

Township of Millburn
Minutes of the Planning Board
July 15, 2020

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, July 15, 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
Marc Matsil
Joseph Steinberg
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 June 17, 2020 was made by Miriam Salerno, seconded by Beth Zall, and carried with a unanimous voice vote.

MEMORIALIZATIONS

Appl#20-004, 518 Millburn Avenue Bagels, LLC, 518 Millburn Avenue

With a motion to approve made by Gaston Hauptert, a second by Jorge Mastropietro, and a roll-call vote as follows:

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

**518 Millburn Ave. Bagels, LLC
Block 1708, Lots 13 and 14
Application No. 20-004
Conditional Use Approval**

WHEREAS, 518 Millburn Ave. Bagels, LLC ("Applicant") has made application to the Township of Millburn Planning Board ("Board") for conditional use approval for a bagel store/deli (classified as a fast food restaurant) on property primarily in Millburn Township ("Township"), located at 518 Millburn Avenue, formally known as Block 1708, Lots 13 and 14 on the Official Tax Map of the Township of Millburn, with a sliver of the subject property in Springfield Township, (Block 101, Lot 2 on the Official Tax Map of the Township of Springfield), in the Millburn B-3 Neighborhood Business zoning district (the "Property" or "Site"), which involves a change of tenancy from Cait & Abby's, a former bakery/café (also classified as a fast food restaurant), to Bagel Pantry, a bagel store/deli, without a change of use from fast food restaurant; and

WHEREAS, the Applicant has submitted a survey entitled "Composite Survey, Tax & Zoning Map, 518 Millburn Avenue, Tax Lots 13 and 14, Block 1708, Township of Millburn, Essex County, New Jersey, and Tax Lot 2, Block 101, Township of Springfield, Union County, New Jersey", consisting of one sheet prepared by Michael Lanzafama of Casey & Keller, Inc., dated March 15, 2020 ("Survey"); 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, N.J.S.A. 40:55D-1 et. seq. ("MLUL") and Section 424 of the Development Regulations and Zoning Ordinance of the Township of Millburn as modified for the purposes of conducting the public meeting remotely through the Zoom platform wherein members of the public are able to 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 June 17, 2020; and

WHEREAS, at the hearing the Applicant was represented by Anthony Cerciello, Esq. of Levitt & Cerciello, Esqs., and testimony in support of the application was provided by Richard A. Keller, P.E., P.P., C.M.E. of Casey & Keller, Inc., who testified in the capacity of a professional engineer; and

WHEREAS, the Board having considered the testimony presented and reviewed the Exhibits related thereto, together with the application and Survey, and the report of its own professional Planner, hereby makes the following findings of fact:

1. The Property is commonly known as 518 Millburn Avenue, which is primarily in Millburn Township, located at Block 1708, Lots 13 and 14 on the Official Tax Map of the Township of Millburn, with a sliver of the subject property in Springfield Township, (Block 101, Lot 2 on the Official Tax Map of the Township of Springfield). It is on the south side of Millburn Avenue, a designated secondary roadway within the Township, across from Glenwood Drive and is located within the B-3 Neighborhood Business zoning district of the Township. The Property is approximately 0.6778 acres and is developed with a one and two-story commercial building with paved parking in the rear.

2. In the B-3 Neighborhood Business Zone, for lots such as the Property that abut a primary or secondary roadway, restaurants, fast food restaurants, retail food establishments, and eating and drinking places are permitted as conditional uses provided the closest part of the structure exclusive of parking and loading areas is not less than 125 feet from the nearest lot line of a single-family dwelling in a residential district, and there are no drive-up windows. See Township Development Regulations and Zoning Ordinance (“DRZ”), Article 6 “Zoning Provisions” at §606.6.1(d).

3. The Applicant seeks conditional use approval to utilize one of the storefront tenant spaces at the Property for a fast food restaurant (i.e., bagel store/deli). The subject premises were most recently used by Cait & Abby’s as a bakery/café (also classified as a fast food restaurant), but has been vacant for a period of time. The Applicant seeks to replace the former bakery/cafe with a bagel shop, i.e., Bagel Pantry, and thus the application involves a change of tenancy from Cait & Abby’s to Bagel Pantry without a change of use from fast food restaurant (the “Project”).

4. The Applicant’s Engineer provided detailed testimony that the Applicant met each of the conditional use criteria of §606.6.1(d) (i.e., the Property is located on Millburn Avenue, which is classified as a secondary roadway in the Township; the subject tenant space is 174 feet from the nearest residential use in a residential zone; and the proposed bagel store will not offer drive-up window service) to satisfy said conditions to make the Bagels Pantry Project a valid conditional use.

5. In further support of its application for conditional use approval, the Applicant relied in part upon the Board’s previous grant of minor site plan approval together with a parking variance and window graphics variance to Raoul Saade, t/a Cait & Abby’s, to operate the aforesaid bakery/café at the Property, which was memorialized in a resolution

adopted on October 17, 2001 (“2001 Resolution”). In 2001, Raoul Saade, t/a Cait & Abby’s, sought to establish a bakery in the subject tenant space on the Property, which at the time was, as it is still now, located in the B-3 Neighborhood Business zoning district of the Township. The proposed bakery use was classified as fast food, a then permitted conditional use in the B-3 Zone District provided that the use was not less than 125 feet from the nearest lot line of a single-family dwelling in a residential district and did not allow for drive up windows. The 2001 Cait & Abby’s application conformed to the aforesaid conditional use requirements.

6. In the B-3 Zone District, the requirement for the number of off-street parking spaces for a fast food restaurant, both in 2001 at the time of the Cait & Abby’s application and now, is one space per 35 square feet of gross floor area. Based on the area of the subject tenant space to be occupied (i.e., 1,848 sq. ft. as reflected in the 2001 Resolution), a total of 53 parking spaces would be required. This exceeds the number of spaces existing on the Property today and does not account for the parking requirements of other tenants at 518 Millburn Avenue. These same conditions existed at the time of the 2001 approval for Cait & Abby’s, and the Board granted parking variance relief because the Property abutted a municipal parking lot and, as a condition of approval, the then applicant agreed to obtain parking permits at said municipal lot for all its employees. At that time, the Board imposed that condition in its Resolution of Approval to which this Applicant must adhere and to which this Applicant agreed to adhere. The municipal parking lot still abuts the Property as it did in 2001.

7. The Applicant is not increasing the seating capacity within the subject tenant space on the Property for Bagel Pantry, nor adding gross floor area, and thus the application does not involve an increase in either the number of off-street parking spaces required or gross floor area. Section 301.60(b) of the DRZ provides that “[b]uilding alterations and/or changes of use and/or changes of tenancy which do not involve an increase in the required number of off-street parking spaces or additional gross floor area- nonresidential shall be site plan exempt.” The subject application therefore is site plan exempt and the Applicant accordingly need not obtain site plan approval from this Board for its Project.

8. Deliveries of supplies and other inventory to Bagel Pantry will be made to the rear of the Property as there is rear access into the subject tenant space from the parking lot area. There is an alleyway on the side of the Property from which delivery trucks/vans can reach the rear of the subject tenant space, unload supplies and inventories, and then depart utilizing Jarvis Lane. No unloading or deliveries will therefore occur at the front of the building on Millburn Avenue. The dumpster area will be located in the rear of the Property.

9. The Board imposed a condition of approval in the 2001 Resolution for Cait & Abby’s that the applicant therein provide a detail of the screening of the dumpster area to be reviewed and approved by the Township Engineer. The same condition will be imposed upon the Applicant for Bagel Pantry.

10. The Township Forester and Township Engineer did not have any concerns with regard to the application.

11. The Board is of the view that conditional use approval 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 June 17, 2020 granting conditional use approval for a fast food restaurant on the Property, in the nature of a bagel store/deli, 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 a detail of the screening of the rear dumpster area to be reviewed and approved by the Township Engineer.

5. The Applicant shall obtain business parking permits for all employees so that they may park in the municipal parking lot adjacent to and abutting the Property.

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 June 17, 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 June 17, 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 15th day of July, 2020.

BUSINESS

Appl#19-009, 40 E. Willow, LLC, 30 E. Willow Street, Millburn

Michael Kaplonski, Attorney for the applicant, indicated that he submitted the required documents for recording of minor subdivision of the applicant's property. The documents were

returned for a minor modification and he resubmitted the documents on 7/13/20. He respectfully requests an extension of time to perfect the subdivision. A motion to grant an extension of time to perfect the subdivision, to expire 8/14/20, was made by Beth Zall, seconded by Jorge Mastropietro, and carried with a unanimous roll call vote. Joseph Steinberg recused from the vote.

APPLICATIONS

APPL#20-006, JENNY YIU, 315C MILLBURN AVENUE, MILLBURN, NJ

Richard Keller, P. E., and Jenny Yiu, appeared and were sworn. The applicant is seeking conditional use approval to operate a bubble tea/slush juice bar, which is classified as a fast food restaurant, on the property located at 315C Millburn Avenue.

Entered as A-1: C/U plan updated 6/19/20

Richard Keller stated that the application is site plan exempt as per the ordinance. However, conditional use approval is required due to the nature of the business. Fast food restaurants are a permitted conditional use provided the closest part of the structure is at least 125 feet from the lot line of a single family dwelling in a residential district. The applicant meets this condition.

The property was previously used by The Peccary as a bakery. As a condition of that approval, The Peccary was required to purchase parking permits for all employees, with a minimum of 6 business parking permits.

Entered as A-2: Peccary resolution of 2/7/18

Mr. Keller testified that although the prior tenant was required to purchase 6 business parking permits, he feels a 3 parking permit requirement is more appropriate for this 1200 SF space. There is one parking space on site and Ms. Yiu employs 2-3 people, typically teenagers who walk, bike or are dropped off at the site.

Ms. Yiu indicated that she is proposing to be open from 11 AM – 7 PM 7 days a week at this time. She anticipates that her hours will be extended to 11 AM – 9 PM once the Covid-19 pandemic passes. She indicated that deliveries are made every several weeks and typically exist of 1-2 pallets.

Mr. Keller spoke to the professional reports and indicated that the applicant will comply with the requirements of the Fire Marshal.

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

Daniel Baer – yes

Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Joseph Steinberg – yes
Shaunak Tanna – yes
Miriam Salerno – yes
Beth Zall – yes

App#20-006, Jenny Yiu, 315 C Millburn Avenue, condition use approval was **GRANTED** with the condition that the applicant comply with the Fire Marshal requirements.

Upon a motion made by Joseph Steinberg that the applicant purchase 3 business parking permits, seconded by Daniel Baer and with a roll-call vote as follows:

Daniel Baer – yes
Dianne Eglow – no
Gaston Hauptert – yes
Jorge Mastropietro – no
Marc Matsil – yes
Joseph Steinberg – yes
Shaunak Tanna – yes
Miriam Salerno – yes
Beth Zall – yes

said motion carried.

BUSINESS

*Joseph Steinberg recused from the matter and left the meeting.

The Board discussed proposed Ordinance #2560-20, which proposes to amend section 606.6; 606.6.1; 606.7 of the Development Regulations by removing restaurants, fast food restaurants, retail food establishments and eating and drinking places from the conditional uses and allowing them as permitted uses in the B-2, B-3 and B-4 zones.

Upon a motion made by Shaunak Tanna, seconded by Jorge Mastropietro, and with a roll-call vote as follows:

Daniel Baer – yes
Dianne Eglow – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Shaunak Tanna – yes

Miriam Salerno – yes
Beth Zall – yes

the Planning Board recommends Township Committee adoption of Ordinance #2560-20 as not inconsistent with the Township Master Plan.

ADJOURNMENT

A motion to adjourn was made by Dianne Eglow, seconded by Beth Zall, and carried with a unanimous voice vote. (9:35 PM)

Eileen Davitt
Board Secretary

Motion: JS
Second: GH
Date Adopted: 8/19/20