

Township of Millburn  
Minutes of the Planning Board  
September 2, 2020

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, September 2, 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:

Dianne Eglow  
Gaston Hauptert – arrived 7:37 PM  
Jorge Mastropietro  
Marc Matsil  
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

**MEMORIALIZATIONS**

**Appl#20-005, Canoe Brook Solar Partners, 167 JFK Parkway, Short Hills**

With a motion made by Marc Matsil, a second by Jorge Mastropietro, and a roll-call vote as follows:

Dianne Eglow – yes  
Jorge Mastropietro – yes  
Marc Matsil – yes  
David Morrow – yes  
Joseph Steinberg – no  
Shaunak Tanna – yes  
Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION  
PLANNING BOARD  
TOWNSHIP OF MILLBURN**

**In the Matter of:**

**Canoe Brook Solar Partners, LLC  
Minor Site Plan #20-005  
167 John F. Kennedy Parkway  
Block 5302, Lot 5  
Minor Site Plan Approval  
Bulk Variance  
Waiver**

**WHEREAS**, Canoe Brook Solar Partners, LLC ("Applicant") has made application to the Township of Millburn Planning Board ("Board") for minor site plan approval with bulk "c" variance approval, along with a completeness waiver as set forth in more detail below, in connection with property commonly known as 167 John F. Kennedy Parkway, and formally known as Block 5302, Lot 5 on the Official Tax Map of the Township of Millburn ("Property"); and

**WHEREAS**, the Applicant has submitted plans and designs entitled: "Minor Site Plan for New Jersey American Water, Block 5302, Lot 5, Canoe Brook Substation, Township of Millburn, Essex County, New Jersey -- Minor Site Plan, Floating Solar Photovoltaic Array System, Canoe Brook Reservoir No. 1, Millburn Township, Essex County, NJ" prepared by Melissa Kelly, RLA of Rettew Associates, Inc., dated June 1, 2020, consisting of 3 sheets ("Plans"); and "General Site Plan for New Jersey American Water Canoe Brook Water Treatment Plant", prepared by Richard C. Matthews, PLS of Stires Associates, P.A., dated January 31, 2013 and revised through December 27, 2016; 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 August 19, 2020; and

**WHEREAS**, at the hearing the Applicant was represented by Jeffery Zenn, Esq. and testimony in support of the application was provided by Applicant's professional engineer, Jason D. Wert, P.E. of Rettew Associates, Inc.; 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 located at 167 John F. Kennedy (“JFK”) Parkway and is formally known as Block 5302, Lot 5 on the Official Tax Map of the Township of Millburn. The Property is located in the C Conservation-Recreation Zone, and is owned by New Jersey American Water Company, a water utility. The Property is a very large tract consisting of approximately 530 acres, and is located to the north of JFK Parkway. It shares boundaries with the Boroughs of Chatham, Florham Park and the Township of Livingston.

2. The Property is developed with New Jersey American Water Company’s Canoe Brook water treatment plant which produces and treats water from wells and surface waters from the Canoe Brook reservoirs located on the site. Utility facilities related to the protection, preservation or distribution of regional water supplies, and accessory uses subordinate to and serving such principal uses, are permitted uses in the C Conservation-Recreation Zone. The buildings and infrastructure associated with the Canoe Brook water treatment plant are generally located in a cluster in the southerly portion of the Property proximate to JFK Parkway. The remainder of the site contains two reservoirs, wetlands and forested lands. There is an existing small floating solar photovoltaic array in the southwest portion of Canoe Brook Reservoir #1 which represented a pilot project in advance of this application.

3. The Applicant, Canoe Brook Solar Partners, LLC, is seeking minor site plan approval in order to construct: (1) a large accessory floating solar photovoltaic array system to be located near the center of Canoe Brook Reservoir #1, which is on the easterly side of the Property; (2) an elevated equipment platform near the shoreline of Reservoir #1 to serve the proposed new array system; and (3) an overhead powerline along the westerly shoreline of Reservoir #1 to connect the new equipment platform to the water treatment plant located in the southerly portion of the site; and bulk “c” variance relief to allow for 23 utility riser poles each measuring 40 feet in height to support the afore-said overhead powerline. The project is intended to generate electricity from the solar energy produced from the new solar array system, which will be sold to and utilized by New Jersey American Water Company for its on-site Canoe Brook water treatment plant.

4. Applicant’s professional engineer, Jason Wert, P.E., of Rettew Associates, Inc., presented Exhibits A-1 to A-3, depicting the proposed site plans. The proposed new array system will measure approximately 940 feet by 834 feet in size (approximately 18 acres), and be located near the center of Canoe Brook Reservoir #1 (which measures approximately 160 acres) and set back over 2100 feet from JFK Parkway. The unmanned array will be comprised of a matrix of solar panels that are mounted on a buoyant structure to keep the panels unified and afloat, and able to move with the wind and the water’s surface. The panels will sit 8 inches to 2.5 feet above the water’s surface.

5. The Applicant also seeks approval to construct an elevated equipment platform near the shoreline of Reservoir #1 to serve the proposed new array system. The platform will be L-shaped, measure approximately 73 feet long by 25 feet wide at its southerly edge, and will contain equipment including switchgear, transformers, inverters, batteries and cable connections. Applicant's Engineer presented Exhibit A-3, which contains an enlarged rendering of the proposed equipment platform and location for same. Applicant's professional engineer testified that the platform will be located in a non-wetlands area in order to minimize land disturbance and will be built at an elevation of 177 feet, which is one foot higher than the FEMA 100-year flood elevation standard of 176 feet. A trench box is also proposed to be located directly on the shoreline to connect floating cables to the new solar array system.

6. The Applicant further seeks approval to install a new overhead power line along the westerly shoreline of Reservoir #1 to connect the proposed elevated equipment platform to the Canoe Brook water treatment plant in the southerly portion of the Property. The overhead power line is proposed to be supported by 23 utility riser poles each measuring 40 feet in height.

7. The Applicant requests a plan checklist waiver for the scale of its site plan and designs. The Board is of the view that this is a minor item on the checklist and granted a waiver of the aforesaid checklist requirement to allow the application to proceed.

8. Based upon the testimony of Applicant's Engineer, the project will have minimal (if any) visual impact on surrounding areas and adjacent roadways. The proposed solar array system will have a low profile to the reservoir's surface and be located well in the interior of the Property. The driveway into the Property from JFK Parkway affords only a very limited view of the site from that roadway. The proposed accessory elevated equipment platform, overhead power line and attendant utility poles therefore likewise will also have minimal if any visibility from JFK Parkway and the surrounding areas. Additionally, the area of the site where the 23 utility poles are contemplated to be installed is obscured by tall trees. The project will have minimal land disturbance, affecting mainly grassy areas that will be primarily due to only the proposed elevated equipment platform and utility poles. The proposed solar array will not result in any land disturbance, nor will it impact drainage on the Property. The array will produce 8.5 megawatts of solar energy, enough to provide approximately 98% of the power needed by New Jersey American Water Company to operate its Canoe Brook water treatment plant.

9. The Township Development Regulations and Zoning Ordinance, Section 606.1(d)(3) permits a maximum structure height of 32 feet in the C Conservation-Recreation Zone. Because the Applicant seeks to support the proposed new overhead power line with 23 utility riser poles measuring 40 feet in height, it therefore requires a "c" bulk variance. Applicant's Engineer testified that the New Jersey Department of Environmental Protection ("NJDEP") has requested the higher 40 feet poles for the project, and that the slightly higher poles will reduce the aggregate number of poles needed to support the proposed overhead power line and therefore minimize the extent of disturbance of environmentally constrained land and the overall visual impact of same. Installation of the 40 foot high poles will not require the

removal of trees or otherwise materially impact the site's landscape. Applicant's Engineer further testified that the higher utility poles will result in less land disturbance as compared to the alternative of underground encased utility conduits that would not only be wider than the contemplated poles, but also need to be buried. The Board accepts the testimony of Applicant's professional, and accordingly finds it is appropriate to grant a variance from Section 606.1(d)(3) of the Township regulations and zoning ordinance because the benefits of the proposed 40 feet high utility poles as shown on the Plans substantially outweigh any detriment of violation of the 32-foot height limit and there is no substantial detriment to the public good and the surrounding neighborhood, and no impairment to the intent and purpose of the Township's zone plan and ordinances.

10. The Applicant has requested from NJDEP the requisite flood hazard area and freshwater wetland related permits necessary to proceed with the Project.

11. The Township Engineer issued a Memorandum dated August 11, 2020 noting that (1) a permit for the Project is required from the Hudson-Essex-Passaic Soil Conservation District;(2) an approval or letter of no interest must be obtained from the County of Essex,; and (3) flood hazard area and freshwater wetland permits must be obtained from NJDEP. The Township Engineer noted that subject to approval from the afore-referenced agencies, Applicant's Plans as submitted satisfactorily address engineering concerns with regard to soil erosion and sediment control, proximity to wetlands and identification of the associated transition buffer delineation, and storm water drainage, and therefore she has no objection to approval of the application.

12. The Township Police Department and the Township Forester did not have any concerns with regard to the application. The Township Fire Marshal requires that the Fire Department be provided and maintained access to all proposed structures undergoing construction and that construction materials l not block any temporary firefighting access required by the Fire Marshal, or access to fire hydrants and fire department connection. . The Township Fire Marshal also notes that the Applicant must meet all Building Code and New Jersey Uniform Fire Code requirements.

13. The Board reviewed and considered the reports of its own experts on the application and 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 August 19, 2020, granting: (i) the checklist waiver mentioned in the Findings of Fact; (ii) minor site plan approval to construct an accessory floating solar photovoltaic array system, an elevated equipment platform to serve said system, and an overhead powerline to connect the equipment platform to the Canoe Brook water treatment plant; and (iii) a "c" bulk variance allowing the installation of 23 utility riser poles each measuring 40 feet in height to support the aforesaid overhead powerline 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 Hudson-Essex-Passaic Soil Conservation District, and an approval or letter of no interest from the County of Essex.

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 August 19, 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 August 19, 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 2<sup>nd</sup> day of September, 2020.

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\*Gaston Haupt arrived at this time (7:37 PM)

**APPLICATIONS**

**APPL#20-008, QUOKKA, LLC, 705 MORRIS TURNPIKE, SHORT HILLS**

Steve Gouin, Attorney for the applicant, stated his appearance. The applicant is seeking preliminary and final site plan approval for a change of use, parking variance and sign variance. Mr. Gouin stated that the subject site is a 4200 SF building which formerly housed The Wine Store. The applicant is proposing to rehab the site and convert it to a medical use for the purpose of an American Family Care urgent care facility.

The Board first reviewed the applicant's waiver of checklist requirements.

A motion to approve the applicant's request for an EIS waiver, and showing floodway and flood hazard limits was made by Beth Zall, seconded by Joseph Steinberg, and carried with a unanimous voice vote.

Michael Dipple, P. E., appeared and was sworn. His credentials were presented and accepted by the Board.

Entered as A-1: sheet C-01  
Entered as A-2: sheet C-02  
Entered as A-3: sheet C-03  
Entered as A-4: sheet C-04  
Entered as A-5: sheet C-05  
Entered as A-6: colored rendering of C-03 dated 6/26/20

Mr. Dipple indicated that the property is located in the B-2 zone which permits medical use. The applicant is proposing an American Family Care urgent care facility. To the east of the subject property is a small shopping center. To the west of the subject property is a larger shopping center. There are no physical site improvements proposed. There will be minor façade changes and the parking lot is proposed to be re-striped.

Michael Dipple spoke to the existing non-conforming conditions on the site. He stated that the property is deficient in the required lot width, front yard setback, side yard setback, and lot coverage. The applicant is seeking variance relief for not providing a loading space and for a deficient parking requirement. The applicant is also seeking several sign variances which will be discussed by the applicant's architect. In addition, the applicant is seeking a waiver from the required one-way drive aisle width as per section 516.5a of the ordinance.

Entered as A-7: Google earth aerial of subject property

Mr. Dipple testified that there are 25 parking spaces proposed on the site. Ingress and egress are set up so that autos will enter from Morris Turnpike using the western driveway, circle around the rear of the building and exit onto Morris Turnpike by way of an area that is shared with the adjoining property. The property line on the east side of the building is 10.06 feet at its narrowest point and the egress driveway extends beyond that width onto the adjacent parking lot.

Board members were concerned with the 3 parallel spaces on the east side of the building. It was decided that without a permanent legal right by the applicant to utilize the adjacent property as a means of egress, the 3 parallel spaces should be eliminated in order to utilize the full width of the applicant's property for egress purposes.

The applicant agreed to remove the 3 parallel spaces, thereby reducing the proposed parking from 25 spaces to 22 spaces. This results in a 6 space deficiency based on the ordinance

requirement of 1 space/150 SF for medical use. Mr. Dipple stated that only 3,200 SF of the building is being actively used for medical purposes and the rest is being used for storage. In that regard, he felt that the 22 spaces proposed will more than adequately accommodate the proposed use.

John Buchholz, Applicant's architect, appeared and was sworn. His credentials were presented and accepted by the Board. He gave a brief description of the proposed interior of the building.

Entered as A-8: sheet A-1 (floor plans)  
Entered as A-9: sheet A-2 (elevations)  
Entered as A-10: photo package of area signage

The floor plan includes a 24-seat waiting area, 6 exam rooms, a triage area, x-ray room, nurse's station, restroom and utility room. There will also be a manager's office, break room and staff room. The back area of the building will be used mainly for medical storage. The exterior of the building is proposed to be refurbished with some façade changes in order to give it a more updated look.

Mr. Buchholz spoke to the proposed signage for the building. He indicated that the applicant is proposing a wall sign which requires variance relief in order to exceed the maximum permitted height of 2 feet. He stated that the letters conform to the 2 foot restriction. However, the vertical portion of the logo has a height of 3.51 feet. A 4 foot by 4 foot vertical ground sign is proposed at the front of the property near the entrance driveway.

Board members questioned Mr. Buchholz about the HVAC and filtration system due to its importance in a medical facility during a COVID pandemic. Mr. Buchholz stated that the facility's HVAC system will not expel internal air outside. The system will bring in outside air, filter that air, and re-circulate it throughout the building.

Nicholas Graviano, P. P., appeared and was sworn. His credentials were presented and accepted by the Board. He stated that the property is located in the B-2, Highway Business District, which permits a wide range of commercial uses, including the medical facility proposed. The applicant seeks to re-use an existing site, particularly suited for this medical use. There are no urgent care facilities in the immediate area. This proposed use will provide a health care service to the community. Mr. Graviano stated that the applicant's proposal will not result in any detrimental impact to the public or the neighborhood. In addition, he indicated that there is no substantial impairment of the Zoning Ordinance or Master Plan.

Upon a motion to approve made by Joseph Steinberg, a second by Beth Zall, a with a roll-call vote as follows:

Dianne Eglow – yes  
Gaston Hauptert – yes  
Jorge Mastropietro – no

Marc Matsil – no  
David Morrow – yes  
Joseph Steinberg – yes  
Shaunak Tanna – yes  
Miriam Salerno – yes  
Beth Zall – yes

App#20-008, QUOKKA, LLC, 704 Morris Turnpike, site plan approval/variance relief was **GRANTED** with the following conditions: 1) the applicant shall comply with the Fire Marshal's 8/27/20 memorandum; 2) final placement of the ground signage shall be approved by the Township Engineer for potential ingress/egress sight issues; 3) additional low-level lighting in the proposed rear parking area shall be reviewed by the Township Engineer; 4) the 4 parking spaces in the rear of the parking lot shall be reserved for facility staff.

### **ADJOURNMENT**

A motion to adjourn was made by Joseph Steinberg, seconded by Dianne Eglow, and carried with a unanimous voice vote. (11:03 PM)

Eileen Davitt  
Board Secretary

Motion: DE  
Second: MS  
Date Adopted: 10/28/20