

Township of Millburn
Minutes of the Planning Board
January 6, 2021

A regular meeting of the Township of Millburn Planning Board was held on **Wednesday, January 6, 2021** at 7:30 PM via Zoom webinar.

Board Attorney, Edward Buzak, administered the oaths of office to Daniel Baer, Sanjeev Vinayak, Maggee Miggins, and Sriniv Vijay.

Eileen Davitt opened the meeting by reading Section 5 of the Open Public Meetings Act.

The following members were present for the meeting:

Daniel Baer
Gaston Hauptert
Jorge Mastropietro
Marc Matsil
Maggee Miggins
David Morrow
Miriam Salerno
Joseph Steinberg
Sanjeev Vinayak
Sriniv Vijay
Beth Zall

Also present:

Edward Buzak, Board Attorney
Eric Fishman, Court Reporter
Paul Phillips, Township Planner
Martha Callahan, Township Engineer
Eileen Davitt, Zoning Officer/Board Secretary

ORGANIZATION OF THE BOARD

Eileen Davitt asked for a nomination for Chairman of the Planning Board.

A motion to nominate Beth Zall for Chairwoman was made by Miriam Salerno, seconded by Marc Matsil, and carried with following roll-call vote:

Daniel Baer – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes

Marc Matsil – yes
Maggee Miggins – yes
David Morrow – yes
Joseph Steinberg – yes
Sanjeev Vinayak – yes
Miriam Salerno – yes

The meeting was turned over to Chairwoman Beth Zall who nominated Miriam Salerno for Vice Chairwoman of the Zoning Board. A second was made by David Morrow and the motion carried with the following roll-call vote:

Daniel Baer – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Maggee Miggins – yes
David Morrow – yes
Joseph Steinberg – yes
Sanjeev Vinayak – yes
Beth Zall – yes

A motion to appoint Edward Buzak as Board Attorney was made by Beth Zall, seconded by Joseph Steinberg, and carried with the following roll-call vote:

Daniel Baer – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Maggee Miggins – yes
Joseph Steinberg – yes
Sanjeev Vinayak – yes
Miriam Salerno – yes
Beth Zall – yes

A motion to appoint Eileen Davitt as Board Secretary was made by Beth Zall, seconded by Joseph Steinberg, and carried with the following roll-call vote:

Daniel Baer – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Maggee Miggins – yes
Joseph Steinberg – yes
Sanjeev Vinayak – yes
Miriam Salerno – yes

Beth Zall – yes

A motion to adopt the Resolution of 2021/22 Annual Notice was made by Joseph Steinberg, seconded by Jorge Mastropietro, and carried with a roll-call vote as follows:

Daniel Baer – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Maggee Miggins – yes
Joseph Steinberg – yes
Sanjeev Vinayak – yes
Miriam Salerno – yes
Beth Zall – yes

APPROVAL OF MINUTES

A motion to approve the minutes of December 2, 2020 was made by Beth Zall, seconded by Gaston Hauptert, and carried with a unanimous voice vote.

A motion to approve the minutes of December 16, 2020, as corrected, was made by Beth Zall, seconded by Gaston Hauptert, and carried with a unanimous voice vote.

MEMORIALIZATIONS

App#20-013, Jonathan Gordon, 153 Highland Avenue, Short Hills

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

Daniel Baer – yes
Gaston Hauptert – yes
Jorge Mastropietro – yes
Marc Matsil – yes
Joseph Steinberg – yes
Miriam Salerno – yes
Beth Zall – yes

the following memorializing resolution was adopted:

**RESOLUTION
PLANNING BOARD
TOWNSHIP OF MILLBURN**

In the Matter of:

**Jonathan Gordon
Application #20-013
Block 3104 Lots 2 and 3
Minor Subdivision Approval
E.I.S. Waiver**

WHEREAS, Jonathan A. Gordon (“Applicant”) seeks minor subdivision approval in order to adjust an existing lot line between two neighboring single family residential properties on Lots 2 and 3 within Block 3104 on the Official Tax Map of the Township of Millburn, with street addresses of 153 and 163 Highland Avenue (“Property”); and

WHEREAS, the Applicant has submitted several plans and exhibits, including, without limitation, the following: Minor Subdivision Plat for Lot Line Adjustment, 153 and 163 Highland Avenue, consisting of three sheets, prepared by Michael T. Lanzafama, P.E., L.S., P.P. of Casey and Keller, Inc. dated 11/15/2018 (the “Plans”) ; and

WHEREAS, a public hearing with proper notice under the Municipal Land Use Law (“MLUL”) and the applicable ordinances of the Township of Millburn, as modified for the purposes of conducting the public hearing remotely through the Zoom platform wherein members of the public can 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, was held on the application on December 2, 2020; and

WHEREAS, at the public hearing testimony in support of the application was provided by Applicant’s professional land surveyor, Michael T. Lanzafama, PE, LS, PP; and

WHEREAS, the subject application is identical to a prior application for minor subdivision approval submitted by the Applicant to the Board and which the Board considered and granted on March 20, 2019 (Application #18-016) (the “Prior Approval”); and

WHEREAS, the Applicant did not perfect the Prior Approval within 190 days in accordance with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-47, and thus the Prior Approval expired and the Applicant is now seeking a new approval for the same minor subdivision; and

WHEREAS, the Board having reviewed the materials submitted and considered the testimony presented, and having reviewed the reports of the Board's professionals with respect to the application and considered their opinions, hereby makes the following findings of fact:

1. The Applicant is seeking a lot line adjustment in order to adjust a lot line between two neighboring residential properties. Both properties are located within the R-3 Single Family Residential Zone. The minor subdivision would transfer 2,827 square feet of land from Block 3104, Lot 2 to Block 3104, Lot 3, and would also transfer 55 square feet of land from Lot 3 to Lot 2. No new lots are proposed to be created, and no new variances are requested.

2. The subject properties are located on the western side of Highland Avenue, south of Stewart Road and north of Minnisink Road. Both lots are oversized for the R-3 zone, where the minimum required lot area is 29,000 square feet. Block 3104, Lot 2 measures 81,750 square feet in area and Block 3104, Lot 3 measures 59,035 square feet in area.

3. The existing driveway that serves Lot 3 is located near the southerly lot line that is a common boundary line with Lot 2. At some points the driveway for Lot 3 is located less than a foot from the common property line. The applicant proposes to adjust the lot line such that the Lot 3 driveway would maintain a setback of at least 10.78 feet from the common property line that is shared with Lot 2. There is a small triangular area of 55 square feet fronting on Highland Avenue that will be transferred from Lot 3 to Lot 2 so as to maintain existing vegetation on Lot 2. Following the lot line adjustment, Lot 2 would measure 79,978 square feet (1.813 acres) and Lot 3 would measure 61,087 square feet (1.419 acres).

4. The proposed new lots would be conforming with regard to the lot area and width. Several preexisting nonconforming conditions would remain on Lot 2, including a reduced rear yard setback (68.4 feet existing, whereas 80.05 feet is required) and a reduced unoccupied rear yard (14.3% existing, 14.4% proposed, 25% required). The previous nonconformity related to the driveway setback from the adjacent lot would be eliminated as a result of the proposed minor subdivision.

5. The Applicant has requested a waiver from the requirement to submit an Environmental Impact Statement. The Board finds that there is no environmental impact as a result of the proposed lot line adjustment and agrees that the Applicant shall not be required to submit an Environmental Impact Statement.

6. After considering the testimony of Applicant's expert and the exhibits submitted at the hearing, and reviewing the report of the Board's Planner and considering his expert opinion, the Board is of the view that minor subdivision approval should be granted and that the waiver request for the submission of an Environmental Impact Statement should likewise be granted in accordance with the requirements as set forth in this Resolution, and subject to the terms and 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 taken on December 2,

2020 granting (i) minor subdivision approval for the Property; and (ii) a waiver of the requirement that Applicant submit an Environmental Impact Statement; 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 requirements 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 submit applications to, and obtain approval from, the Essex County Planning Board and the Hudson-Essex-Passaic Soil Conservation District, if applicable.

5. Pursuant to N.J.S.A. 40:55D-47, the approval of a minor subdivision shall expire 190 days from the date of adoption of the Resolution of Approval, unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, or a deed or deeds clearly describing the approved minor subdivision is filed by the Applicant with the County Recording Officer, the municipal engineer and the municipal tax assessor. Any such plat or deed accepted for such filing shall have been signed by the Chairperson and Secretary or the Planning Board. Property descriptions for each of the lots shall be subject to prior approval by the Township Engineer and if Deeds are to be recorded to perfect the minor subdivision, the same shall be subject to prior approval by the Planning Board Attorney.

6. The Applicant shall be bound to comply with all representations made before this Board by the Applicant, and Applicant's witness during the course of the public hearing on the application held on December 2, 2020 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.

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 December 2, 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 6th day of January 2021.

APPLICATIONS

APPL#20-011, ADVANCED ACCELERATOR APPLICATIONS, 45/57 E. WILLOW STREET, MILLBURN

*Daniel Baer recused and left the meeting.

A question was raised as to the applicant's adequacy of notice as it relates to the existing front yard setback encroachment. Board Attorney Ed Buzak indicated that the applicant is seeking preliminary and final site plan approval. The notice that was published was much more comprehensive than the memorandum read by Mr. Steinberg. Specifically, the applicant seeks variance relief and design waivers and has articulated 6 deviations; 1 of which is the front yard setback of 14.3 and 14.6 feet, where 24 feet is the required setback. Mr. Buzak stated that he feels notice is sufficient for the relief being sought. He added that the Board will have to consider that several of the variances, front yard setback being one of them, are pre-existing non-conforming conditions. He stated that if the condition is not being aggravated or intensified, the Board can rely on that pre-existing condition and do nothing. The applicant has the right to ask the Board to legitimize or grant that variance. It appears as though the applicant is seeking variance relief for these pre-existing non-conforming conditions. The Board has the right to decline to grant variance relief for the pre-existing condition while still approving the application.

James Webber, Attorney for the applicant, stated his appearance. The applicant is seeking preliminary and final site plan approval to improve the properties at 45 and 57 East Willow Street. The property at 57 E. Willow received site plan approval with variance relief in 2015. That 2015 approval allowed Advanced Accelerator Applications to implement the light manufacturing of a radio pharmaceutical cancer treatment drug for neuro endocrine cancer. There are interior renovations taking place at 57 E. Willow at this time. The applicant is proposing the consolidation of the two properties which requires site plan approval. Approval of the application will be beneficial for the applicant as well as the municipality.

Mr. Webber stated that the applicant's team has met with area residents to see and hear their concerns. They met at the neighbors' properties and had 2 conference calls which resulted in a list of approximately 10 items of concern.

The Board first spoke to the applicant's request for a waiver of the submission of an EIS. Township Engineer, Martha Callahan, indicated that this is a fully developed site and she was satisfied with the applicant's request for a waiver of an EIS submission.

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

Entered as A-1: sheet C-06 of submitted plans (9/23/20)

In response to several questions posed by Marc Matsil, Mr. Patel provided testimony with regard to site run-off. He stated that there are no surface improvements or grading changes proposed on lot 85 (57 E. Willow Street) and existing roof drains are connected to the underground drainage system. There will be no significant increase to run off on lot 57. Lot 84 has existing roof drains on the west side of the building that will remain. The proposal calls for the removal and replacement of existing pavement. The applicant also proposes the removal of some pavement in the Riparian Zone. There is a net reduction in the overall impervious coverage on the site and there is no adverse impact on the surrounding properties

Concern was expressed by the Board as to the production increase and its impact on the environment.

Mr. Webber indicated the same materials will be produced but in an increased production area. The quantity would also be increased as would pick-ups/deliveries on site. However, it would result in no negative impact to the environment. Several Board members felt that an environmental study should be provided that speaks to the new output and any potential undesirable impact on the environment.

Robert Gunning, Financial Officer of AAA, appeared and was sworn. He stated that the facility is regulated by the FDA. All product is restricted and everything is done in a closed environment. There is no internal air circulated to the exterior.

The Board requested further testimony as to the impact on the environment. They did not feel that enough testimony has been presented to grant the applicant's request for a waiver of EIS submission.

Bill Diamantopoulos, site head for the manufacturing operation, appeared and was sworn. He spoke to the established production facility. He stated that they manufacture a neuro endocrine cancer drug. The NJDEP inspects the site regularly. Due to the nature of the product, it does not volatilize. There is zero output of any radiopharmaceutical. Any waste created is product or material that has come in contact with the radio isotope and is disposed of safely. It is retained on site in waste rooms and picked up by an authorized courier for safe, off-site disposal. Nothing remains on site.

Ed Buzak read the Township's EIS section of the ordinance and explained the contents needed in an EIS statement.

Overall, the Board felt an EIS is warranted.

Mr. Webber indicated that an EIS will be prepared in order to address the Board concerns. He asked if there were any additional concerns that the Board would like addressed.

The Board requested that a copy of the 2015 resolution be forwarded since it was not included in the copies sent to Board members. They also requested a copy of the lighting study from 2015. Mr. Webber stated that he will have an engineer go to the site and prepare an updated study regarding lighting. The Board requested a copy of the list of neighbors' concerns and also requested that the applicant make it available to the public, as well. The Board requested that the applicant also prepare an exhibit to speak to the proposed landscaping.

The matter was carried to February 17, 2021, with no further notice required.

ADJOURNMENT

A motion to adjourn was made by Joseph Steinberg, seconded by Gaston Hauptert, and carried with a unanimous voice vote. (9:37 PM)

Eileen Davitt
Board Secretary

Motion: MMA
Second: GH
Date Adopted: 2/3/21