

Township of Millburn
Minutes of the Planning Board
May 15, 2019

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, May 15, 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
Beth Zall, Chairwoman

Also present:

Valerie Kimson, 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 April 17, 2019 was made by Daniel Baer, seconded by Joseph Steinberg, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Appl#19-004, 188 Essex, Inc., 184 Essex Street, 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:

**188 Essex, Inc.
Site Plan #19-004
Block 702, Lot 18
Conditional Use Approval
Preliminary and Final Major Site Plan Approval
Variance
Waivers**

WHEREAS, 188 Essex, Inc. ("Applicant") has made application to the Township of Millburn Planning Board for conditional use approval and preliminary and final major site plan approval, along with associated variances and waivers as set forth in more detail below, in connection with property commonly known as 184 Essex Street and formally known as Block 702, Lot 18 on the Official Tax Map of the Township of Millburn ("Property"); and

WHEREAS, the Applicant has submitted plans entitled "Preliminary & Final Site Plan Application: Proposed Restaurant 184 Essex Street, Tax Lot 18, Block 702, Township of Millburn, New Jersey", prepared by Casey & Keller, Inc., dated 3-7-2019, consisting of 1 Sheet ("Plan") and Architectural Plans entitled "Proposed Restaurant, 188 Essex St., Millburn, NJ 07041", prepared by Frank D. Mileto, AIA, Long Valley, NJ, dated 03/01/2019, consisting one 1 sheet ("Architectural 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 April 17, 2019; and

WHEREAS, at the hearing the Applicant was represented by Anthony Cerciello, Esq. and testimony in support of the application was provided by Yuk Sum Yeung, sole owner of Applicant and Richard Keller, PE, PP; and

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

1. The Property is located at 184 Essex Street and is formally known as Block 702, Lot 18 on the Official Tax Map of the Township of Millburn. The Property is located within the B-4 Zone District and is currently developed with a building consisting of approximately 12,161 square feet with 4 retail units. Three of the units are currently occupied (a bakery, liquor/wine store and restaurant). One unit is vacant which is the subject of this application which unit consists of approximately 1,085 square feet at the ground floor which would be used for the restaurant (specifically a ramen noodle shop) consisting of a restaurant, kitchen, seating area and walk-in cooler and another 1,085 square feet at basement level which would be utilized for storage.

2 The Applicant requests a waiver from various checklist requirements related to certain plan details as set forth in the application and the requirement to submit an Environmental Impact Statement ("EIS"). Based in part upon the recommendation of the Township Engineer, the Board is satisfied that the requested waivers should be granted and to the extent that other components of the Plans have not been submitted, they also should be waived because the Plans submitted provide adequate information for the Board to understand and consider the application. Therefore, the Board will waive these requirements, including the requirement for the submission of an EIS.

3. The Applicant seeks conditional use approval and preliminary and final major site plan approval with associated bulk variances and design waiver in connection with the use of approximately 1,085 square feet of ground floor commercial space for a restaurant offering a variety of Chinese ramen noodles. The basement, of equal size, will be used solely for storage. In addition to take-out orders, there will be 18 seats in the restaurant located in the front of the unit along with a host station and waiter station. The restroom and kitchen area would be located further toward the rear of the Property with a walk-in cooler proposed to be installed in the rear of the space. In addition to site plan approval, the Applicant seeks condition use approval for a restaurant in the B-4 Zone; a variance from the loading space requirement; a variance from the parking requirements; and, as above mentioned and granted by the Board, a waiver of certain checklist submission requirements and the submission of an EIS. The Applicant further seeks a waiver of the provision for stormwater runoff.

4 Land use in the vicinity of the Property consists of predominately one-to-two-story commercial and mixed use buildings with retail sales or services on the ground floor and residential and/or professional offices above. The West Branch of the Rahway River runs along the southern boundary of the Property. This tenant space was previously utilized as a real estate office.

5. The Applicant testified that the hours of operation will be 11:00 am to 9:30 pm, weekdays and 11:00 am to 10:30 pm on weekends. The restaurant will be open 7 days a week and will generally have a lunch menu from 11:00 am to 3:00 pm and a dinner menu from 5:00

pm to closing. There will be a maximum of 4 employees on site at any given time. Deliveries will be made 2 to 3 times per week. Because there is no loading space and the delivered packages are relatively small, the truck will park in off-site parking spaces and will hand-truck or carry the supplies into the restaurant through the front or side door. The Applicant testified that there will be no need to have a loading space on-site because of the minimal number of deliveries and the relatively small size of the delivered products.

6. Refuse disposal will be through the use of a dumpster which is contracted through a private party. The refuse removal will take place 2 to 3 times per week.

7. Although there is no on-site parking, the Engineer and Planner testified that there are 86 three-hour pay station spaces available in Lot P-1 as shown on a certain photo board prepared by the Engineer, dated March 28, 2019 and marked as Exhibit A-1. There are an addition 400 spaces with 39 three-hour pay station spaces on the area shown as P-2 on Exhibit A-1. In addition, there is another parking area marked P-5 which is next to the Municipal Building and behind various other premises on Essex Street. Thus, the Engineer testified that there was adequate off-site parking available in proximity to this Property. In addition, the Engineer confirmed that delivery trucks can park on Essex Street and hand-truck or carry supplies to the building. He testified that this is a low impact restaurant because of the nature of the ramen noodles and broth.

8. The Engineer confirmed that the Property and structure is at least 125 feet from the nearest lot line of a single-family dwelling in a residential zone and there will be no drive-up windows. The Engineer thus concluded that the Applicant satisfied the conditions of the conditional use for a restaurant in the B-4 Zone. The Engineer also confirmed that there will be no exterior changes, no increase in space and no changes whatsoever that would impact the environment to trigger the need for the submission of an EIS and, thus, supported the request that the requirement be waived. The Engineer's testimony also supported the fact that the Board could waive the provisions for stormwater runoff as the activity which is the subject of this application involves all interior work on the premises.

9 With regard to the variances requested by the Applicant related to the number of parking spaces and the lack of a loading space, the Planner testified that a hardship is created by the lot itself which does not allow the construction of any parking on-site. Nevertheless, the Planner testified that in light of the available off-site parking in proximity to the restaurant, the granting of a variance for any parking requirement would not create any substantial detriment to the public good and that the granting the two variances related to parking and a loading space would not create a substantial impairment of the zoning ordinances or zoning plan. Furthermore, the Planner testified that the Applicant will purchase four business parking permits for the employees which the Board will make a condition of any approval.

10. With regard to trash removal, both the Applicant's Engineer and Planner and a member of the public commented on the multiplicity of dumpsters in the rear of the Property that tend to migrate when emptied by the particular carting company or companies utilized. After hearing the testimony, the Board was of the view that the Township Administration should be

made aware of this issue as well as illegal parking along the entranceway between the building housing these premises and the adjacent building to the west.

11. No exterior architectural elevations or signage plans were provided and the Applicant indicated that there would be no changes to the façade and further confirmed that any signage would conform to the ordinance requirements of the Township.

12. The initial determination that must be made by the Board is whether the proposed use meets the conditions for a conditional use in the B-4 Zone. Specifically, restaurants and retail food establishments are conditional uses in the B-4 Zone, provided that the closest part of the structure, exclusive of parking and loading areas, is not less than 125' from the nearest lot line of a single family dwelling in a residential district. No drive-up windows are permitted in the B-4 Zone. The Applicant's Engineer testified that the proposed use will not have a drive-in window and, as mentioned earlier, that the structure is located more than 125' from the nearest lot line of a single-family dwelling in a residential zone (the Applicant indicated that the structure is located approximately 468' from the nearest single-family dwelling in a residential zone). Based upon that testimony and its verification by the Board's Planner, the Board has determined that the proposed restaurant meets the conditional use requirements set forth in the ordinance.

13. As noted above, a variance for providing on-site parking and an on-site loading space is requested. Specifically, Section 607.1 of the ordinance requires a loading space, but no loading space currently exists on the site nor is one proposed. Similarly, there is no on-site parking. Based upon the testimony of the limited volume of deliveries to this site and the nature of those deliveries, the lack of any area on the lot for providing a loading or parking space and the proximity of adequate alternate parking availability, the Board was satisfied that delivery vehicles could park in proximity to the Property and that supplies could be hand-trucked or carried to the tenant space without any major inconvenience. That, together with the fact that there is virtually no remaining unoccupied space on the lot on which the structure is located and the fact that patrons can park off-site in proximity to the use, the Board is of the view that a variance from that requirement in the Zoning Ordinances should be granted.

14. The Board is of the view that this application complies with the conditional use requirements of the ordinance and that preliminary and final major site plan approval, the associated variances set forth in detail above, and the design waivers enumerated above should 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 actions of the Planning Board of the Township of Millburn on April 17, 2019, granting (i) conditional use approval for a restaurant on the premises; (ii) preliminary and final major site plan approval; (iii) a variance from the requirement of providing a loading space; (iv) a variance from the requirement that on-site parking be provided and; (v) a waiver for the submission of an EIS and certain checklist waivers as set forth above and hereinafter, subject to the following conditions:

1. The Applicant shall comply with all 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 that shall have jurisdiction over the development.

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

4. The Applicant shall seek and obtain approval or waiver from the Hudson-Essex-Passaic Soil Conservation District prior to the commencement of construction, if applicable.

5. The Applicant shall comply with the requirements as set forth in the April 5, 2019 Memorandum from the Fire Marshal of the Township of Millburn on this application.

6. All loading and unloading and deliveries shall be done from an off-site location and hand-trucked or carried into the premises.

7. As a condition of the issuance of a Certificate of Occupancy for the restaurant, the Applicant shall purchase 4 business parking permits and shall continue to purchase said permits while the restaurant use continues.

8. The Applicant shall be bound to comply with all representations made before this Board by the Applicant and Applicant's witnesses during the course of the public hearing on the application held on April 17, 2019 as related to the application 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.

9. 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 April 17, 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 15th day of May, 2019.

APPLICATIONS

APPL#19-006, CARTLEY ASSOCIATES, 348 MILLBURN AVENUE, MILLBURN

Helen Schultz, Attorney for the applicant, stated her appearance. The applicant is seeking site plan approval for a change of use from retail to residential. The applicant is also seeking parking and loading variance relief.

John Buchholz, Architect for the applicant, appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as A-1: sheets A-O and A-1 of submitted plans

The subject property is currently a 3-story building. Retail sales will continue to be operated on the first floor. The applicant is seeking a change of use to convert the 2nd and 3rd floor to residential apartments.

Entered as A-2: photo of current building front façade

John Buchholz spoke to the variance relief required. He stated that the previous use of the property generated the need for 17 parking spaces. The conversion of the 2nd and 3rd floors to residential decreases the parking requirement to 11 spaces. There are no parking spaces on site. Mr. Buchholz spoke to the professional reports and indicated that the Forester and Engineer had no comments. The Fire Marshal requested that AutoCAD floor plans be provided which he indicated he will provide.

Joseph Steinberg asked Mr. Buchholz if the applicant will comply with the Fire Marshal's comment #4 with regard to the installation of a fire sprinkler system. Mr. Buchholz stated that sprinklers are not required and his client is not proposing sprinklers at this time.

Robert Schultz, owner of subject property, appeared and was sworn. He gave a brief history of the property. He indicated that he is proposing to convert the 2nd and 3rd floor area to residential due to the dynamic change in the retail atmosphere. He feels that a residential component will be a good use and will benefit the surrounding businesses and restaurants.

Robert Engel, 46 Main Street, appeared and was sworn. He appreciates the architects and the applicants design of the building. He feels the apartments create less of a demand on parking than a retail establishment would create. He urges the Board to support the application.

Board members had positive comments on the applicant's proposal.

Upon a motion made by Cheryl Burstein, seconded 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
Joseph Steinberg – yes
Beth Zall – yes

Appl#19-006, Cartley Associates, 348 Millburn Avenue, site plan approval with a parking and loading variance was **GRANTED** with the following conditions: 1) the tenants of the residential apartments shall purchase municipal parking permits; 2) the applicant shall comply with the requirements noted in the professional reports.

APPL#19-007, BROW-EYED GIRL, 55 MAIN STREET, MILLBURN

Gary Goodman, Attorney for the applicant, stated his appearance. The applicant is seeking site plan approval for a change of use from office to retail service. The applicant is also seeking a parking and loading space variance.

Courtney Schreiber, business owner, appeared and was sworn. She gave a brief description of her business model, which is the application of semi-permanent eyebrows. She has no employees and sees clients by appointment only and only 1 client is on site at a time. She has been allotted 1 parking space by the owner of the building. She proposes to be open Monday through Saturday from 9 AM – 7 PM. The space has an area of 250 SF which results in the need to provide 2 parking spaces. The Board was of the opinion that since the applicant has been allotted 1 parking space for her use, there was no need for the applicant to purchase a business parking permit.

Upon a motion made by Cheryl Burstein, seconded 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
Joseph Steinberg – yes
Beth Zall – yes

Appl#19-007, Brow-Eyed Girl, 55 Main Street, site plan approval with a parking and loading space variance was **GRANTED**.

APPL#19-008, ANISH KHANNA, 33 BIRCH LANE, SHORT HILLS

Mark McMenemy, Attorney for the applicant, stated his appearance. The applicant is seeking final subdivision approval. Preliminary subdivision approval was granted by the Planning Board and an extension was granted by the Board through June 30, 2019.

Mr. McMenemy stated that there were several issues that the Board required to be addressed in order to obtain final approval. He indicated that he has submitted the necessary documentation and respectfully requests that the Board grant final subdivision approval.

Joseph Steinberg questioned Mr. McMenemy with regard to the Township Engineer's recommendations in her May 9, 2019 report. Mr. McMenemy stated that the applicant will gladly comply with the Engineer's recommendations.

Stewart Glickman, 20 Adams Avenue, appeared and was sworn. He stated that he is concerned with the conditions of the property.

Entered as P-1: photos of subject property

Mr. Glickman would like to see any approvals contingent on the applicant correcting the conditions on the property immediately.

Carsten Schwarting, 49 Adams Avenue, appeared and was sworn. He shares the same concerns as Mr. Glickman.

Entered as P-2: photos of subject property

He would also like to see the drainage condition taken care of immediately before any future construction takes place.

Karen Horowitz, 41 Adams Avenue, appeared and was sworn. She would like to see the water condition on the property addressed. She is concerned with the proposed removal of the trees and the potential impact it could have on the water issues.

Brian Glatt, 50 Birch Lane, appeared and was sworn. He stated that he is concerned with the potential development of these properties with 2 houses and the effect it will have on the surrounding neighborhood. He would like to see this Board restrict the development of these properties with regard to patios, pools, and other impervious coverage.

Mark McMenemy briefly summarized and indicated that the applicant made numerous complaints to the local Police Department due to local landscapers dumping on the subject property. He stated that the properties will be developed in accordance with the local ordinance with regard to lot coverage, building coverage, floor area ratio, etc. These properties, when developed, will meet all Township requirements with regard to stormwater management.

Anish Khanna, 33 Birch Lane owner, appeared and was sworn. In response to Board questions, he indicated that he received letters from the Township Code Enforcement Officer about some of the existing conditions on the property and is working at this time to correct all the issues.

Michael Lanzafama, P. E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. He spoke to the conditions of the memorializing resolution and the applicant's compliance with each of the 17 conditions.

Board Attorney, Valerie Kimson, spoke to the Board's role in this final subdivision approval. She stated that conditions 3, 5, 6, 7, 8, 9, 11, 12, 15 and 17 are related to the lot development and will remain open and in effect.

Upon a motion made by Cheryl Burstein, seconded by Beth Zall, 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 – no
Joseph Steinberg – yes
Beth Zall – yes

Appl.#19-008, Anish Khanna, 33 Birch Lane, final subdivision approval was **GRANTED**.

BUSINESS

2018 Zoning Board of Adjustment Annual Report

The Planning Board reviewed the Zoning Board annual report, which summarizes the variance relief granted by the Zoning Board during calendar year 2018. It also makes several recommendations for ordinance changes.

Chairwoman Beth Zall asked Board members to review the report in order to discuss it at the next Planning Board meeting.

ADJOURNMENT

A motion to adjourn was made by Cheryl Burstein, seconded by Daniel Baer, and carried with a unanimous voice vote. (10:00 PM)

Eileen Davitt
Board Secretary

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