

Township of Millburn  
Minutes of the Planning Board  
August 19, 2020

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, August 19, 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 – arrived 7:43 PM  
Gaston Hauptert  
Jorge Mastropietro  
Marc Matsil  
Tara Prupis  
Joseph Steinberg  
David Morrow, Alt. #1  
Shaunak Tanna, Alt. #2  
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 July 15, 2020 was made by Joseph Steinberg, seconded by Gaston Hauptert, and carried with a unanimous voice vote.

**MEMORIALIZATIONS**

**Appl#20-006, Jenny Yiu, 315C Millburn Avenue, Millburn**

With a motion made by Beth Zall, a second by Daniel Baer, and a roll-call vote as follows:

Daniel Baer – yes  
Gaston Hauptert – yes  
Marc Matsil – yes  
Joseph Steinberg – yes

Shaunak Tanna – yes  
Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:**

**Jenny Yiu (315C Millburn Avenue – Kung Fu Tea)  
Block 702, Lot 15  
Application No. 20-006  
Conditional Use Approval**

**WHEREAS**, Jenny Yiu (315C Millburn Ave. – Kung Fu Tea) ("Applicant") has made application to the Township of Millburn Planning Board ("Board") for conditional use approval for a bubble tea/slush juice bar (classified as a fast food restaurant) on property located at 315 Millburn Avenue, formally known as Block 702, Lot 15 on the Official Tax Map of the Township of Millburn (the "Property"); and

**WHEREAS**, the Applicant has submitted a Conditional Use Confirmation Plan entitled "Permitted Conditional Use Approval: Kung Fu Tea, 315 Millburn Avenue, Tax Lot 15, Block 702, Township of Millburn, New Jersey" consisting of one sheet prepared by Michael Lanzafama of Casey & Keller, Inc., dated June 18, 2020, last updated June 19, 2020 ("Plan"); 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 July 15, 2020; and

**WHEREAS**, at the hearing, the Applicant's principal, Jenny Yiu, testified and further 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 planner; and

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

1. The Property is commonly known as 315 Millburn Avenue, located at Block 702, Lot 15 on the Official Tax Map of the Township of Millburn. It is on the north side of Millburn Avenue, at the corner of Lackawanna Place. The Property in total measures 12,627 square feet, is developed with a one-story commercial masonry building with paved parking in the rear, and is located in the B-4 Central Business zoning district of the Township. The subject Unit C tenant space is approximately 1,200 sq. ft.

2. The Applicant seeks conditional use approval to utilize tenant space Unit C at the Property for a fast food restaurant (i.e., bubble tea/slush juice bar). The subject premise was most recently used by the Peccary Cafe, a former coffee house/café (also classified as a fast food restaurant), but has been vacant for a period of time. The Applicant seeks to replace the former coffee house/café with a bubble tea/slush juice bar, i.e., Kung Fu Tea, and thus the application involves a change of tenancy from the Peccary Café to Kung Fu Tea without a change of use from fast food restaurant (the “Project”).

3. Ms. Yiu testified that the hours of operation of her current nearby Kung Fu Tea café are decreased due to the ongoing pandemic to 11 a.m. to 7 p.m., 7 days a week. She anticipates resuming normal hours of operation after the pandemic passes to 11 a.m. to 9 p.m., 7 days a week. Ms. Yiu also testified that deliveries of supplies and other inventory would be made in one to two pallets every several weeks through the front or rear door of the subject tenant space. Trash pick-up will be on-site.

4. In the B-4 Central 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 Section 606.7(d).

5. The Applicant’s Planner, Richard A. Keller, provided detailed testimony that the Applicant met each of the conditional use criteria of §606.7(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 213 feet from the nearest residential use in a residential zone; and the proposed bubble tea/slush juice bar will not offer drive-up window service) to satisfy said conditions to make the Kung Fu Tea Project a valid conditional use.

6. In further support of its application, the Applicant relied in part upon the Board’s previous grant of parking and loading space variances to The Peccary, LLC, to operate the aforesaid coffee house/cafe at the Property, which was memorialized in a resolution adopted on February 7, 2018 (“2018 Peccary Resolution”). Per Section 607.2 of the DRZ, the requirement for the number of off-street parking spaces for a fast food restaurant in the B-4 Zone District, both in 2018 at the time of The Peccary, LLC application and now, is one space per 35 square feet of gross floor area. Based on the 1,200 sq. ft. area of the subject tenant space, a total of 35 parking spaces would be required. This exceeds the number of spaces existing on the

Property and does not account for the parking requirements of other tenants at 315 Millburn Avenue. These same conditions existed at the time of the 2018 approval for the Peccary Cafe, 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 at least 6 business parking permits at said municipal lot for all its employees. At that time, the Board imposed that condition (i.e., the purchase of 6 business parking permits) in its Resolution of Approval. The municipal parking lot still abuts the Property as it did in 2018.

7. Per Section 607.4 of the DRZ, in the B-4 Zone District, there is no requirement to provide off-street parking spaces for a changed use which would not result in any increased off-street parking requirement, provided, however, that existing parking spaces on such premises are maintained or alternate parking spaces are established to replace them subject to Planning Board approval. Additionally, any existing requirements for the provision of off-street parking spaces, including requirements to purchase municipal parking permits, which may have been previously approved by the Board, shall continue in full force and effect unless modified by the parties. Applicant's Planner testified that the Applicant is not increasing the seating capacity within the subject tenant space on the Property for Kung Fu Tea, nor is she 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

8. Since there is no increased parking requirement as a result of the proposed change in tenancy, the parking condition/requirement previously approved by the Board in the 2018 Peccary Resolution for the purchase of at least 6 business parking permits continues for the Applicant as the new tenant, unless modified by the parties.

9. Applicant's Planner testified that although the prior Peccary Café was required to purchase 6 business parking permits, he thought a 3 parking permit requirement would be more appropriate for a 1,200 sq. ft. use such as the subject tenant space He also noted that there is one parking space on the Property designated for Unit C. Applicant Jenny Yiu, testified that she currently runs a Kung Fu Tea café nearby, and wants to relocate the café to Unit C on the Property. She employs two to three people, who are teenagers and students at nearby Millburn High School, who walk or bike to her café for work. Therefore, in her view, since her current employees do not drive, they are not in need of parking and it is unnecessary to purchase any business parking permits at all, and that in the event a parking space were needed, the on-site designated space would be available to the employee.

10. The Board is of the view that decreasing that requirement to 3 business parking permits as recommended by the Planner for the Applicant is appropriate and reasonable given the fact that it is uncertain whether Applicant's future employees will need parking.

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

12. The Township Police Department commented that the Applicant should be required to purchase business parking permits for her employees.

13. 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 July 15, 2020 granting conditional use approval for a fast food restaurant on the Property, in the nature of a bubble tea/slush juice cafe, 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 purchase 3 business parking permits for all employees so that they may park in the municipal parking lot adjacent to and abutting the Property as recommended by the Applicant's Planner.
5. The Applicant shall comply with the July 10, 2020 report of the Township Fire Marshal.
6. The Applicant shall be bound to comply with all representations made before this Board by the Applicant and Applicant's professional planner during the course of the public hearing on the application held on July 15, 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 July 15, 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 19<sup>th</sup> day of August, 2020.

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## **APPLICATIONS**

### **APPL#20-005, CANOE BROOK SOLAR PARTNERS, LLC, 167 JFK PARKWAY, SHORT HILLS**

Jeffrey Zenn, Attorney for the applicant, stated his appearance. The applicant is seeking site plan approval to install a floating solar array on the property. A previous approval for a smaller floating solar array was granted by this Board approximately 7 years ago.

Entered as A-1: site plan

Entered as A-2: sheet 3 of submitted site plan

Entered as A-3: enlarged rendering of equipment platform

Jason Wert, P. E., appeared and was sworn. His credentials were presented and accepted by the Board. He stated that he is familiar with the site and prepared the site plan before the Board tonight. The property is located in the C Zone and is owned by New Jersey American Walter Company. It borders the Boroughs of Chatham and Florham Park and the Township of Livingston. The applicant is seeking site plan approval to construct a large floating solar array in reservoir #1 and an elevated equipment platform. The applicant is also seeking variance relief to allow for 23 utility poles to support the powerlines. The power generated will be sold to and utilized by NJAW for its Canoe Brook water treatment plan.

The new array will measure approximately 940 feet by 834 feet and will be set back more than 2100 feet from JFK Parkway. The panels will sit above the water's surface from 8 inches to 2.5 feet. The proposed platform will measure 73 feet by 25 feet and will contain the necessary equipment for the arrays. The overhead power line is proposed to be supported by 23 utility poles at 40 feet in height. Mr. Wert indicated that NJDEP requested the higher 40 foot poles for the project, in order to reduce the total number that would have been needed if the poles were lower in height. In addition, there are no trees being removed as part of the proposal. The required flood hazard area and freshwater wetland permits have been applied for from NJDEP.

Overall, Board members were in favor of the application.

A motion to grant the applicant's request for a checklist waiver from the requirement to submit at a scale not to exceed 1" = 50' was made by Beth Zall, seconded by Marc Matsil, and carried with a unanimous roll call vote.

Upon a motion made by Dianne Eglow, 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

David Morrow – yes  
Tara Prupis – yes  
Joseph Steinberg – yes  
Beth Zall – yes

App#20-005, Canoe Brook Solar Partners, 167 JFK Parkway, site plan approval and variance relief was **GRANTED**.

**ADJOURNMENT**

A motion to adjourn was made by Joseph Steinberg, seconded by Gaston Hauptert, and carried with a unanimous voice vote. (8:30 PM)

Eileen Davitt  
Board Secretary

Motion: DE  
Second: JS  
Date Adopted: 9/16/20