

Township of Millburn
Minutes of the Planning Board
April 18, 2018

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, April 18, 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
Dianne Eglow
Joseph Steinberg
Beth Zall, Vice Chairwoman
Kenneth Leiby, Chairman

Also present:

Edward Buzak, Board Attorney
Eric Fishman, Court Reporter
Martha Callahan, Township Engineer
Eileen Davitt, Zoning Officer/Board Secretary

APPLICATIONS

APPL#18-006, SHORT HILLS ASSOCIATES, 1200 MORRIS TURNPIKE, SHORT HILLS

John Wyciskala, Attorney for the applicant, stated his appearance. The applicant is before the Board seeking site plan approval for an update to the current lighting at 1200 Morris Turnpike. The property is the site of the Mall at Short Hills and is located in the Township's B-1, regional business zone. The applicant also requires a design waiver from section 512.1, which does not permit LED lighting.

John Powers, lighting expert, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief overview of the proposed lighting. He indicated that the lights are proposed to be converted to LED lighting. The poles range in height from 30 feet to 15 feet. The height of the poles will not change from the currently existing conditions. The LED lighting will be directed in a way that will minimize any spillage to adjoining properties. In addition, the proposed LED lighting provides a more precise control for brightness, intensity and

activation. The lighting will be controlled through a software computer program allowing precision controls and limitations. The proposed lighting will allow the applicant greater flexibility in providing more lighting under particular conditions. The lighting intensity at ground level, required to average between 0.5 to 1.0 foot candles, with a maximum of 10 foot candles at any given point, will be met. However, there are certain areas that will exceed the 0.5 to 1.0 foot candle allowance.

Mr. Powers spoke to all professional reports and indicated that all recommendations would be adhered to. He spoke specifically to the lighting intensity referenced by Paul Phillips, Township Planner, and stated that the applicant will not exceed the maximum average of 1.0 foot candle.

Entered as A-1: revised sheet 4 of submitted plans

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
Marilyn Atlas-Berney – yes
Dianne Eglow – yes
Joseph Steinberg – yes
Beth Zall – yes
Kenneth Leiby – yes

Site Plan #18-006, Short Hills Associates, 1200 Morris Turnpike, site plan approval with design waiver was **GRANTED**.

APPL#18-004, 271 MILLBURN AVENUE, LLC, 271 MILLBURN AVENUE, MILLBURN

*Marilyn Atlas-Berney recused and left the meeting.

Richard Schkolnick, Attorney for the applicant, stated his appearance. The applicant is before the Board seeking conditional use approval, site plan approval and several associated variances.

John Buchholz, Architect for the applicant, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the proposal. The property in question is located at 271 Millburn Avenue in the Township's B-4 zone.

Entered as A-1: colored rendering of proposal

The property in question has been vacant for some time. The application proposes a 2900 SF restaurant in the same footprint of the current building and a residential component on the 2nd floor. The four residential apartments will consist of two one-bedroom units (between 581-681

SF) and two two-bedroom units (between 928-969 SF). The proposed building will be brick with aluminum panels. There are decorative metal railings proposed on the second floor apartment windows facing the parking lot. A stucco cornice is proposed along the roof line. The proposed restaurant will have a 72 seat dining area, hostess station, bathroom, kitchen and storage areas. There will be approximately 5-7 employees on site at any given time. The applicant is proposing a building-mounted sign on the Millburn Avenue frontage and a monument sign along the Essex Street frontage. The sign will be set back 1.4 feet from the property line and will measure approximately 12 square feet.

Entered as A-2: sheet A-1 of submitted plans

Entered as A-3: sheet A-2 of submitted plans

Entered as A-4: west side exhibit

John Buchholz spoke to the professional reports. Township Engineer, Martha Callahan, expressed concern with the parking space closest to Millburn Avenue that encroaches into the right-of-way. She thought this space would create safety issues for cars pulling in and backing up. The applicant agreed to reserve that space for the manager of the restaurant who will arrive early in the morning and remain on-site.

Entered as A-5: Dykstra Walker site layout plan

J. Michael Petry, P. E., appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as A-6: aerial map with tap max superimposed

Entered as A-7: tax map with zoning superimposed

Entered as A-8: photoboard of 7 photos

Mr. Petry gave a brief description of the proposal. He stated that the property is located in the B-4 zone district. Restaurants are a conditional use in the B-4 zone with the condition that the closest part of the structure shall be not less than 125 feet from the nearest single family lot line in a residential district. The proposed restaurant is located approximately 175 feet from the nearest single family lot line and therefore meets the condition specified. The 13,805 SF property is located in the B-4 zone and has frontage on Essex Street and Millburn Avenue.

The property is bordered on the north by the R-5 zone; on the south by the R-6 zone; and on the east by the B-2 zone. The applicant is proposing 20 parking spaces, 2 of which will be ADA compliant. Four of the spaces will be assigned to the residential units and one space will be dedicated to the manager of the restaurant.

Mr. Petry spoke to the waivers and variances required. He stated that a variance is required for not providing a loading space, as per section 607.1 of the ordinance. He indicated that no space currently exists on site and previous restaurants have functioned adequately without one. Section 607.2 requires one parking space for every 3 seats in the restaurant, resulting in the requirement to provide 24 spaces. In addition, RSIS demands 8 residential

parking spaces which results in the need for 32 parking spaces on site. Variance relief is required to permit a building height of 29.55 feet, where 28 feet is permitted. Variance relief is required to permit a freestanding sign to be set back 1.4 feet from the property line along Essex Street. In addition, variance relief is required to permit a wall graphic greater than 6 SF on a property with less than 100' of frontage. Variances are also required to permit wall graphics on the side of the building adjacent to the proposed parking lot. The ordinance only permits graphics on the side of the building adjacent to a parking lot that is greater than 40 feet in width. The proposed parking lot is only 37.7 feet wide. A design waiver is required for aisle width of 13.3 feet where 18 feet is required. In addition, a waiver is being sought in order to allow LED lighting, which is not permitted by ordinance. Finally, the applicant is seeking conditional use approval and preliminary and final site plan approval.

Mark Walker, P. E., appeared and was sworn. His credentials were presented and accepted by the Board. He gave brief testimony regarding drainage on the property. On the proposed plan, the parking lot will be re-graded and curbing will be installed on the property line between the applicant's property and the Footnotes property to prevent water from flowing into that property.

Joseph Steinberg questioned the Planning Board's jurisdiction on this matter. He stated that the ordinance allows apartments over stores. In this case, the apartments are proposed to be constructed over a restaurant. Eileen Davitt, Zoning Officer, was sworn. She stated that it has been interpreted through the years that apartments have been allowed on the 2nd floor. There have been several applications that have properly been before the Planning Board for apartments on the 2nd floor of buildings with offices on the first floor. It was her opinion that the use, as proposed, is a permitted use in the zone. Attorney Ed Buzak indicated that it has been the Zoning Officer's determination that the proposed use is permitted and jurisdiction is with the Planning Board.

The Board discussed the number of parking permits the applicant should be required to purchase. As stated in section 607.4 of the ordinance, there is no requirement to provide off-street parking for any use that does not result in an increased off-street parking requirement from the previous use. If the existing use is changed such that the minimum parking requirement is increased, the applicant is required to purchase municipal parking permits for such an increased parking demand. In this case, there is no current use on the property and there have been several restaurant operations on the property over the years. The applicant was unable to provide any information regarding the parking demand of the previous uses. The applicant's professional testified that the restaurant will have 72 seats and indicated that the applicant would be prepared to purchase seven business parking permits to be used by the employees of the restaurant.

Mr. Schkolnick gave a brief summary and stated that the proposal will be an aesthetic improvement to the area and respectfully requested the Board approve the applicant's request for site plan approval and variance relief.

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

Daniel Baer – yes
Elaine Becker – yes
Dianne Eglow – yes
Joseph Steinberg – no
Beth Zall – yes
Kenneth Leiby – yes

Appl#18-004, 271 Millburn Avenue, LLC, 271 Millburn Avenue, site plan approval was **GRANTED** with the following conditions: 1) applicant shall obtain Hudson-Essex-Passaic Soil Conservation District approval prior to the commencement of construction; 2) lighting plans shall be revised to show the proposed decorative building-mounted lighting fixtures; 3) applicant shall comply with all light intensity levels as set forth in section 512.1 of the ordinance; 4) plans shall be revised to provide a decorative gate detail at the southern entrance to the western walkway between the subject property and adjacent lot 4; 5) all loading/unloading and deliveries shall be done on-site; 6) four parking spaces shall be reserved for the residential units; 7) the parking space closest to Millburn Avenue shall be reserved for the restaurant manager; 8) prior to the issuance of a CO for the restaurant, applicant shall purchase 7 business parking permits with said purchase to continue while the restaurant use continues.

BUSINESS

HOUSING ELEMENT AND FAIR SHARE PLAN DISCUSSION

Liz Leheny, Phillips, Preiss, Grygiel representative, gave a brief presentation on the Housing Element and Fair Share Plan and a brief history of what the plan proposes for the Township of Millburn.

Millburn Township has a prior round obligation of 261 units. Millburn has a present need obligation that ranges from 109 units to 140 units, based on several estimates from various experts. The 1999-2025 obligation of Millburn Township ranges from 545 units to 1373 units. Millburn will have to address the 261 units plus whatever the 3rd round turns out to be.

As outlined in the report, 4 overlay zones are being established to meet the unmet need. Establishing an overlay zone allows the current zone to remain in place but provides an additional development alternative in the form of multifamily residential use with a required affordable housing set-aside. The overlays in the B-2 zone and the CMO zone fronting on Main Street will also allow ground floor non-residential uses.

Elaine Becker questioned previous discussion topics that haven't been included in the revised report. She specifically questioned JFK Parkway and the lower portion of Millburn Avenue which were not included in an overlay zone. Another issue was group homes, which have not been taken into account. Liz Leheny stated that JFK Parkway was considered not suitable for an overlay district. In addition, the properties on Millburn Avenue were small and lacked depth. Elaine Becker also questioned the inclusion of the Canoe Brook Country Club in

an overlay zone without further research on the potential environmental constraints on the property.

Anne Levison, 3 Thackeray Drive, had concerns with the golf course being included as an overlay zone. She feels golf clubs are not doing as well in today's economic climate. Her fear is that Canoe Brook Country Club could be sold and she has concerns with how it could be developed.

Cary Heller, 56 Byron Road, disagreed with not using downtown properties in an overlay zone.

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

- Daniel Baer – yes
- Elaine Becker – no
- Dianne Eglow – yes
- Joseph Steinberg – yes
- Beth Zall – yes
- Kenneth Leiby – yes

The Planning Board approved and adopted the Housing Element and Fair Share Plan as an amendment to the Master Plan and the following resolution was approved:

**RESOLUTION
PLANNING BOARD
TOWNSHIP OF MILLBURN**

**RESOLUTION ADOPTING THE APRIL, 2018
HOUSING ELEMENT AND FAIR SHARE PLAN
AS A COMPONENT OF THE MASTER PLAN OF THE
TOWNSHIP OF MILLBURN**

WHEREAS, the Township of Millburn Planning Board, County of Essex, State of New Jersey (“Board”) has adopted a comprehensive Master Plan on or about February 27, 1991; and

WHEREAS, said Master Plan has been periodically amended and supplemented from time to time; and

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued its decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (the “2015 Case”), in which the Court transferred primary jurisdiction over affordable housing matters from the New Jersey Council on Affordable Housing ("COAH") to the New Jersey Superior Court and established a process, consistent with the Fair Housing Act (“FHA”), N.J.S.A. 52:27D-301 et seq. and the regulations previously

adopted by COAH, for municipalities to file Declaratory Judgment actions seeking to declare their Housing Elements and Fair Share Plans ("HEFSPs") as being constitutionally compliant and seeking similar protections to those they would have received had they continued to proceed before COAH; and

WHEREAS, pursuant to the FHA, the 2015 Case, and other applicable common law, the New Jersey Superior Court has authority to enter an Order granting protection and repose against exclusionary zoning litigation to a municipality that has sought a Judgment of Compliance and Repose through the Court and is seeking compliance with its affordable housing obligations under the FHA; and

WHEREAS, there has been prepared a Housing Element and Fair Share Plan ("HEFSP") for the Township of Millburn entitled "Housing Element and Fair Share Plan Township of Millburn, New Jersey", prepared by Phillips Preiss Grygiel Leheny Hughes LLC, dated April 2018 (the "2018 HEFSP"); and

WHEREAS, the Board has considered and discussed the contents of the initial drafts of the 2018 HEFSP and made certain revisions and modifications thereto; and

WHEREAS, on April 18, 2018, the Board conducted a public hearing on the 2018 HEFSP; and

WHEREAS, said public hearing was held and conducted, after notice and publication as required under N.J.S.A. 40:55D-13 was provided; and

WHEREAS, after conducting said public hearing and further discussing the 2018 HEFSP, the Board has determined that the 2018 HEFSP is consistent with the goals and objectives of the Township of Millburn and the Board with regard to addressing the Township of Millburn's affordable housing obligations and that the adoption and implementation of the 2018 HEFSP is in the public interest and will protect the public health and safety and will promote the general welfare and fulfill the constitutional obligation of the Township of Millburn to provide a realistic opportunity for the construction of its fair share of the region's low and moderate income needs.

NOW, THEREFORE, BE IT RESOLVED by the Township of Millburn Planning Board, County of Essex, State of New Jersey, on this 18th day of April, 2018 as follows:

1. The Township of Millburn Planning Board ("Board") hereby approves and adopts the Housing Element and Fair Share Plan entitled "Housing Element and Fair Share Plan Township of Millburn, New Jersey", dated April 2018 ("2018 HEFSP") as an amendment to, and element of, the 1991 comprehensive Master Plan as thereafter amended and supplemented.

2. The final version of the adopted 2018 HEFSP shall be placed in a bound volume, with a certified copy thereof placed in the Office of the Township Clerk of the Township of

Millburn, as well as in the Office of the Board for future use and to represent a portion of the officially adopted Master Plan.

3. Pursuant to N.J.S.A. 40:55D-13, the Board Secretary shall cause a copy of this Resolution, together with a copy of the adopted 2018 HEFSP to be sent to the Office of Planning Advocacy and to the Essex County Planning Board, not more than thirty (30) days after the adoption.

4. The Board, Board Secretary, and all other officials, employees and professionals of the Township are hereby authorized and directed to take any and all actions and steps necessary to effectuate the purposes of this Resolution.

5. This Resolution shall take effect immediately.

ADJOURNMENT

A motion to adjourn was made by Joseph Steinberg, seconded by Cheryl Burstein, and carried with a unanimous voice vote. (11:15 PM)

Eileen Davitt
Board Secretary

Motion: DE
Second: BZ
Date adopted: 5/16/18