/18 to the extent applicable; 4) all structures on the property shall be demolished prior to the perfection of this major subdivision; 5) the prior resolution of 7/5/17 is hereby rescinded.

APPL#18-002, THE PECCARY, LLC, 315C MILLBURN AVENUE, MILLBURN

Justin Calta, Attorney for the applicant, stated his appearance. He stated that the applicant, The Peccary, LLC, is seeking site plan approval for a change of use from retail to fast food restaurant. The proposed use of the property will be for a high-end coffee bar/café. The application also requires conditional use approval and variance approval for insufficient parking and loading space.

David Hu, owner, appeared and was sworn.

Entered as A-1: sheet A-100 of revised plan

Mr. Hu gave a brief description of the floor plan. He stated that the first floor is an approximate 1100 SF space. The basement area is approximately 400 SF and is only accessible from the sidewalk. There is no basement entrance from the interior of the space. He stated that he proposes to utilize the basement area for storage.

The proposed hours of operation are Monday thru Friday from 6 AM to 3 PM.

The Board discussed the applicant's request for a waiver from certain checklist requirements. A motion to grant the applicant's request for checklist waivers, with the exception of an EIS submission was made by Cheryl Burstein, seconded by Dianne Eglow, and carried with a unanimous roll-call vote.

Michael Lanzafama, P. E., P. P., P. L. S., appeared and was sworn. His credentials were presented and accepted by the Board. He referred to the cover sheet page of the submitted plans. He stated that the property is located in the B-4 district. The use proposed is a conditional use, and meets the required conditions. A variance from a loading space requirement is being sought. There is no loading space on sight. The supplies are delivered in small trucks on a regular basis. This is a similar situation for most of the tenants along Millburn Avenue. A parking variance is also being sought. This use is categorized as a fast food restaurant requiring 78 spaces, based on a 1 space per 35 SF. The applicant is agreeable to purchase 6 business parking permits for the employees.

Entered as A-2: cover sheet of submitted plans

Entered as A-3: satellite photo

There are approximately 43 street parking spaces in this area along Millburn Avenue. The proposed use will provide revitalization for the area. This proposed use will not be a burden on the community and is consistent with the Master Plan. There is no negative impact with the granting of the parking or loading variance.

Michael Lanzafama spoke to the request for a waiver from the requirement of an EIS. He stated that there is no exterior modification proposed for this building.

Overall, Board members felt the proposal was consistent with the Master Plan and were supportive of the application.

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

Daniel Baer – yes
Elaine Becker – yes
Cheryl Burstein – yes
Dianne Eglow – yes
Roger Manshel – yes
Miriam Salerno – yes
Joseph Steinberg – yes
Beth Zall – yes
Kenneth Leiby – yes

Appl#18-002, The Peccary, LLC, 315C Millburn Avenue, site plan approval was **GRANTED** with the following conditions: 1) the applicant shall purchase 6 business parking permits; 2) the applicant shall comply with recommendations in Township professional reports.

ADJOURNMENT

A motion to adjourn was made by Joseph Steinberg, seconded by Roger Manshel, and carried with a unanimous voice vote. (8:45 PM)

Eileen Davitt
Board Secretary

Motion: CB
Second: BZ
Date adopted: 2/7/18