

Township of Millburn  
Minutes of the Planning Board  
July 17, 2019

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, July 17, 2019** at 7:00 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  
Gaston Haupert  
Jorge Mastropietro  
Marc Matsil  
Miriam Salerno. Vice Chairwoman  
Beth Zall, Chairwoman

Also present:

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

**MEMORIALIZATIONS**

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

Upon a motion made by Cheryl Burstein, a second by Daniel Baer, and with a roll-call vote as follows:

Daniel Baer – yes  
Elaine Becker – yes  
Cheryl Burstein – yes  
Dianne Eglow – yes  
Gston Haupert – yes  
Jorge Mastropietro – yes  
Marc Matsil – yes  
Miriam Salerno – yes  
Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:**

**40 East Willow, LLC  
Application No. 19-009  
Block 1004, Lots 4 and 5;  
Minor Subdivision Approval  
Preliminary and Final Site Plan Approval  
Waiver**

**WHEREAS**, 40 East Willow, LLC ("Applicant") has made application to the Township of Millburn Planning Board ("Board") for minor subdivision approval, preliminary and final site plan approval, and a waiver request that an Environmental Impact Statement not be submitted, all as set forth in the application filed and as set forth in more detail below, in connection with the adjustment of the lot line between Lots 4 and 5 of Block 1004, the removal of all development from the smaller of the two proposed lots (Lot 5) and a reconfiguration of the parking and circulation areas of the larger lot (Lot 4), all located on Block 1004, Lots 4 and 5 on the Official Tax Map of the Township of Millburn ("Property"); and

**WHEREAS**, the Applicant has submitted a plan entitled "Preliminary-Final Site Plan & Minor Subdivision Plat, 40 East Willow Street, Tax Lots 4 & 5, Block 1004, Township of Millburn, Essex County, New Jersey", prepared by Casey & Keller Incorporated, dated 2-11-2019, latest revision 4-29-19, consisting of 8 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; and

**WHEREAS**, a public hearing was held on the application on June 19, 2019; and

**WHEREAS**, the Applicant was represented by Michael Kaplonski, Esq. and testimony was provided by Michael Kohler, one of the principals of the Applicant; and Michael Lanzafama, P.E., L.S., and P.P., all in support of the application; and

**WHEREAS**, the Board having considered the testimony offered on behalf of the Applicant and the interested parties and having reviewed the Exhibits related thereto, together with the application and the Plans, hereby makes the following findings of fact:

1. The Property is located at 40 East Willow Street and is formally known as Block 1004, Lots 4 and 5 on the Official Tax Map of the Township of Millburn. The Property is located in the Commercial/Medical Office Zone (“CMO Zone”). The Property is developed as one combined property. The total tract (Lots 4 and 5) measure approximately 2.17 acres (94,483 square feet). The tract is located on the south side of East Willow Street, south of the Rahway River and east of Main Street. Surrounding uses generally consist of commercial and industrial uses within the CMO Zone.

2. The Applicant seeks minor subdivision approval to adjust the lot lines between Lots 4 and 5 to make Lot 5 a conforming lot as to lot area, but still non-conforming with regard to certain other bulk requirements in the CMO Zone. The Applicant is also seeking preliminary and final major site plan approval to remove all improvements from the newly configured Lot 5 (the smaller of the two proposed lots), which improvements consist primarily of bituminous pavement, curbing and other parking related improvements, but there are no buildings located thereon. The Applicant further proposes to reconfigure the parking and circulation areas on the reconfigured Lot 4 which is now smaller as a result of the lot line adjustment.

3. More specifically, currently Lot 4 measures 71,455 square feet (approximately 1.64 acres) and is developed with a one story, 11,261 square foot masonry office/industrial building and associated parking area. Lot 5, located to the west, measures approximately 23,028 square feet (0.53 acres) and consists largely of circulation and parking serving the building located on Lot 4. The Applicant proposes to adjust the lot line between Lots 4 and 5 by shifting the common boundary line approximately 11.5’ to the east, then extending it further to the east toward the rear of Lots 4 and 5 such that the newly configured Lot 5 would consist of 30,000 square feet, but be “L” shaped. If the subdivision is approved, the newly configured Block 1004, Lot 4 will consist of 64,483 square feet and the newly configured Block 1004, Lot 5 will consist of 30,000 square feet, making Lot 5 conforming as to lot area, but non-conforming as to lot width.

4. The Applicant testified that the business conducted at the premises is the same business that was previously conducted at premises located at 61 East Willow Street. The Applicant company is a fiber-optics company and employs approximately 12 persons. The building structure is located entirely on Lot 4 and will remain so. Parking for the building is located on both Lots 4 and 5, but the Applicant proposes to eliminate parking on Lot 5 and make Lot 4 with the building on it a self-contained lot. Parking on the newly configured Lot 4 will be on the west side and in the rear of the building. The rear parking area on Lot 4 is also used for storage of fiber-optic cable as well as a variety of vehicles operated by the business. Refuse collection and disposal is provided by a one time per week pick-up through South Orange Disposal and/or Bush Brothers.

5. The purpose of the subdivision is to create a newly configured, conforming Lot 5 as to lot area with the intention of being able to utilize that lot as a free standing lot.

6. The testimony revealed that in order to reconfigure proposed Lot 5 to make it conforming as to size (the lot is currently approximately 23,028 square feet, whereas a minimum lot size of 30,000 square feet is required), the Applicant proposes to shift the common boundary line between Lots 4 and 5 to the east 11.5', and run that new line approximately 148.59' in a southerly direction, then make a 90 degree turn to the east approximately 60.53' and then proceed south again to the rear boundary line approximately 74.00'. This will create a newly configured "L" shaped lot (Lot 5) with the larger width of 165.38' in the rear, but only 111.52' in the front along East Willow Street, whereas a 150' width is required. The Applicant's expert qualified as an engineer, land surveyor and planner, testified that if the lot width were increased along East Willow Street to the required 150', the lot line would go up to approximately the existing building and therefore eliminate the ability to create an ingress and egress for that existing building on Lot 4. The Applicant's expert testified that as a result of the existing structure on Lot 5 which is legally located thereon, practical difficulties and a hardship would be created to conform to the requirements of the Zoning Ordinance.

7. The parking and circulation areas would be fully reconfigured on the proposed newly reduced in size Lot 4 by providing 32 spaces (where 25 are required), which will include two ADA accessible spaces. One of those spaces is located in the front yard requiring a variance. The Applicant's expert testified that the entrance-way of the building is located such that the provision of the additional ADA space encroaching into the front yard will provide better access to the building and that the purposes of the Municipal Land Use Law would be advanced, including the promotion of public health, safety and general welfare. Further, the Planner testified that the benefits of granting such a variance for a single encroaching ADA compliant parking space far outweighs any detriments given the industrial area in which the building is located and the location of the existing building on the lot.

8. The Applicant's Plans originally activated the need for a variance because of the location of a fence in the front yard. The Applicant agreed to move the fence out of the front yard and therefore eliminate the need for the Board to consider a variance from this requirement.

9. Lot coverage on the newly reconfigured Lot 4 is non-conforming. Currently, existing lot coverage on Lot 4 (before its reduction in size to add area to adjacent Lot 5) is 80.8% (57,737 square feet), whereas a maximum of 75% lot coverage is permitted. However, following the subdivision and site improvements, the lot area for the newly configured Lot 4 will be reduced by approximately 7,000 square feet and while lot coverage would also be reduced, it would only be reduced by approximately 2,000 square feet, thereby increasing the lot coverage percentage on the newly configured Lot 4 to 86.38%. Because the Applicant is proposing to remove all of the impervious area for the newly configured adjacent Lot 5, there is no lot coverage issue raised with that lot. The Applicant's Planner testified that impervious coverage will actually be reduced by approximately 2,000 square feet as abovementioned, but because the lot size is being decreased by 7,000 square feet, the percentage coverage has increased mathematically. He testified, however, that the drainage system that currently exists on Lot 4

more than adequately accommodates the increased impervious coverage and that there would be no problem created for drainage purposes if the lot coverage percentage increased as proposed. Nevertheless, the Board had considerable concern about the increase in the percentage of lot coverage and encouraged the Applicant to eliminate some portions of the impervious area on Lot 4 so as to reduce the ultimate percentage. After discussing the matter with the Applicant, the Applicant's Engineer and Planner proposed a variety of revisions to the Plans that would reduce lot coverage on the newly configured Lot 4 to 83% (as opposed to 86.38%). While still not conforming with the 75%, the Board was generally satisfied that given the pre-existing conditions on this lot, further reduction in impervious area would be ill advised, particularly in light of the proposed use of that Property in the industrial area. The Applicant's Planner testified that the reduction in lot coverage by 2,000 square feet far outweighed the detriments of further reducing impervious coverage, particularly because the drainage system has been and will continue to be able to accommodate the run-off from the impervious area. Given the further reduction of impervious area to 83%, the Applicant's Engineer was satisfied that the benefits of granting this variance outweighed the detriments of eliminating more impervious coverage on Lot 4 with regard to this particular Property. Also, the fact that a non-conforming lot as to lot area (Lot 5), would now become conforming, far outweighed the detriments of increasing the impervious coverage on the newly configured Lot 4.

10. The Applicant indicated that there would be 3 new 23' high pole-mounted fixtures in the rear parking area and 6 additional wall-mounted fixtures on the side and rear façades of the existing building which will be mounted at either 10.5' or 16', with all lighting fixtures to be LED "Cobra-Head" styled fixtures.

11. With regard to circulation, currently, access is provided from Lot 5. The Plans submitted relocate ingress and egress to be entirely on Lot 4 near the westerly Property line, while the existing curb cut near the easterly side of Lot 4 would remain.

12. The Applicant also provided a new landscaping plan which would retain the 3 existing shade trees along the lot frontage and install an additional shade tree along with several ornamental deciduous trees and evergreen trees proposed to be planted adjacent to the base of the front façade with other shrubs and perennials. Additional shrubs and perennials are proposed adjacent to the rear building entrance from the rear parking lot and pavers are proposed to replace an existing grass area in the rear of the building. With regard to the reconfiguration and elimination of certain impervious areas to reduce the coverage to the 83% set forth above, additional landscaping will be installed within some of the now pervious areas created as result of the reconfiguration.

13. The Applicant sought a waiver from the requirement that an Environmental Impact Statement be provided. The Applicant's Engineer and Planner testified that the Property is already paved and covered by parking lot and existing buildings. All of the impervious improvements on the newly configured Lot 5 will be eliminated and the actual impervious area on the newly configured Lot 4 will be reduced even further than originally proposed, as set forth above. There is new landscaping to be provided and there is adequate and proven stormwater management on the site through its underground storage system. The building is 1' above the

flood elevation and there is minimal flooding on the Property, even in major storm events. The Applicant's Engineer and Planner testified that there will be no change from existing conditions or, if anything, the impact of the development currently existing on the Property will be reduced as a result of the adjustments made with regard to lot coverage and the new landscaping that is taking place. For all those reasons, the Applicant's Engineer and Planner supported the waiver of the submission of an Environmental Impact Statement. After consideration of that testimony and hearing no objection from any of the Board's professionals, the Board agreed to waive the requirement that the Applicant submit an Environmental Impact Statement.

14. The Applicant's Planner testified that with regard to all variances the negative criteria has been satisfied. First, there is no substantial detriment to the public good as a result of any of the variances being requested because the building and impervious areas are already existing and the coverage issues, the width issues of the newly configured Lot 5, the provision of an ADA parking space in the front yard, and the increase in impervious area all will not affect any of the surrounding properties because essentially the same conditions currently exist. Furthermore, the Applicant's Planner testified that there would be no substantial impairment of the Zoning Ordinance and Zoning Plan, particularly given the fact that the building is already existing and no change is being proposed in the building. The impervious area is already existing and, in fact, ultimately will be reduced by the elimination of the impervious coverage on the newly configured Lot 5. For all of these reasons, the Applicant's Planner was of the view that the negative criteria have been satisfied.

15. There were a number of professional reports issued in connection with this application. Specifically, the Township Engineer issued a report of June 13, 2019; the Fire Marshal submitted a report dated June 12, 2019; the Police Department submitted a report dated 6-14-2019; the Zoning Officer submitted a report dated June 10, 2019; the Township Forester submitted a report dated June 5, 2019; and the Township Planner submitted a report dated June 17, 2019. The Applicant agreed to comply with the requirements and recommendations set forth in all of said reports.

16. After considering the testimony, the recommendations of the Board's Professionals, and the advice of its counsel, the Board is of the view that minor subdivision approval should be granted to reconfigure the common boundary line between Lots 4 and 5 in Block 1004 and preliminary and final site plan approval should be granted for the elimination of impervious coverage on the newly configured Lot 5 and the reconfiguration of parking, impervious coverage and landscaping on the newly formed and reconfigured Lot 4, should be granted, subject to the conditions as 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 taken on June 19, 2019, granting minor subdivision approval as set forth in the Plans and granting preliminary and final site plan approval to remove all development and impervious area from the newly configured Lot 5 and to reconfigure the parking circulation and landscaping on the newly reconfigured Lot 4; granting variances to allow proposed Lot 5 to have a front yard width of 111.5' rather than the required 150'; to allow for the impervious lot coverage for the

reconfigured Lot 4 to be 83%, whereas a maximum of 75% impervious area is required; and to allow the installation of a single ADA compliant parking space in the front yard on the westerly side of the newly reconfigured Lot 4, all as set forth in the application for premises known as 40 East Willow Street, formally known as Block 1004, Lots 4 and 5 on the Official Tax Map of the Township of Millburn, along with the granting of a waiver of the submission of an Environmental Impact Statement as set forth above, 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 requirement 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 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. The Applicant shall comply with the reports of each of the professionals and/or Township staff as set forth previously in this Resolution.
6. The Applicant shall remove all impervious coverage from the newly configured Lot 5, Block 1004.
7. The Applicant shall move the fence on the easterly side of Lot 4 to a point outside of the front yard setback.
8. The Applicant shall reduce the impervious coverage to not to exceed 83% on the newly configured Lot 4 by adjusting landscaping areas and other modifications as represented by the Applicant's Engineer and Planner at the public hearing.
9. The Applicant shall provide an appropriate metes and bounds description for the newly configured Block 1004, Lot 4 and the newly configured Block 1004, Lot 5 for review and approval by the Township Engineer prior to the perfection of this subdivision.
10. The Applicant shall perfect this minor subdivision in accordance with N.J.S.A. 40:55D-47d by filing a Plat in conformity with the approval and the provisions of the "Map Filing Law", P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9, et seq.) or Deeds clearly describing the approved minor subdivision, signed by the Chairman and Secretary of the Planning Board, and filed within 190 days after the adoption of the instant Resolution, pursuant to N.J.S.A. 40:55D-47d with the County Recording Officer, the municipal engineer and the municipal tax assessor. The minor subdivision deed shall be submitted for review and approval by the Planning Board Engineer and the Planning Board Attorney.

11. To the extent required, the Applicant shall submit revised Plans to reflect the changes to which the Applicant agreed and/or those modifications that were required by the Board or the Board's experts.

12. The Applicant shall be bound to comply with all representations made before this Board by the Applicant and the Applicant's witness during the course of the public hearing on the application held on June 19, 2019 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.

13. 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 19, 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 17<sup>th</sup> day of July, 2019.

## **APPLICATIONS**

### **APPL#19-011, CONGREGATION B'NAI JESHURUN, 1025 SOUTH ORANGE AVENUE, SHORT HILLS**

Lawrence Levitt and Anthony Cerciello, Attorneys for the applicant, stated their appearance. The applicant is seeking site plan approval to replace their existing lighting with new poles and LED fixtures and install a new ground graphic on the site. The property is a 16.72 acre lot located in the R-4 zone.

The Board addressed the applicant's request for several checklist waivers. A motion to approve the applicant's request for checklist waivers was made by Dianne Eglow, seconded by Daniel Baer, and carried with the following roll-call vote:

Daniel Baer – yes  
Elaine Becker – yes  
Cheryl Burstein – yes  
Dianne Eglow – yes  
Gaston Hauptert – yes  
Jorge Mastropietro – yes  
Marc Matsil – yes  
Miriam Salerno – yes

Beth Zall – yes

Entered as A-1: Spiezele lighting improvements exhibit

Adam Alexander, landscape architect, appeared and was sworn. His credentials were presented and accepted by the Board. He outlined the proposed lighting plan for the site and indicated that there are 34 pole mounted fixtures proposed to be installed within the parking area. The outdoor lighting will be on from dusk to dawn, operating on a photoelectric cell. Currently, this is done manually. However, the new system will have a time clock that will automatically turn the lights on and off. There are 12 LED decorative fixtures proposed to be mounted at 14 feet-8.5 inches in height and 20 LED lights to be mounted at 20 feet in height. In addition, the existing sign is proposed to be replaced with a new illuminated entrance sign. The new sign will measure 5 feet high by 3 feet wide. He agreed to re-locate the proposed ground graphic to 10 feet off the front property line.

Mr. Alexander spoke to the comments made by the Board Planner, Paul Phillips. With regard to comment #1, Mr. Alexander stated that a waiver request is being sought for LED lighting as it will not negatively impact the surrounding area. In addition, there is no light spillage onto adjoining properties.

With regard to comment #3 relative to the location of the proposed sign, the applicant ultimately agreed to relocate the proposed sign to be a compliant 10 feet off the property line.

Mr. Alexander referred to the Township Engineer's professional report. With regard to comment #2 which addresses the maximum foot candle ordinance requirement of 10 foot candles, the applicant indicated that they will modify the plan so as not to exceed the allowable 10 foot candles.

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  
Miriam Salerno – yes

Appl#19-011, Congregation B'nai Jeshurun, 1025 South Orange Avenue, site plan approval with a waiver from the lighting requirements was **GRANTED** with the following conditions: 1) the applicant shall revise the plan to show the proposed sign 10 feet from the front property line; 2) the applicant shall modify the lighting intensity of the project to meet the ordinance requirements

as stipulated in the Township Engineer's report; 3) there shall be no light spillage onto any neighboring residential properties, and modified lighting plans to achieve this requirement shall be submitted to/approved by the Township Engineer.

**BUSINESS**

**Ord#2539-19 Development Regulations Section 512 -- Lighting**

The Board discussed Ordinance #2539-19 which sets forth criteria to provide outdoor lighting to protect public health and security

Upon a motion made by Cheryl Burstein, a second by Miriam Salerno, and with a roll-call vote as follows:

- Daniel Baer – yes
- Elaine Becker – yes
- Cheryl Burstein – yes
- Dianne Eglow – yes
- Gaston Hauptert – no
- Jorge Mastropietro -- yes
- Marc Matsil – yes
- Miriam Salerno – yes
- Beth Zall – yes

the Planning Board recommends TC adoption of Ordinance #2539-19 as not inconsistent with the Master Plan, with the following addition to the last sentence in the "Statement of Purpose:"

The purpose of this section is to set forth criteria to provide outdoor lighting to protect public health, security, and welfare; to protect drivers and pedestrians from the glare of non-vehicular light sources that shine into their eyes and thereby impair safe traverse; to protect neighbors and the night sky from nuisance glare and light trespass from poorly aimed, placed, applied or shielded light sources; and to promote conservation through efficient lighting design **and reduction in energy consumption.**

**ADJOURNMENT**

A motion to adjourn was made by Cheryl Burstein, seconded by Beth Zall, and carried with a unanimous voice vote. (8:35 PM)

Eileen Davitt  
Board Secretary

Motion: EB  
Second: CB  
Date Adopted: 9/4/19