

MINUTES OF THE FEBRUARY 23, 2012 KEYPORT UNIFIED PLANNING BOARD

The Keyport Unified Planning Board held a Regular Meeting on February 23, 2012 which was called to order at 7:01 PM in the Council Chambers at Borough Hall, 70 West Front Street, Keyport, NJ, called to order by Mark Sessa, the Sunshine Law Notice was read followed by the Flag Salute.

ROLL CALL:

Present: Mayor McLeod, Councilman Sheridan, Robert Burlew, Richard Hassmiller Mark Sessa, Allen Hudson, Keith Platt, John Kovacs Alternates: Juan Carlos-Oviedo, Roger Benedict. Others Present, Planning Board Attorney, Marc Leckstein, Planning Board Engineer, Donald Norbut and Planning Board Planner, John Maczuga

Absent: John Ambrose

Appointment of Recording Secretary: Denise Nellis

Motion made by B. Burlew, second by R. Hassmiller

Roll call: Ayes: Mayor McLeod, J. Sheridan, R. Burlew, R. Hassmiller, M. Sessa A. Hudson, K. Platt, J. Kovacs, R. Benedict, J. Oviedo
Nays
Abstain:
Absent: J. Ambrose

VOUCHERS:

Fast Copy: Name plate for D. Norbut 18.00

Motion made by Mayor McLeod, second by J. Sheridan

Roll call: Ayes: Mayor McLeod, J. Sheridan, R. Burlew, R. Hassmiller, M. Sessa A. Hudson, K. Platt
Nays
Abstain: J. Kovacs
Absent: J. Ambrose

MINUTES: January 26, 2012 Re – Organization meeting

Motion made by A. Hudson, second by J. Kovacs

Roll call: Ayes: Mayor McLeod, J. Sheridan, M. Sessa A. Hudson, J. Kovacs, K. Platt, R. Benedict, J. Oviedo
Nays
Abstain: R. Burlew, R. Hassmiller
Absent: J. Ambrose

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Mr. Leckstein asked that Other Business and Discussions be addressed now since the application and the Longview Resolution are Use Variances and the Mayor and Councilman Sheridan would be asked to step down for those items.

Mr. Burlew steps down from dais to speak about the Aeromarine Property. Mr. Burlew discuss what is going on at the property. He mentioned that there is illegal dumping, and one building has collapsed leaving only a vacant lot. Mr. Burlew asked if the land can be leased. Mr. Burlew stated that people are using this property as a trucking transfer and fixing engines and disposing the old ones into the weeds. Mr. Burlew asked what can be done.

Mr. Leckstein stated that they can not do that. If the property is zoned light industrial, the owners could only use it for the permitted uses. The only exception would be if the property constituted a pre-existing non-conforming use and the use currently being practiced fit that previous non-conformity.

The Mayor indicated that the property in question had been the subject of a redevelopment overlay that dates back four to five years ago. He is not exactly clear how that would impact the applicable zoning on the property.

Mr. Burlew feels that there has to be a decision as to whether the current activities may continue or not.

Mr. Leckstein asked Mr. Burlew to call him so they can discuss this further. It was suggested that a conference be held between Mr. Burlew, Mr. Leckstein and Mr. Norbut to discuss what is permissible on the site.

The issue will be placed on the next meeting agenda for further discussion

ANY OTHER BUSINESS OR DISCUSSIONS:

Have Planning Board Attorney look into Updating Borough Ordinances and Re-examination of the Master Plan with Mayor and Council approval

Mayor would like GC zone amended to permit mixed uses so as to allow second floor residences. He did not believe such property owners should have to seek use variances to allow second floor residences at their properties.

Mr Leckstein suggested such a revision should be rolled into the Master Plan Re-examination.

Mr. Leckstein indicated it was his understanding the Council wanted him to review the Borough's Fee Schedule Ordinance. Councilman Sheridan indicated he believed this was true and would have to look to see whether funding was available for this work.

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Mr. Leckstein asked if Council has found the money for the Re-examination; the Mayor asked Mr. Maczuga, the Board's Planner if T&M's quote for producing this report was still \$8,500.00; Mr. Maczuga indicated he believed the answer was "yes".

Mr. Leckstein asked if we should approve T&M to do the re-examination; Mr. Sheridan said wait until Budget is passed. Mr. Sessa agreed.

Motion to carry to the next meeting was made and carried unanimously.

Mayor and Councilman Sheridan were asked to step off the dais at 7:30 PM and both left that meeting at that time.

OLD BUSINESS:

1. Longview Venture Resolutions – Memorializing Approval of Plan Modification

Mr. Leckstein explained the resolution for Longview Venture. He noted that he had not been involved in the Longview application as it predated his tenure working for the Board. However he understood that the draft Resolution, which had been prepared by the applicant's attorney, had been reviewed by the Board's former attorney Mr. Menna and that Mr. Menna had given his blessing.

The issue is that the Board's original Resolution required the Applicant to seek approval for a waterfront development from the DEP. The DEP has since indicated to the applicant that it is not going to require such development. Accordingly, the applicant is seeking to have the condition removed. A letter from the DEP confirming this representation was provided to the Board.

Mr. Hudson asked who decided on where the money goes and how did we come up with the amount.

Mr. Norbut stated that his office came up with the construction cost.

Mr. Norbut stated that the resolution before the Board only deals with the removal of the DEP condition. All other aspects of the original resolution of approval would remain.

Motion to adopt the Resolution made by R. Hassmiller, second by J. Kovacs

Roll call: Ayes: R. Burlew, R. Hassmiller, M. Sessa A. Hudson, K. Platt, J. Kovacs
Nays
Abstain:
Absent: J. Ambrose

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APPLICATION:

Application No. 03-18 Pannullo Application/JPJ Properties – Amended (asking that resolution be amended)
88-92 Broad Street
Block 61 and Lot 1 and 33.01

Mr. Raymond Laytham attorney for applicant.

Mr. Laytham asked Mr. Leckstein to swear his two witnesses. Mr. John Malva, owner and Mr. Peter Pannullo, Co-Owner

Mr. Laytham gave a brief history of the application. Mr. Laytham is asking for a modification of the original Resolution of Approval which had required the recording of a restriction forever linking his client's main multi-residential parcel to a non-contiguous property that was dedicated as parking for the main site.

The following exhibits were entered:

- A1 – March 25, 2004 Use Variance Resolution
- A2 – Final Resolution dated June 25, 2004
- A3 – Birdsall Engineer letter dated December 15, 2003
- A4 – Revised site plan dated August 1, 2004
- A5 – Copy of Deed dated February 24, 2004 and recorded February 25, 2004 linking the lots.

Mr. Laytham stated that even if Resolution was modified his client has no intention to change the current parking situation – if he ever wants to he would have to come before Board. He indicated that the Parking lot has no value as it is the building which has 99% of the value. Mr. Laytham is asking for the Board to unlink this property so that the applicant can borrow against the building. He indicated that his client is finding it impossible to borrow against the building currently since the lots are not contiguous and there is no easement agreement in place which provides access to the parking lot. The parking lot is land locked.

Applicant went to Mayor and Council and requested an easement as it is the Borough Parking Lot that surrounds the applicant's property. The applicant was advised by the Borough that an escrow would have to be paid so as to allow for \$15,000 to survey the parking lot and \$5,000 in engineering costs. Mr Laytham stated such a request is considered a major hardship for his client and therefore they were choosing to come before the Board to request relief.

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Mr. Leckstein stated that what happened in 2004 was a legal agreement. Requiring an applicant to link properties together by way of a recorded deed is not unheard of in land use applications. There is certainly nothing improper about such a requirement and Mr. Leckstein has seen it done before. Further, he noted that the applicant had willingly accepted this condition in order to obtain the use variance relief it had been granted at the time.

Mr. Leckstein stated that this is a self created hardship; if the Board was to grant relief he was concerned as to where the parking would go if someone else purchases the building and doesn't want the parking lot. Mr. Laytham indicated he could not envision a circumstance where that would happen. Mr. Leckstein disagreed and argued that he felt it was quite possible that someone would want to purchase the main building but have no desire to purchase the second lot if they did not have to. Absent the condition in the Resolution and the Deed Restriction, there would be no obligation for the lots to remain linked.

Mr. Leckstein stated that ultimately this was a decision for the Board.

Mr. Platt – It was evident that the applicant never thought about the consequences of agreeing to the lot linking at the time of the 2004 application. He feels that there is no reason to separate the properties. The issue should have been addressed in 2004.

If there is to be any solution, the applicant should work to obtain an easement across the Borough property from the Mayor and Council.

Mr. Burlew gave background to the parking lot and when it was purchased. Mr. Burlew stated that these two properties are locked together. Mr. Leckstein stated the purpose of the resolution is so that the property is sold together. Applicant wants this to be removed. Mr. Leckstein stated that there is not guarantee they won't be sold separately if the condition is removed from resolution.

There was discussion regarding the easement walkway that was done before the applicant purchased the property.

Mr. Malva stated that the number given by the Council for obtaining an easement was out of reach he felt it is was their way of saying no. He stated that someone has to step up and help them out as 1.5 million dollars lies in this building.

Mr. Laytham suggested that there might be some alternative language that would be acceptable to the Board. Mr. Leckstein stated that If Mr. Laytham could find language acceptable to his client's bank, but kept the lots linked, the Board would be happy to consider it.

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Mr. Malva stated he is willing to split the property and donate the lot to the Borough as long as he is granted permit parking for his tenants. Mr. Leckstein stated that has to be presented to the Council and the Borough Attorney. It is not something the Planning Board could consider.

There was further discussion regarding this property.

The meeting was opened to the public at 7:40 pm.

Mr. Michael Lane, 51 First Street, (sworn in) asked if the applicant considered asking the neighboring Bank for an easement to the parking lot; Mr. Malva replied that he has but has not received a phone call back from the bank.

Mr. Lane asked about the title insurance when purchased in July of 2008; the banking law changed since 2008.

Board took a five minute break so that Mr. Lane could go over all his exhibits to hand into the board.

Exhibit 0-1 Deed dated January 28, 2002

Exhibit 0-2 Planning Board Meeting minutes dated September 18, 2003

Mr. Lane stated that in the September 18, 2003 minutes, the applicant had indicated that it already had an easement. Mr. Pannullo stated that was for a sidewalk easement.

Mr. Lane stated that the 2003 minutes indicated that the applicant already did homework to link parking lot with easement intention in placement at first meeting; he therefore believed the applicant had created its own hardship.

Mr. Laytham asked what the sidewalk easement has to do with parking lot.

Mr. Lane felt that it was evidence the applicant created his own hardship

Meeting was closed to the public at 9:05 pm.

Mr. Leckstein asked Mr. Laytham what his client wants to do with the application. Mr. Laytham would like to leave application open so that he can go back to the Council.

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Based upon Mr. Laytham's position, Mr. Leckstein suggested that the Application be carried to a date to be determined. The applicant would have to re-notice when it wished to return to the Board and it was possible addition escrows would have to be paid at that time.

The Board agreed and a motion was made by K. Platt, second by A. Hudson and unanimously to approve this.

The next regularly scheduled Planning Board Meeting will be Thursday, March 22, 2012.

ADJOURNMENT: 9:20 PM