

Township of Millburn
Minutes of the Planning Board
August 4, 2021

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, August 4, 2021** at 7:30 PM via Zoom webinar.

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
Gaston Haupt
Jorge Mastropietro
Marc Matsil
Maggee Miggins
David Morrow
Srini Vijay
Beth Zall, Chairwoman

Also present:

Edward Buzak, Board Attorney
Eileen Davitt, Zoning Officer/Board Secretary

APPROVAL OF MINUTES

A motion to approve the minutes of May 5 2021, was made by Daniel Baer, seconded by BethZall, and carried with a unanimous voice vote. Maggee Miggins abstained.

A motion to approve the minutes of May 19, 2021, was made by Marc Matsil, seconded by Gaston Haupt, and carried with a unanimous voice vote. Maggee Miggins abstained.

A motion to approve the minutes of June 16, 2021, was made by David Morrow, seconded by Jorge Mastropietro, and carried with a unanimous voice vote. Maggee Miggins abstained.

MEMORIALIZATIONS

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

Daniel Baer – yes
Jorge Mastropietro – yes

David Morrow – yes
Beth Zall – yes

the following memorializing resolution was adopted:

RESOLUTION
PLANNING BOARD
TOWNSHIP OF MILLBURN

In the Matter of:

275 Company, Inc.
Application #21-003
275 Millburn Avenue
Block 704, Lot 4
Preliminary and Final Major Site Plan Approval
Variances
Waivers

WHEREAS, 275 Company, Inc ("Applicant") has made application to the Township of Millburn Planning Board for preliminary and final major site plan approval, variance relief for building height, number of off-street parking spaces, and off-street loading, a waiver of the requirement that an Environmental Impact Statement ("EIS") be submitted, as well as certain site plan checklist waivers as set forth in more detail below, in connection with the development of a mixed-use project (multi-family residential over existing retail space) at premises commonly known as 275 Millburn Avenue, Millburn, New Jersey, and formally known as Block 704, Lot 4 on the Official Tax Map of the Township of Millburn ("Property"); and

WHEREAS, the Applicant has submitted the following plans and designs: (i) "Preliminary and Final Site Plan, 275 Millburn Avenue", prepared by Casey and Keller, Inc. dated March 12, 2021, consisting of four sheets (the "Plans"); and (ii) "Floor Plans and Elevations for Footnotes Mixed-Use Two Story Addition", prepared by Buchholz Architects, dated May 27, 2021, consisting of sheets A-1 and A-2 (the "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 as modified for the purposes of conducting the meeting remotely through the Zoom platform wherein members of the public were 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 July 7, 2021; and

WHEREAS, at the hearing the Applicant was represented by Richard C. Stewart, Esq., and testimony in support of the application was provided by Michael Lanzafama, P.E., P.P., P.L.S. of Casey and Keller, Inc.; and John Buchholz, AIA, of Buchholz Architects; and

WHEREAS, the Board having heard and 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 275 Millburn Avenue, Millburn, New Jersey, and formally known as Block 704, Lot 4 on the Official Tax Map of the Township of Millburn. It has a site area of 9,342 sq. ft. and is a through lot between Millburn Avenue and Essex Street in the B-4 Central Business zoning district. There is 100% lot coverage, with the site presently improved with a single-story block and stucco building (with a basement) occupied by Footnotes, a retail shoe store, fronting on Millburn Avenue and a rear parking lot accessed from Essex Street. The topography generally slopes slightly downward from Essex Street toward Millburn Avenue. Adjoining uses are solely commercial or mixed use in nature and buildings are typically one to two stories.

2. The Applicant is seeking preliminary and final major site plan approval for a two-story addition for residential apartments to be constructed above the existing single-story retail building. Four two-bedroom apartment units are proposed to occupy the new second and third floors over the existing retail space. The Footnotes shoe store will be retained and remain on the first floor. A small addition increasing the building footprint by approximately 400 sq. ft. is also proposed at the rear of the building. The addition will enable the rear portion of the existing building to accommodate an elevator, new residential lobby, residential storage room, and ADA lift, as well as a building storage room, stairwell, rear retail entrance, and rear residential entrance.

3. The Applicant requests a waiver from the requirement to submit an EIS. Its Engineer/Planner, Michael Lanzafama, P.E., P.P., testified in support of same, stating that the Property is narrow, contains no steep slopes, no freshwater wetlands, and is not in a flood zone. He noted that the scope of the proposed project is limited in that it calls for the construction of only four apartment units atop of an existing structure. The new roof to be installed will have minimal square footage. The small addition to the rear of the building will only marginally increase the building footprint and of particular significance, will be replacing an existing paved area. The Engineer/Planner also stated he examined the existing on-site drywell and that same is effective and in good working order, and the Applicant will enhance same to absorb the limited additional runoff generated from the project. Mr. Lanzafama maintained that surrounding flora and fauna will not be impacted. Lighting will be LED and not upward tilted. The Board Engineer concurred with the request for an EIS waiver, especially given the fact that the site is already fully developed and the small increase in the building footprint from the proposed rear addition is replacing existing pavement. For all of the aforesaid reasons, the Board is of the view that a waiver of the EIS requirement is appropriate and should be granted.

4. The Applicant further requests completion and site plan checklist waivers for a fact sheet, contours, and curbs, driveways, structures and signs within 100 ft. of the site. The Board Engineer likewise concurred with those waiver requests. The Board is of the view that waivers of the aforesaid requirements are also appropriate and should be granted, and such waivers are hereby granted to allow the application to proceed.

5. The B-4 Central Business District Zone permits residential use provided it is not on the ground floor. The Applicant's proposal therefore complies with use requirements for the district. However, variance relief is sought from the Township Development Regulations and Zoning Ordinance ("DRZ") for:

i. number of off-street parking spaces (10 proposed whereas 28 are required under DRZ Section 607.2(p); there are currently 13 existing spaces);

ii. off-street loading (0 spaces proposed whereas 1 space is required under DRZ Section 607.1); and

iii. building height (42.73 ft. proposed whereas 40 ft. maximum permitted under DRZ Section 606.7(e)(4))

6. Applicant's Engineer/Planner utilized the Plans to give an overview of the site's existing conditions. As aforesaid, the Property is fully developed with 100% lot coverage. The one-story building containing the retail shoe store has a footprint of approximately 3,657 sq. ft. and has a single rear entrance. The structure does not have a fire suppression system. Behind the building is an approximately 5,240 sq. ft. parking area containing 13 spaces, a combination of angled and 90-degree parking. There is a block wall along the westerly perimeter of the parking lot and a type "A" flat inlet grate in the central portion of the lot. A monument sign stands in the northwest corner near Essex Street and will remain in place (the Applicant initially sought to relocate same but subsequently withdrew that request). Access to the parking lot is solely from Essex Street. The site has a 5 ft. grade differential over 186 ft., which is calculated to be an approximately 2.5% slope. There is no vegetation on the site. An overhead utility wire spans directly across the top of the one-story building between utility poles on Millburn Avenue and Essex Street.

7. As was also illustrated on the Plans, the Engineer/Planner for the Applicant testified that the rear addition component of the proposed project will increase building coverage by approximately 400 sq. ft. However, this small building addition is proposed over existing sidewalk and pavement. The four proposed two-bedroom residential apartments will occupy the new second and third floors that are to be constructed over the existing retail space. The existing 13 parking spaces to the rear of the site are proposed to be replaced by 10 right-angle parking spaces, including an ADA handicap space and an electric charging station. The existing flat inlet grate in the parking lot will be replaced with a new type "A" inlet. The Board Engineer advised that a construction detail is to be provided for the new inlet. An extra 20 ft. wide driveway is proposed for easy vehicular maneuverability. A stop sign and a stop bar will be installed at the driveway exit. The Board Engineer advised that same should be augmented with a "No Right

Turn” warning plaque, as well as a left turn arrow traffic marking symbol painted in the exit lane. Two pole mounted lights are proposed in the parking area, for which a photometric plan and lighting analysis were submitted. Lighting levels and uniformity ratios will meet all the parameters as outlined in the Township DRZ, Section 512.1.

Although the small building addition does not increase the site’s existing lot coverage, and the size of the site and proposed development do not require a stormwater management system, the Applicant nonetheless proposes to install same on the Property as part of its project. The new stormwater management system will consist of two 8-ft. diameter drywell tanks in a gravel bed, which meets the Township standard of 250 cubic ft. of volume provided for every 1,000 sq. ft. of impervious coverage. The Board Engineer recommended that a percolation test be performed to determine the potential efficacy of the proposed stormwater detention system. The Applicant agreed to undertake that testing.

8. Applicant’s architect, John Buchholz, AIA, presented the Architectural Plans. Sheet A-1 was shown to depict the proposed floor plans for the ground floor, second floor and third floor. The ground floor will have the existing retail Footnotes shoe store with a front retail entry and a short flight of steps at the rear corner leading to a basement where inventory is kept. Within the area of the small addition proposed to be constructed at the rear of this retail space will be an elevator, residential lobby with mailboxes, residential storage room, building storage room, and a rear residential entry. The building storage room was noted to be small, and the Applicant agreed to sufficiently enlarge same to have the capacity to store a minimum of 5 bicycles (for the residents of the proposed new apartment units). There will be two rear building entrances, one for the retail space and a second for the residential apartments. The Board Engineer recommended that lighting be installed at the residential lobby and the rear retail entrance. The Applicant agreed to install the aforesaid additional lighting. The Applicant further agreed to place a bike rack near the rear retail entry that will accommodate 4 to 5 bicycles. Outside the building between the two rear entrances a narrow, paved area designated for electrical and gas meters, and recyclable and garbage dumpsters are proposed. These items are will be screened with a gate of wood-type finish. Adjacent to the aforesaid area is the rear parking lot.

As was also illustrated on Sheet A-1 of the Architectural Plans, the existing 13 on-site parking spaces are proposed to be reconfigured to create 10 compliant parking spaces, including one handicap space and one electric vehicle charging station. The Engineer/Planner for the Applicant testified with regard to the parking variance to allow for 10 spaces. He was of the view that the criteria for the “flexible c” [N.J.S.A. 40:55D-70c(2)] variance was met because the purposes of the MLUL would be advanced by the subject application and the benefits of granting a deviation substantially outweigh any detriment. With regard to the positive criteria, he opined that relief is appropriate since the Footnotes shoe store employs only 4 full-time employees, and 1 part-time employee and therefore has a limited need for employee parking. The Applicant also agrees to purchase 4 business parking permits for use by the employees of the retail space. The store operates from 10AM to 6PM, Monday to Saturday when 3 employees are on shift, and 12 Noon to 5PM on Sundays when 2 employees are on shift. Mr. Lanzafama further noted that a train station is located proximate to the site, which under the Residential Site Improvement

Standards (“RSIS”) is a consideration for reducing parking space requirements. He also cited to the 21 on-street parking spaces along Millburn Avenue, 10 permit spaces on the north side of Essex Street, and 10 metered parking spaces on the south side of Essex Street, all of which are proximate to the site and, in the Engineer/Planner’s view, further support the grant of a parking variance to the Applicant. Moreover, four parking spaces will be expressly reserved for use only by the new on-site residential apartment units and marked accordingly. Mr. Lanzafama also referenced several goals and objectives enumerated in the Township’s Master Plan which will be advanced by virtue of the proposed development, including at Sections 1.02, 4.03, and 4.04, i.e., promote the appropriate mix of development in downtown and other commercial areas; leverage opportunities for new commercial development or redevelopment of existing properties where appropriate; and strengthen existing business centers including the Downtown core. The aforesaid, in the Engineer/Planner’s view, comport with the purposes of the MLUL and thus support parking variance relief. With regard to the negative criteria, Mr. Lanzafama indicated that given the aforesaid, there would be no substantial detriment to the public good nor any substantial impairment of the Zoning Ordinance or Zoning Plan by virtue of granting the variance sought. The Board Engineer opined that while the proposed parking configuration reduces the number of on-site parking spaces from 13 to 10, it meets the parking and aisle dimensional requirements as stipulated in DRZ Section 516.5, and allows for easier vehicular maneuvering.

Several Board members noted the lack of vegetation in the parking area along Essex Street and requested that a shade tree and hedges be planted. It was acknowledged, however, that Essex Street is a County right-of-way. The Applicant agreed to make every effort to secure County approval to allow for the planting of a shade tree and/or hedges in the parking lot area along Essex Street to break up the paved area and make same more attractive.

9. With regard to the variance to allow for no loading space in the parking lot when one loading space is required under DRZ Section 607.1, the Engineer/Planner for the Applicant also opined that relief should be granted under the “flexible” N.J.S.A. 40:55D-70c(2) criteria. He stated that there presently is no loading zone on the site. Notwithstanding the absence of same, UPS trucks making deliveries to, and pickups from, the rear of the building for the retail shoe store have ample space to back up into the parking area to the rear of the building. Similarly, private haulers utilized by the retail store currently have no issues backing into the parking lot to access the recyclable and garbage at the rear of the building before pulling back onto Essex Street. Mr. Lanzafama opined that the parking lot configuration for the proposed 10-parking spaces will not impact accessibility to the rear of the building for UPS trucks or private haulers. He also drew attention to the extra 20 ft. wide parking lot driveway that will be constructed. With regard to the positive criteria for granting the loading space variance, the Engineer/Planner stated that the reasons previously recited for the parking space variance also apply to the requested variance for no off-street loading. As aforesaid, the Board Engineer opined that the proposed parking lot configuration allows for easier vehicular maneuvering. This, in the Board’s view, also supports variance relief for the lack of an on-site loading space.

10. With regard to the variance for a 42.73 ft. building height when DRZ Section 606.7(d)(4) limits same to a 40 ft. maximum, the Architect for the Applicant, John Buchholz,

AIA, testified that same is necessitated due to the complexity of reusing the existing building structure and constructing thereon floors for the residential apartment units. The Architect utilized Sheet A-2 of the Architectural Plans to explain that the two new upper floors must be supported with auxiliary steel and reinforcing structures, and center line bearing walls. The one-story building's existing membrane roof will be re-used and preserved, which requires providing ample crawl space for repair personnel to access same in the event of leakage or other service needs. Moreover, the Applicant will be installing a fire suppression system for the entire mixed-use building, a fire protection and safety feature that the existing building currently lacks. To that end, ample height space is needed between the new second and third floors for fire suppression sprinkler heads and piping network lines. Space must also be allocated for water and sewer lines, and duct work. The Architect further contended that residential apartments are customarily built with 10 ft. high ceilings. In short, the Architect testified that the proposed 42.73 ft. building height is the bare minimum height needed.

In support of the requested building height variance, the Engineer/Planner for the Applicant opined that same should be granted under the "flexible" N.J.S.A. 40:55D-70c(2) criteria because the subject application advances the purposes of the MLUL and the benefits of granting the deviation substantially outweigh any detriment. The subject application presents a unique scenario because the Applicant will not be building from scratch but rather retaining an existing structure and working with same. As testified by the Architect, height overage is needed to achieve appropriate floor to ceiling height, adequate space for duct work, sewer lines and water lines, and to install a comprehensive fire suppression system to serve both the retail and residential aspects of the development. The fire safety feature will protect not only the subject proposed mixed-use building, but also the public at large. The benefits of a building height variance to retain an existing structure and to provide for a fire suppression system therefore outweigh any detriment, and will pose no substantial detriment to the public good nor any substantial impairment of the Zoning Ordinance or Zoning Plan. As an aside, Mr. Lanzafama noted that the proposed 42.73 ft. building height is measured from the average grade of the site, as required by the Township Ordinances.

11. The proposed floor plans for the second and third floor two-bedroom residential apartments were shown on Sheet A-1 of the Architectural Plans and described by the Applicant's Architect as being fairly identical. The Architect testified that the units will be approximately 1,500 sq. ft., contain an open-concept kitchen/dining/living room area, a home office (with no window), and a balcony accessible from both the living room and a bedroom. Mr. Buchholtz represented that although the mixed-use building will not be LEED certified, energy saving appliances, double-pane glass windows and high seer-rating units will be installed in and for the residential apartment units. Low VOC paint shall also be used.

12. The proposed Essex Street and Millburn Avenue elevations of the mixed-use building were presented on Sheet A-2 of the Architectural Plans. The existing Footnotes storefront on Millburn Avenue will be largely maintained. The retail façade rises to the open balconies of the second floor residential apartments. White stone tiling will be utilized to frame the four residential balconies. Multiple windows of varying sizes, metal panels, and dark gray brick on the second and third floors combine to form an attractive exterior. The roof will have a

parapet and aluminum cap. The proposed Essex Street elevation depicts the separate rear retail and residential entrances, and the screened and gated utility meter, recyclables and trash area. Windows, metal panels, dark gray brick and glass paneling on the second and third floors combine to form an attractive exterior from this frontage as well. The Applicant's Architect indicated that residential apartments will have split-heating/air conditioning units and the compressors for same will be located in the center of the roof.

13. The application was reviewed by various professionals of the Township. The Township Engineer, by Memorandum dated June 25, 2021, had a variety of comments, concerns and requests with which the Applicant agreed to comply. The Township Planner, by review letter dated July 2, 2021, also had various comments or concerns on the application, with which the Applicant agreed to comply. The Township Fire Marshal by Memorandum dated July 21, 2021 had a variety of comments and requests with which the Applicant agreed to comply.

14. After considering the testimony and exhibits of the Applicant and the recommendations of the Board's Professionals, the Board is of the view that preliminary and final major site plan approval; variances for off-street parking spaces, off-street loading space, and building height; a waiver of the EIS requirement; as well as certain site plan checklist waivers as was set forth in detail above, should be granted, all 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 July 7, 2021, granting: (i) preliminary and final major site plan approval; (ii) a variance to allow for 10 parking spaces; (iii) a variance to allow for no off-street loading space; (iv) a variance to allow for a building height of 42.73 ft; (iv) a waiver of the EIS requirement; as well as certain site plan checklist waivers as was set forth in more detail above, in connection with the construction of a mixed-use development (multi-family residential over existing retail space) at premises commonly known as 275 Millburn Avenue, Millburn, New Jersey, and formally known as Block 704, Lot 4 on the Official Tax Map of the Township of Millburn ("Property"); 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 ground floor building storage room shall be enlarged to have a capacity to store a minimum of 5 bicycles.

5. A bicycle rack shall be installed near the rear retail entry to accommodate a minimum of 5 bicycles.
6. Additional lighting shall be installed at the residential lobby and the rear retail building entrance.
7. A stop sign and a stop bar shall be installed at the parking lot driveway exit.
8. A “No Right Turn” warning plaque shall be installed at the parking lot driveway exit.
9. The Applicant shall purchase 4 business parking permits for the retail shoe store.
10. Four parking spaces shall be reserved for the residential apartment units and marked accordingly.
11. The Applicant shall make every effort to obtain County approval to allow for the planting of a shade tree and/or hedges in the parking lot area along Essex Street and shall install same if authorization is obtained.
12. There shall be no storage of any item on the residential balconies.
13. Energy saving appliances, double-pane glass windows and high seer-rating units shall be installed in and for the residential apartment units. Low VOC paint shall also be used.
14. A percolation test shall be performed to determine the potential efficacy of the proposed stormwater detention system, and the results of same shall be reported to the Board Engineer. The Applicant shall comply with any recommendations for the stormwater system that are made by the Board Engineer post-testing.
15. The Applicant shall comply with the comments and recommendations of the Board’s professionals as set forth in the following reports by: (i) the Township Engineer in her Memorandum dated June 25, 2021; (ii) the Township Planner in his review letter dated July 2, 2021; (iii) the Township Fire Marshal by Memorandum dated July 21, 2021.
16. If applicable, the Applicant shall remit the residential developer fee in accordance with any Developer Fee Ordinance enacted by the Township of Millburn in accordance with its terms.
17. 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 July 7, 2021 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.

18. 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 July 7, 2021.

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 4th day of August, 2021.

APPLICATIONS

There were no applications scheduled.

BUSINESS

Board Attorney, Ed Buzak, addressed some questions raised by Township residents as it relates to the procedures of this Board. An issue was raised with respect to the 3-minute time limit imposed on public comment on an application. The Board openly discussed this concern and was satisfied that the 3-minutes imposed for the purpose of the 85 Woodland Road application was ample time for residents to adequately convey their opinions to the Board. They indicated that the Township Committee has a similar format. Board members felt the time limit works very well and maintains order through the process. Concerned residents are given an opportunity to finish their statements and are not completely cut off mid-sentence. A second issue was raised indicating that witnesses under oath should be prohibited from using their cell phones during their testimony. Ed Buzak stated that the Board has seen this in virtual format since witnesses are not in the same room as the rest of the professionals involved in the matter. With on-site meetings, witnesses may turn to someone else on their team for guidance or clarifying testimony. Overall, Board members did not feel that they could or should prevent witnesses from sending a text message or calling another professional on relevant matters. A final issue was raised with respect to memorializing resolutions. A Township resident felt that draft resolutions should be made available to members of the public, prior to the Board's vote, in order for the public to be able to make comments or suggested amendments to them. Ed Buzak explained that the Board has a duty to hear an application and adopt a resolution in the matter. The public has an opportunity to ask questions and make statements during the presentation of the application. However, there is no provision in the Municipal Land Use Law that allows for the public to provide comments on the memorializing resolution. This is the responsibility of the voting Board members. Board members would be delinquent in their duties if they delegated this responsibility to non-public officials. If an interested party is unhappy with the adopted resolution, they have legal avenues that can be taken at that time.

ADJOURNMENT

A motion to adjourn was made by Marc Matsil, seconded by Jorge Mastropietro, and carried with a unanimous voice vote. (8:20 PM)

Eileen Davitt
Board Secretary

Motion: GH
Second: MM
Date Adopted: 10/6/21