

Township of Millburn
Minutes of the Planning Board
June 17, 2020

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, June 17, 2020** at 7:30 PM via Zoom webinar format.

Chairwoman Beth Zall opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Daniel Baer
Dianne Eglow
Gaston Hauptert
Jorge Mastropietro
Tara Prupis
Joseph Steinberg
David Morrow, Alt. #1
Shaunak Tanna, Alt. #2
Miriam Salerno, Vice Chairwoman
Beth Zall, Chairwoman

Also present:

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

APPROVAL OF MINUTES

A motion to approve the minutes of May 20, 2020 was made by Dianne Eglow, seconded by Gaston Hauptert, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Appl#20-001, JCP&L, 101 JFK Parkway, Short Hills, NJ

With a motion to approve made by Joseph Steinberg, a second by Dianne Eglow, and a roll-call vote as follows:

Daniel Baer – yes
Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes

Tara Prupis – yes
Joseph Steinberg – yes
Miriam Salerno – yes
Beth Zall – yes

the following memorializing resolution was adopted:

RESOLUTION
PLANNING BOARD
TOWNSHIP OF MILLBURN

In the Matter of:

Jersey Central Power & Light Co.
Minor Site Plan #20-001
101 John F. Kennedy Parkway
Block 5302, Lot 4
Minor Site Plan Approval
Bulk Variance
Waivers

WHEREAS, Jersey Central Power & Light Co. ("Applicant" or "JCP&L") has made application to the Township of Millburn Planning Board ("Board") for minor site plan approval with bulk "c" variance approval, along with certain completeness waivers as set forth in more detail below, in connection with property commonly known as 101 John F. Kennedy Parkway, and formally known as Block 5302, Lot 4 on the Official Tax Map of the Township of Millburn ("Property" or "Site"); and

WHEREAS, the Applicant has submitted plans and designs entitled: "Minor Site Plan for Jersey Central Power & Light Co., Lot 4, Block 5302, Canoe Brook Substation, Township of Millburn, Essex County, New Jersey" prepared by French & Parrello Associates, Hackettstown, New Jersey, dated January 20, 2020, latest revision March 9, 2020, consisting of three sheets ("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 as modified for the purposes of conducting the meeting remotely through the Zoom platform wherein members of the public can participate by joining the meeting utilizing the invitational link set forth in the notice or by telephone using the invitational telephone number as set forth in the notice; and

WHEREAS, a public hearing was held on the application on May 20, 2020; and

WHEREAS, at the hearing the Applicant was represented by John P. Beyel, Esq. and testimony in support of the application was provided by JCP&L’s representative, Juan Alvarado, P.E. (who did not testify as an expert but only as a fact witness); Molly O’Connor, P.E., of Black and Veatch Corp. (who also did not testify as an expert but only as a fact witness); and Denis F. Keenan, P.E., of French & Parrello Associates; and

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

1. The Property is commonly known as 101 John F. Kennedy Parkway and formally known as Block 5302, Lot 4 on the Official Tax Map of the Township of Millburn. It is located within the OR-1 Office Research Zone and developed with a JCP&L electrical substation and related accessory uses such as sheds and fencing, etc. (“Canoe Brook substation” or “substation”). The Property consists of approximately 0.23 acres, does not have frontage on a public street, and is accessed via a gravel roadway located on Block 5303, Lot 5, which is an adjacent property containing New Jersey-American Water Company’s Canoe Brook Reservoir facility that is in the C Conservation/Recreation Zone. Two office buildings known as 101 and 103 John F. Kennedy Parkway are located to the south of the Property on Block 5302, Lot 3.

2. The Applicant is seeking minor site plan and “c” variance approval in order to construct flood walls, fencing, and a flood gate system around the perimeter of the Canoe Brook substation (the “Project”). There is an existing 8-foot high security perimeter fence around the substation consisting of 7 feet of chain link fence topped with 1 foot of barb wire. The Applicant seeks approval to remove and replace a portion of the current perimeter fence with a 4-foot high concrete flood wall base, upon which will be mounted a 4-foot fence consisting of 3-feet of chain-link fencing topped with 1-foot of barbed wire (the same materials as the current perimeter fence), for an aggregate 8-foot high barrier. The concrete flood wall base has a tapered design for water run-off and to prevent climbing. For another section of the new enclosure, JCP&L seeks approval to install 4-foot high steel sheet piling, which will be fronted by what remains of the existing perimeter fence (after construction of the aforesaid concrete flood wall base and fencing combination). Additionally, incorporated within the new enclosure near the northerly corner of the Property closest to the Canoe Brook Reservoir, JCP&L plans to install a 4-foot high flood gate that will self-activate when flooding conditions occur. The proposed new flood walls, fencing, sheet piling and flood gate will not exceed the height of the current 8-foot high perimeter fence. No changes or additions are proposed to the equipment within the substation. The Applicant is undertaking the Project under the terms of a Final Decision and Order Approving Stipulation entered by the New Jersey Board of Public Utilities in 2019.

3. The Applicant requests 7 checklist waivers. More specifically, JCP&L seeks waivers regarding existing covenants, easements and restrictions on the Property; a sustainability checklist; location and description of existing and proposed monuments; streams and ponds; parking spaces; loading areas; and existing structures to be removed or altered. JCP&L’s attorney, witnesses and/or expert indicated that the aforesaid checklist requirements

were not relevant to this particular application, and that the only structure being removed and replaced is a portion of the existing 8-foot high perimeter fence. The Board agreed with that position and granted a waiver of the aforesaid checklist requirements to allow the application to proceed. The Applicant also indicated that a waiver from the requirement for the submission of an Environmental Impact Statement (“EIS”) was not sought because this is a minor site plan application and thus the requirement to submit an EIS was inapplicable.

4. The Property is located in the OR-1 Zone. Utility facilities are not specifically permitted as a principal use in the OR-1 Zone; as such, the Property is considered a preexisting nonconforming use. The installation of flood walls, fencing, sheet piling and a flood gate, as set forth in detail in the Plans and as proposed by the Applicant, are the only changes sought to the Canoe Brook substation. There would be no modifications, enhancements or additions to the equipment within the facility. The Project therefore does not involve any expansion or intensification of the substation.

5. The Project will have little to no visual impact on neighboring properties and the surrounding areas because the proposed flood walls, fencing, sheet piling and flood gate will not at any point exceed the height of the existing 8-foot high perimeter fence, the Property has no frontage to any public street, is partially obscured by trees and tall reeds, and the substation sits on a slight depression.

6. The Canoe Brook substation serves approximately 311 customers, including about 300 residential homes, a Hilton hotel, and the Mall at Short Hills. Its function is to reduce incoming high voltage down to a lower voltage that is usable and safe for customers. The facility includes, amongst other things, two incoming high voltage transmission power lines, two transformers, four distribution breakers, and secondary power lines. The substation has historically sustained recurring flooding. The Site is surrounded by wetlands and is located in a wetlands transition and floodplain area, and a special flood hazard area. During storm events, the nearby Passaic River often overflows its banks and causes water to inundate the substation. During Hurricane Irene in 2011, all 311 customers served by the substation lost power due to flooding to the facility. The Applicant has attempted to mitigate flooding. There is a “Hesco” flood barrier along the perimeter of the substation which is essentially collapsible heavy-duty plastic and fiber wire mesh containers filled with sand. “Hesco” barriers are considered only an interim and transitional solution to flood control. The “Hesco” barrier at the Site has degraded from extended UV light exposure, is deteriorating and failing due to prior flood events, and is an inadequate means to effectively control and further mitigate future flood damage to the substation. The Applicant expressed a sense of urgency to complete the Project before the hurricane season begins in late summer.

7. The Township Development Regulations and Zoning Ordinance, Section 609.6(a) and (b), do not permit fences, walls, or any combination thereof to exceed 6 feet in height, or if any combination thereof exceeds 6 feet in height, the fence must be set back at least 3 feet from the wall. As abovementioned, JCP&L seeks to construct a flood wall and fence combination 8 feet in height to be located on the property line. It therefore requires a “c” bulk variance from Section 609.6(a) and (b) of the regulations and zoning ordinance. The Board

accepts the testimony of the Applicant that the 8-foot height flood wall and fence barrier is necessary to deter vandalism to the substation, to prevent entry by the general public, and to minimize flood impacts that will damage the substation and render it unsafe and inoperable, thereby jeopardizing electrical service to 311 customers, including 300 residential homes. The Board further accepts the testimony of the Applicant that safety considerations preclude locating the fence at a distance set back from the flood walls. It is also not possible to relocate the substation. The Board therefore finds that the proposed aggregate 8-foot flood wall and fence barrier as shown on the Plans benefits the Site by enhancing security, benefits the general welfare and protection of the public, and outweighs the detriment of exceeding the 6-foot height limit, and does not impair the intent and purpose of the Township's zone plan and zoning ordinances.

8. Moreover, an 8-foot high security perimeter fence is already in place at the Site. Applicant's proposed flood walls mounted with fencing and barbed wire being at the same 8-foot height would therefore make little difference from a visual standpoint to neighboring properties. The Site is neither accessible nor visible from any public street, and is partially obscured by trees and reeds. The Board accordingly finds it is appropriate to grant a variance from Section 609.6(a) and (b) of the Township regulations and zoning ordinance because the benefits of the proposed aggregate 8-foot high barrier that will form a part of the new enclosure as shown on the Plans substantially outweigh any aesthetic detriment of violation of the 6-foot height limit and that there is no substantial detriment to the public good and the surrounding neighborhood..

9. The Project will reduce impervious coverage on the Site from 19.23% to 17.69% because the "Hesco" flood barrier currently along the perimeter of the substation will be replaced with concrete flood walls and steel sheet piling.

10. Since the Property is located in a flood zone and wetlands transition area, the Applicant has requested from the New Jersey Department of Environmental Protection ("NJDEP") the requisite flood zone and wetlands transition related permits necessary to proceed with the Project. JCP&L has also requested from NJDEP a hardship waiver relating to displacement of flood storage area since construction of the proposed flood walls and flood gate will constitute a displacement of more than 20% of the flood storage volume on the Site. Applicant's engineer, Denis Keenan, testified that the Site is small (.23 acres), and the loss of flood storage volume will therefore be de minimis and will not impact the flood levels of the surrounding area. He further testified that the afore-referenced permit and waiver requests are presently under review by NJDEP, and expected to be approved.

11. The Township Police Department and the Township Forester did not have any concerns with regard to the application. The Township Fire Marshal requested that no conditions be imposed, but noted that the Applicant must still meet all Building Code, New Jersey Uniform Fire Code, and municipal Ordinance requirements.

12. The Board reviewed and considered the reports of its own experts on the application.

13. The Board is of the view that minor site plan approval, together with the associated “c” bulk variance as set forth above and hereinafter, 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 action of the Planning Board of the Township of Millburn on May 20, 2020, granting: (i) the checklist waivers mentioned in the Findings of Fact; (ii) minor site plan approval; and (iii) a “c” bulk variance allowing the construction of flood walls and fencing as set forth in the Plans, and 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 project.

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

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

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

6. 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 May 20, 2020 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.

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 20, 2020.

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 June, 2020.

APPLICATIONS

Appl#20-004

518 MILLBURN AVE BAGELS, LLC

518 Millburn Avenue

Block 1708, Lot 13/14, B-3 zone

Conditional use approval

Anthony Cerciello, Attorney for the applicant, stated his appearance. He stated that the applicant is before the Board seeking conditional use approval as per section 407 of the Development Regulations.

Richard Keller, P. E., P. P., appeared and was sworn. His credentials were presented and accepted by the Board. He stated that the applicant is proposing to operate a bagel shop, categorized as a fast food restaurant on the property located at 518 Millburn Avenue. The space has been vacant for some time and was previously the Cait and Abby bakery. Fast food restaurants are a conditional use in the B-3 zone, provided that the closes part of the structure so used is not less than 125 feet from the nearest lot line of a single-family dwelling in a residential district. The applicant meets the conditional use requirement.

The application does not increase the parking demand from the previous tenant. Mr. Keller stated that he is familiar with the property and has reviewed the agency reports.

Entered as A-1: sheet 1 of submitted plans

Mr. Keller spoke to sheet 1 of the submitted plans. He indicated that the property is located on the south side of Millburn Avenue in the B-3 zone. There is a public easement behind the subject property. The subject property is approximately 174.4 feet from the nearest lot line of a single family dwelling in a residential district. There is no drive-up proposed and the subject lot is located on a secondary roadway. As such, the applicant meets all conditional use requirements.

The Board discussed the conditions of the resolution from the previous tenant, specifically with regard to the dumpster and the purchase of parking permits. Mr. Keller indicated that the applicant would maintain the screening of the dumpster and would purchase parking permits for all employees. He also indicated that the building has undergone major exterior renovations since 2001, such as goose neck lighting. He stated that he will work with the Township Engineer to ensure that any proposed lighting is consistent with the rest of the building.

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

Daniel Baer – yes

Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
David Morrow – yes
Tara Prupis – yes
Joseph Steinberg – yes
Miriam Salerno – yes
Beth Zall – yes

App#20-004, 518 Millburn Avenue Bagels, LLC, 518 Millburn Avenue, conditional use approval was **GRANTED** with the following conditions: 1) prior to the issuance of a CO, the applicant shall provide a detail of the screening of the rear dumpster area for review and approval by the Township Engineer; 2) prior to the issuance of a CO, the applicant shall purchase business parking permits for all employees.

BUSINESS

Ord#2557-20, Proposed addition of Section 606.4.2 Residential Multi-Family Affordable Housing RMF-AH2 Zone to Development Regulations

The Planning Board discussed Ordinance No. 2557-20 which proposes to amend and supplement the Township of Millburn Development Regulations and Zoning Ordinance with the addition of section 606.4.2 – Residential Multi-Family Affordable Housing RMF-AH2 zone.

The Board discussed section 606.4.2.g.1 as it relates to vehicular entrance on Millburn Avenue. Specifically, the section refers to vehicular entrance only and does not speak to exits. They felt this section was ambiguous and needed clarification.

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

Daniel Baer – yes
Dianne Eglow – abstain
Gaston Hauptert – yes
Jorge Mastropietro – yes
David Morrow – yes
Tara Prupis – yes
Joseph Steinberg – yes
Miriam Salerno – yes
Beth Zall – yes

the Planning Board recommends further consideration to clarify section 606.4.2.g.1 by the Township Committee regarding ingress and egress.

The Board discussed sections 606.4.2.b.1 and 2 and section 606.4.2.h.2 specifically as it speaks to the requirement that 3,000 SF of Millburn Avenue ground floor space “shall” be a

commercial use. The recent Land Use Element of the Master Plan amendment was adopted recommending that the Township Committee allow for “optional” commercial use on the ground floor along Millburn Avenue rather than mandatory commercial use. Upon a motion made by Beth Zall, seconded by Gaston Hauptert, and with a roll-call vote as follows:

- Daniel Baer – yes
- Dianne Eglow – yes
- Gaston Hauptert – yes
- Jorge Mastropietro – yes
- David Morrow – yes
- Tara Prupis – yes
- Joseph Steinberg – yes
- Miriam Salerno – yes
- Beth Zall – yes

the Planning Board finds sections 606.4.2.b.1 and 2 and section 606.4.2.h.2 not consistent with the Township of Millburn Master Plan. For internal drafting consistency, any revisions made regarding this determination shall include appropriate revisions to any other sections not specifically stated in the Planning Board motion which reference commercial use on the first floor.

The Board discussed environmental initiatives and whether they should be included in the proposed ordinance. Overall, members felt that environmental initiatives should not be included in the ordinance but, instead, should be addressed upon an application before the Planning Board.

ADJOURNMENT

A motion to adjourn was made by Joseph Steinberg, seconded by Tara Prupis, and carried with a unanimous voice vote. (9:30 PM)

Eileen Davitt
Board Secretary

Motion: MS
Second: BZ
Date Adopted: 7/15/20