

Resolution prepared by:
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**RESOLUTION GRANTING
AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH BULK VARIANCE RELIEF**

**UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT**

**BLOCK 110, LOT 24
Application # 24-12
BLAZE KEYPORT, LLC
105 HIGHWAY 35**

WHEREAS, Blaze Keyport, LLC has filed an application seeking Amended Preliminary and Final Site Plan approval so as to operate a Cannabis retail dispensary use within a proposed one-story commercial building to be situated on property located at 105 Highway 35 which is officially designated as Block 110, Lot 24 on the Borough of Keyport's Tax Map; and

WHEREAS, the applicant has provided notice to all property owners within two hundred feet and has caused notice to be published regarding said application in accordance with N.J.S.A. 40:55D-1 et. seq., this Board gaining jurisdiction thereunder; and

WHEREAS, a public hearing on the application was conducted on the within matter during a regularly scheduled meeting of the Unified Planning Board held on October 24, 2024; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicant and the review of the Borough experts;

NOW THEREFORE, be it Resolved by the Unified Planning Board of the Borough of Keyport that the following findings of facts are made:

1. This application seeks Amended Preliminary and Final Site Plan approval to construct a one-story retail commercial building, having a footprint of 2,433 square feet, to be situated on property located at 105 Highway 35 which is officially designated as Block 110, Lot 24 of the Borough of Keyport's Tax Map.
2. The property consists of 14,608 square feet in area. It is triangular-shaped with frontage on Route 35. The property is located approximately one fifth of a mile southeast of the Route 35 and Route 36 interchange and is currently vacant. The only existing improvements are the foundation of a previously demolished building and an existing billboard.
3. The property is located within the Borough's HC (Highway Commercial) District which permits the proposed Cannabis use.
4. The property was previously the subject of an application seeking preliminary and final site plan approval, with bulk variance relief, brought by Nickay Construction, Inc to construct a retail building on the site. That application, # 23-02, was granted by the Board and memorialized within a Resolution of Approval adopted on August 24, 2023.

5. In furtherance of the earlier approval, Nickay Construction had sought and was granted, bulk variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(c), as follows:

VARIANCE	PERMITTED	PROPOSED
Minimum Front Yard Setback (NJ Route 35)	50 feet	11.13 feet
Minimum Parking Setback from Residences	5 feet	2 feet

6. Blaze Keyport, LLC has now come before the Board seeking an amendment to the earlier granted approval. Under the revised plan the following variance relief is now required¹:

VARIANCE	PERMITTED	PROPOSED
Minimum Front Yard Setback (NJ Route 35)	50 feet	11.97 feet
Minimum Parking Setback from Residences	5 feet	2 feet
Parking Space Width	9' x 20'	9' x 18'

7. During all portions of these proceedings, the applicant was represented by Bridget A. Sykes, Esquire of the law firm Fox Rothschild which has an office located at 1301 Atlantic Avenue, Midtown Building, Suite 400, Atlantic City, New Jersey 08401.

8. In support of the application, the following exhibits were marked into evidence:

- Exhibit A-1 :** Amended Preliminary and Final Site Plan last revised September 12, 2024, as prepared by Joseph N. Bachi, P.E. of EKA Associates (consisting of 6 sheets)
- Exhibit A-2:** Architectural Plans dated September 11, 2024, as prepared by Feltz Collins Architecture, LLC (consisting of 2 sheets)
- Exhibit A-3:** Colorized Site Plan and Photo Rendering of Building prepared by Feltz Collins Architecture, LLC

9. Beyond the exhibits marked into evidence by the applicant, the Board also marked its own exhibits into evidence as follows:

- Exhibit B-1:** Engineering and Planning Review letter of CME Associates dated October 15, 2024.
- Exhibit B-2:** Keyport Ordinance # 15-21, Ordinance to Amend and Supplement Chapters 25 "Zoning" and 5 "Licenses" of the Code of the Borough of Keyport Establishing Land Use Regulations and Licensing Requirements for Cannabis Business
- Exhibit B-3:** Fire Marshal Review E-Mail dated September 26, 2024
- Exhibit B-4:** Police Department Review Memo dated September 6, 2024
- Exhibit B-5:** Resolution of the Planning Board in the matter of Nickay Construction Inc., # 23-02, adopted on August 24, 2023

¹ The Board recognizes the only new variance in this application is that of parking space width. The parking area setback sought here is exactly the same as what was previously granted and the variance being sought for the front yard setback is actually less than what was previously granted.

10. In addition to the aforementioned exhibits, the applicant also presented sworn testimony from Gregory D'Agostino, who indicated he was a representative of the applicant. Mr. D'Agostino testified as to the background of the applicant and the fact that they had been approved by the Borough to operate a cannabis dispensary at the site. A provisional license to do so had been granted by the New Jersey Cannabis Regulatory Commission ("CRC") on August 18, 2023 and a full licence would be given once a Certificate of Occupancy was issued by the Borough for the proposed building.
11. Mr. D'Agostino further advised that the anticipated hours of operation for the dispensary would be 8 AM to 10 PM, with a maximum of four (4) employees, including a state certified security guard, being on site.
12. With respect to the care being taken to not impact neighboring properties, Mr. D'Agostino noted that the lights at the site would be on a timer. This would avoid glare from the site onto surrounding lots.
13. Additionally, all cannabis waste would be destroyed in compliance with CRC regulations. This consisted of the waste being locked within a vault and destroyed on site with cameras watching the process. Once destroyed, the waste would be rendered useless and could be thrown out in the regular trash. A private hauler would take the garbage canisters off site. The fact that the site would be serviced by a private hauler would be a condition of approval.
14. The Board was advised that cannabis product was brought to the site as part of four (4) to five (5) deliveries a week. It was indicated however that the frequency of deliveries may increase over time. Delivery vehicles were all sprinter sized vehicles and the product was brought into the building in totes. Thereafter, everything is logged by the applicant and put into a locked vault. An average delivery of product takes approximately fifteen (15) minutes.
15. From a security perspective, Mr. D'Agostino explained that the entire building, other than bathrooms, are under constant video surveillance. Each room in the building requires key card access. This ensures that there is a trackable trail for all traffic within the building. As a condition of approval, it was agreed that the applicant will provide the Keyport Police Department with information on all aspects of the security system in use at the site.
16. As a condition of approval, it was agreed that if the applicant experiences an overflow of customers which are lined outside of the entrance doors of the building, the applicant would implement a point-of-sale system. Lineups outside of the door would not be permitted.
17. As a condition of approval, it was confirmed that all signage will comply with the ordinances of the Borough. Signage would never advertise excessive smoking of cannabis.
18. The applicant also presented testimony from its professional architect, David Collins, A.I.A. who referred to the renderings marked into evidence as **Exhibit A-3**.

19. Mr. Collins noted that the windows will be frosted, so the interior of the building cannot be seen from the outside. He also noted that the footprint of the building has been reduced from what the Board had previously approved.
20. The applicant next presented testimony from its professional engineer, Joseph N. Bachi, P.E. who walked the Board through the site plan.
21. Mr. Bachi noted that the plan was basically the same plan from what had been previously approved. The applicant was still proposing to provide eleven (11) parking spaces whereas only nine (9) spaces are required.
22. Mr. Bachi did indicate that the applicant would now be providing a two (2) cubic yard dumpster for the property and a garbage enclosure. There would be enough room in the enclosure area to house both the dumpster and all recycling canisters. It was agreed, as a condition of approval, that the enclosure would be kept closed when not being used.
23. There was some discussion regarding Condition # 7 of the original Resolution of approval (Exhibit A-5) which had required that the applicant place a speed bump at the entrance of site in order to slow traffic down as it enters the site. The Borough's Fire Marshal, Tony Vecchio, did not believe such a speed bump should be required and as considered such to be a detriment to fire apparatus. (See Exhibit B-3) Based upon the Fire Marshal's request, it was agreed that Condition # 7 of the original resolution would be eliminated as a requirement of approval. With that said, the applicant would be required to adhere to all other requirements of the original Resolution unless specifically modified by this Resolution.
24. With respect to additional concerns raised by the Board Engineer, it was agreed, as condition of approval, that the applicant agreed to provide striping and bollards at the site. Such would be subject to the review and approval of the Board Engineer.
25. The applicant also agreed, as a condition of approval, to provide adequate landscaping at the site. A landscaping plan would therefore be submitted to the Board Engineer for his review and approval.
26. It was made clear that the Board's Engineer did not have any objection to the variance relief being requested for the parking space width. He felt the proposed 9' x 18' spaces would be sufficient to accommodate vehicles coming to the site.
27. The final witness to appear before the Board was the applicant's professional planner, Kenneth F.X. Schlatmann, P.P. who simply testified with respect to conversations the applicant had been having with the neighboring commercial property. This was provided as a representative of that neighboring property had appeared during the previous application. At this time Mr. Schlatmann did not believe the neighbors had any concerns and they were not present at the current hearing.

28. No one else testified with respect to the merits of the application and no members of the public were present.
29. The Board's Engineer, Trevor Taylor, P.E., who was sworn, indicated he had no issues with the application provided the comments of their review letter were adhered to. **(Exhibit B-1)** It was confirmed that in the event of any conflicts, his letter would supercede the letter authored by T&M Associates as part of the original application proceeding.
30. After considering all the testimony and evidence, and assuming all representations were adhered to, the Board finds that proposed site will function properly as proposed under the site plan once it has been revised to meet the conditions of this Resolution.
31. The Board agrees with the testimony of the applicant's planner that the variances required by this application are necessary in order to ensure that the site can be properly developed. The Board is hard pressed to envision any negatives which would occur by a granting of relief and none have been presented to the Board for its consideration.
32. Based upon the evidence presented, the Board finds that the requested variance relief can be granted pursuant to the provisions of both N.J.S.A. 40:55D-70(c)(1) and (2) since, as was found in the earlier application, the the shape of the subject property creates a natural hardship for the applicants and the benefits of granting the variance and approving the entire project, so as to ensure the site is properly developed, far outweighs whatever benefit would be obtained by strictly adhering to the ordinance requirements.
33. It seems clear to the Board that the benefits of granting this application and approving the proposed preliminary and final site plan is in the best interest of the Borough and such an approval far outweighs any detriments that might occur.
34. Based upon all of the above, the Board finds the applicant has met its burden in establishing that it is entitled to the requested amended preliminary and final site plan approval, with bulk variance relief. As such, the sought after application should be granted in its entirety.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Blaze Keyport, LLC, seeking amended preliminary and final site plan approval, with bulk variance relief, for premises located at 105 Route 35, which is officially known as Block 110, Lot 24 on the official tax map of the Borough of Keyport be granted subject to the following conditions:

1. Subject to all conditions of the original resolution of approval of August 24, 2023 **(Exhibit B-5)**, with the exception of Condition # 7 which is eliminated, unless said conditions are in conflict with this Resolution. The provisions of this new Resolution shall control.
2. Subject to substantial compliance with the plans submitted into evidence as part of the new application unless otherwise modified by this Resolution.

3. Subject to the condition that the site be serviced by a private hauler for the removal of all refuse and recycling.
4. Subject to the applicant providing the Keyport Police Department with information on all aspects of the security system to be utilized at the site. The Keyport Police Department must be kept up to date on any changes made to the security system in the future.
5. Subject to a prohibition against customer lineups out of the entrance door of the building. If the applicant experiences an overflow of customers, a remote point-of-sale system must be implemented.
6. All signage will comply with the ordinances of the Borough. Signage shall never advertise excessive smoking of cannabis.
7. Subject to the condition the refuse enclosure must be kept closed when not being used.
8. Subject to the applicant providing striping and bollards at the site. Plans for such shall be subject to the review and approval of the Board Engineer.
9. Subject to a final landscaping plan being submitted to the Board Engineer for his review and approval.
10. Subject to compliance with the comments raised with the review letter authored by the Board's Engineer. **(Exhibit B-1)** In the event of any conflicts between CME's review letter and the review letter dated June 15, 2023 by T&M Associates as part of the earlier application, the new review letter of CME Associates will govern.
11. All representations made under oath on behalf of the applicant, or by its agents, shall be deemed conditions of this approval, and any misrepresentations or actions by the applicant contrary to the representations which were made shall be deemed a violation of this approval.
12. This application is granted only in conjunction with the conditions noted herein and but for the existence of the same, the within application would not be approved.
13. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.
14. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.
15. This approval shall be deemed void by abandonment if a building permit is not applied for within two years of the date hereof.
16. Subject to all laws and ordinances enacted by either the State or the Borough relative to Affordable Housing, including, but certainly not limited to, payment of any required fees.
17. The action of the Unified Planning Board in approving this application shall not relieve the applicant of responsibility for any damage caused by this project, nor does the Unified Planning Board or its reviewing professionals and agencies accept any responsibility for the

structural design of the proposed improvements or for any damage that may be caused by the development.

18. The applicant must publish adequate notice of this Resolution in the official newspaper of the Borough of Keyport at their sole cost, within ten days, and provide proof of publication to the Board Secretary within thirty days.

The foregoing was Moved by M. Sessa, second by J. Oviedo

and on Roll Call, the following vote was recorded:

Affirmative: Chairman Merla, W. McDermott, J. Oviedo, D. Pacheco, M. Sessa

Negative:

Abstentions: Mayor Aranco, C. Demarest

The foregoing is a true copy of a Resolution adopted by the Unified Planning Board of the Borough of Keyport as copied from the Minutes of its meeting on December 5, 2024.


Denise Nellis, Secretary of the Board