

KEYPORT UNIFIED PLANNING BOARD

The Keyport Unified Planning Board held a Regular Meeting on April 28, 2022 which was called to order by Mark Sessa at 7:00 PM, the Sunshine Law Notice was read followed by the Flag Salute.

ROLL CALL:

Present: Mayor Kennedy, Councilmember Davidson, Mark Sessa, W. McDermott, J. Oviedo, D. Pacheco, J. Royster, N. Vecchio

Absent: H. Aumack, C. Dickerson, G. Kotzas

Also in Attendance: Marc Leckstein, Planning Board Attorney, Fran Mullan, Board Engineer, Trevor Taylor (Board Engineer for Brownspoint Marina)

MINUTES: March 29, 2022

Motion to approve was made by D. Pacheco, second by W. McDermott

Ayes: Mayor Kennedy, Councilmember Davidson, Mark Sessa, D. Pacheco, J. Royster, W. McDermott

Abstain: N. Vecchio, J. Oviedo

APPLICATION: **KUPB #21-12**
 JOSEPH MICHAEL MERLA
 120 FIRST STREET
 BLK 95, LOT 4
 VARIANCE RELIEF

Mr. Leckstein explained due to the number of applications on the agenda the applicant's attorney has asked to be forwarded to the May 31st meeting at 7pm without further notice. Mr. Leckstein mentioned that since this was a use variance the Mayor and Councilmember cannot vote.

Motion to carry to the May 31st meeting without further notice was made by W. McDermott, second by J. Oviedo with ayes by all present.

RESOLUTION: PRC-ES ASSOCIATES, LLC
KUPB 16-03
BLK 20, LOT 12.01, 19 AND 20
160 WEST FRONT, 156-158 WEST FRONT STREET
ADMINISTRATIVE APPROVAL (Site / Subdivision)

MOTION TO APPROVE RESOLUTION:

Motion made by Mayor Kennedy, second by Councilmember Davidson

Ayes: Mayor Kennedy, Councilmember Davidson, Mark Sessa, D. Pacheco, J. Royster,
 W. McDermott

Abstain: N. Vecchio, J. Oviedo

UPDATE FROM COUNCILMEMBER DAVIDSON – CANNABIS ORDINANCE

Chairman Sessa asked the Councilmember for any updates regarding the ordinance. Councilmember Davidson stated that she had nothing to report for this meeting.

APPLICATION: KUPB #21-15
DEPUTY VENTURE
44 BEERS STREET
BLK 26, LOT 26, 30 & 31
AMENDED MAJOR SUBDIVISION

Mayor and Councilmember Davidson stepped down from the Dais because the application before the Board was previously a use variance and they cannot participate for any use variance applications.

John Giunco, Attorney with Giordano, Halleran and Ciesla. Mr. Giunco explained that the application was an interesting application. The application was before the Board in 2017 for a subdivision by Mr. Cummins and then purchased by Deputy Ventures who is his client. Mr. Giunco stated that they came back with some modifications and was also approved. There was a condition in the resolution addressing the property line between lots 26, 27 and 30 that it wasn't perpendicular with Front Street. There was a substantial time period of negotiation with the attached property owner which has now been settled, then the pandemic. The application was prepared by Collier Engineering and earlier Mr. Leckstein suggested that they come before the Board for them to consider the change.

Mr. Daniel Sobieski, Engineer was sworn in by Mr. Leckstein.

Mr. Giunco explained the map has been revised to show perpendicular lot lines and between lots 27, 26 and 30 that required an exchange of land between the two properties. If the Board approves the application the lot line will become perpendicular and part of the lot will become dedicated to the Borough. The remaining lines would become perpendicular and all lots will remain conforming.

Mr. Leckstein marked in the following exhibits for this application:

Exhibit A1 – Planning Board application 10/18/2021

Exhibit A2 – final plat for Mystic at Keyport

Exhibit A3 – colorized version

Exhibit B1 – T&M Letter dated 11/23/21

All the conditions of the review letters will be satisfied, if they are not already. Mr. Giunco asked Mr. Sobieski if the plans are in full conformance with the conditions of the Board; Mr. Sobieski stated that all that statements are correct.

Mr. Giunco stated with that being confirmed he would like the Board to consider the application favorably.

Chairman asked if any of the Boardmembers had any questions.

D. Pacheco confirmed that the application address was 44 Beers Street. He asked since it was presented to the Board back in 2016 has any updates regarding the application being in a coastal impact area. There was discussion regarding what flood zone the application is in. Mr. Giunco explained that the application is subject to CAFRA approval. Mr. Giunco stated that don't see any further issue. Further discussion regarding what was presented to DEP and the coastal impact area. Mr. Mullan stated that he is not concerned with the application being in the VE zone and the AE zone the elevation is 14 and 15. Mr. Mullan asked Mr. Giunco if he could attest to the following, that they received the DEP permit, the CAFRA and whatever other outside agency approvals they are protected by entitlement, but if FEMA went up a foot they would have to comply with the construction code and FEMA at the time of pulling building permits. Mr. Mullan stated that the reason they are before the Board is for the subdivision and the perfection of the prior land use approval. Mr. Giunco stated that they will be above the ABFE. Further discussion regarding Mr. Pacheco concern.

Mr. Leckstein asked Mr. Mullan to confirm that everything he heard has no impact on the original application that was previously approved by the Board. Mr. Mullan stated that he did hear the presentation and T&M did issue a letter on November 23, 2021 and he feels everything is consistent with what was presented at this meeting and they have made the revisions that were required as conditional of approval.

Mr. Leckstein explained that we are not revisiting the application the approval is still grandfathered in and they can still do the original approval. The only thing they are looking to do is a lot line change. Mr. Leckstein stated that it is not an opportunity to revisit the application.

Mr. Mullan stated that there is one question that he had. On Front Street which is county road did is the county going to request any type of right-of-way. Mr. Giunco stated that they have filed and they have not received any comments back. Mr. Mullan asked if he believed that the county has requested everything that they are going to want; yes. Mr. Mullan stated he will accept that answer; the county knows that they are going to have additional frontage on Front Street. Mr. Mullan stated that normally the county would ask the applicant for right-of-way widening. There was further discussion regarding the right-of-way.

Motion to open to the public at 7:15pm was made by N. Vecchio, second by J. Oviedo with ayes by all present.

Michael Lane, 51 First Street – There was discussion regarding Mr. Lane's handout. Mr. Lane stated he would like to point out the errors in their site plan document. Mr. Leckstein asked if he was challenging the application is incorrect; yes. Mr. Leckstein asked what happens if it is incorrect; Mr. Lane stated that they would be building in the coastal A zone. Building in a coastal A zone they would have to build to the VE standard. Mr. Lane stated that he reviewed all their documents; Mr. Leckstein asked what did that have to do with the Planning Board. Mr. Lane stated that they have not submitted the information that they said they were going to three or four years ago. Mr. Leckstein asked what did that have to do with the application before the Board. Mr. Lane stated that he feels the application needs to show these changes, in addition that they would have to get a deed change that clearly specifies the level of flooding and the frequency. Mr. Leckstein asked if that is per the ordinance; Mr. Lane stated it was per the condition in the resolution. Mr. Leckstein stated that all the conditions will be done when they start to build. Mr. Leckstein explained that is all part of resolution compliance. Mr. Leckstein asked Mr. Giunco if he is asking for any waivers of the conditions of approval; no. Mr. Leckstein explained that the applicant will have to comply with all the conditions that were previously approved. Further discussion regarding the conditions of approval in the resolution as well as the conditions in the T&M letter. Mr. Mullan stated that he will cross check all of their review letters to make sure they don't overlook any requirements that they have not complied with. The applicant is presenting that they have complied with everything, if in T&M final review they have not and there are still outstanding issues they will continue to issue review letters. They will not escape all of the all of the conditions that they have to meet. Mr. Giunco stated that they are not looking to escape any of the conditions they will comply with all conditions. Once all the conditions are approved, they will ask for the plans to be signed. Further discussion regarding the plans that have been submitted and the previous approval. Mr. Lane gave Mr. Mullan a copy of the documents that he had. There was discussion regarding what files are part of the Planning Board and what information goes to the building department. Mr. Leckstein explained that we are not revisiting the application the only item before the Board is the lot lines. Mr. Lane did compliment the applicant regarding raises the garage floor as well as the ground level a foot as required. Mr. Lane spoke about the 100-year flood levels and explained that the applicant needs to put that information into the deeds and that would have to be reviewed by the Board Attorney.

Motion to close to the public at 7:28pm was made by N. Vecchio, second by J. Royster with ayes by all present.

Motion to approve was made by N. Vecchio, second by D. Pacheco

Ayes: M. Sessa, W. McDermott, J. Oviedo, D. Pacheco, J. Royster, N. Vecchio

**APPLICATION: KUPB 20-01
357 WEST FRONT STREET, LLC (Browns Point Marina)
BLK 20 LOT 9,11.01, 13, 14 & 14.01**

Mayor and Councilmember returned to the Dias. Mr. N. Vecchio stepped down his residence is within 200 feet of the application, therefore, cannot vote on the application.

Mr. Pape provided a court reporter at the hearing and asked that the transcript be included as part of the permanent record and has been attached to the minutes. Therefore, those will be the minutes for this part of this document.

Motion to approve application with all conditions was made by J. Oviedo, second by J. Royster
Ayes: Mayor Kennedy, Councilmember Davidson, M. Sessa, W. McDermott, J. Oviedo, D. Pacheco, J. Royster

**APPLICATION: KUPB 17-07
357 WEST FRONT STREET, LLC (BrownsPoint Marina)
BLK 20, LOTS 1,2,3,5,6,6.01,7,9, 11.01, 13 & 14
REQUEST FOR EXTENSION OF PREVIOUS APPROVAL
WHICH EXPIRED ON DECEMBER 12, 2020**

Mr. Pape provided a court reporter at the hearing and asked that the transcript be included as part of the permanent record and has been attached to the minutes. Therefore, those will be the minutes for this part of this document.

MOTION TO APPROVE EXTENSION REQUEST

Motion to approve extension request was made by J. Royster, second by D. Pacheco

Ayes: Mayor Kennedy, Councilmember Davidson, M. Sessa, W. McDermott, J. Oviedo, D. Pacheco, J. Royster

**APPLICATION: KUPB #21-13
SHAWN RUSSO
133 SECOND STREET
BLK 125, LOT 19
USE VARIANCE**

(Mayor and Councilmember cannot participate for this application)

Mayor and Councilmember Davidson stepped down from the Dais for this application not because they were not interested but because it is a use variance and they cannot participate in a use variance application. Mr. Nick Vecchio returned to participate for this application.

Exhibit A1 – Boundary location survey
Exhibit A2 – Plot Plan
Exhibit A3 - Architectural
Exhibit B1 – T&M letter dated 4/27/22

Mr. Dante Alfieri, Attorney - Mr. Alfieri explained that they are seeking Board approval for a two-family home at 133 Second Street, block 125 lot 19. Mr. Alfieri explained that he will have two professionals that would provide testimony regarding this application.

Mr. Leckstein asked Mr. Alfieri to confirm that there is currently a two-family home and that two-family home is not permitted use in the zone but it is a pre-existing non-conforming use which means the use is allowed to continue. The applicant is looking to expand a non-conforming use they have to come before the Board for what is known as a D2 variance, not the D1 which is the usual use variance where the Board would hear everything and turn it down if certain criteria isn't met. A D2 means that they have the right to continue with the use but they are expanding upon it and the applicant has to show the Board that what they are looking to expand doesn't unduly exacerbates what already exist and that it is a reasonable accommodation to what exist at the site. Mr. Leckstein asked Mr. Alfieri if what he stated was accurate; yes. Mr. Leckstein stated that the Board doesn't hear a lot of D2 variances. He just wanted to make sure the Board understood what was being presented.

Anthony Maltese, Engineer for the applicant was sworn in. Mr. Alfieri asked Mr. Maltese to explain where the project is located. Mr. Maltese explained that the house is in a RA zone and currently fronts Waverly Street. The lot size is non-conforming, it is a single-family zone, it is currently a two-family which is the current use. Mr. Maltese spoke about the draining pattern, he explained that there is a draining inlet at the corner. Mr. Alfieri asked beyond the 5,000 square feet where they have only 4800 is there any other bulk standards that this site does not meet with the proposed changes. Mr. Maltese stated that currently the front yard setback off of Second Street has an existing variance of 12.01 feet where 20 feet is required. Mr. Maltese stated that the were going to be removing the front covered porch which would create less of variance which would be 19.81 feet which is still a proposed variance. Mr. Alfieri asked if there was any other variance; no. Mr. Leckstein confirmed that the only variance that the applicant is looking for a D2 and one bulk variance; correct.

Mr. Alfieri asked Mr. Maltese if he has reviewed T&M review letter of April 27th; yes. Mr. Alfieri asked if there are any items in the letter that they cannot comply with; no.

Mr. Mullan asked for clarification the front yard minimum requirements for the principal structure, there is a large encroachment with the existing non-conformity which is not being changed or there is no increase in the non-conformity fronting on Waverly Street. The building encroaches on the front yard but it is existing condition and even after they remove the covered porch, which will bring that part of the property closer to compliance. The principal building will still be 19.81 feet back from Second Street right-of-way which is considered a front yard. There will be a minor encroachment along Second Street and a more significant encroachment in the front yard along Waverly Street. Mr. Mullan explained that he wanted to point out that there is a front yard encroachment on both of the streets. If they consider that one non-conformity, Mr. Mullan just want to clarify it.

Mr. Alfieri asked where the trash would be stored; Mr. Maltese explained that it would be stored on the rear yard of the house. Mr. Maltese stated that the plans in front of the Board doesn't show that the applicant is planning on proposing placing a fence behind the driveway, perpendicular to the house parallel with Second Street perpendicular to the neighbor. It would be a six-foot-high fence and they would store the trash behind that fenced in area.

Mr. Alfieri asked if they are planning to replace the existing fencing; yes. Mr. Alfieri stated just for clarification there are some minor encroachments from the adjacent lot owner that the applicant is aware of; yes. Mr. Maltese stated that the adjacent driveway on lot 18 on Waverly Street has an encroachment of approximately three feet over their property and the dwelling on Second Street lot 20 has an encroachment onto their property it goes from six inches to approximately two feet.

Mr. Mullan pointed out that the fence that the applicant maybe installing would that be connected to the corner of the proposed addition and run parallel to the proposed three space driveway; yes. Mr. Maltese explained that it would be exactly where you see the dimension of 20.5 would be the fence line. Mr. Mullan just wanted to make sure it is set back behind the front yard setback requirement. Mr. Maltese stated he understood. Mr. Mullan asked if he had any information regarding the size and type fence that would be installed. Mr. Maltese stated it would be a six-foot high vinyl fence that would be stockade for privacy. Mr. Mullan asked if there would be a gate in that area that would be lockable; yes.

Mr. Mullan asked that element be added to the plans if the application is approved. Mr. Leckstein asked if the fence would require another variance; no.

Mr. Alfieri asked Mr. Maltese if the site complied with the parking requirements; Mr. Maltese stated that the parking requirements is four spaces and they have four spaces.

Mr. Leckstein asked if there was anything in T&M letter that they could not comply with; no. Mr. Leckstein asked if they can briefly tell the Board what exactly is the applicant changing to the existing house exterior. Mr. Maltese explained that they are removing the covered porch that faces Second Street and they are building a two-story addition to the rear of the house. The

current house is two-stories and they are adding a two-story addition to the back of the house. Mr. Leckstein asked if that would square off the existing house; yes.

Mr. Mullan asked if there was any exterior doors and entrances to the addition or is it all through the existing doorways and you will have interior connectivity. Mr. Maltese stated that there would be interior connectivity. Mr. Mullan asked if there was going to be any new utility laterals that would be added to service the building addition or would it be internal plumbing; Mr. Maltese stated it would be internal no additional external service lines. Mr. Mullan confirmed that there were no trenches going out to the street; no.

There was discussion regarding water conditions and run off water on the site not affecting the neighboring properties. Mr. Mullan asked if they feel there is adequate drainage in the inlet to receive the water that would be draining from the property; yes. They spoke to the client and he has been cleaning up the site and the owner will make sure this drainage structure is clear of debris.

Mr. Mullan stated that one of the comments on the letter is that the applicant will replace any and all existing curbs, disrepair sidewalks and handicapped ramps to accommodate the driveways; yes. There was further discussion regarding the repairs and handicap ramps if they were needed on the site.

Mr. Mullan asked about proposed landscape or lighting; Mr. Maltese stated that there was nothing proposed. He did mention that there was a comment on one of the architectural plans had a lighting note. If that is the case, they will make sure that they submit lighting plan to make sure that the neighbors are shield from any lights to T&M. Mr. Mullan stated that would be acceptable.

Mr. Mullan pointed out two other items; the northern property line runs almost through the center of the concrete driveway that straddles the property. He asked if they were taking credit for any of the parking provided by half of that driveway that encroaches on the subject site; no. Mr. Mullan stated in practice does any of the applicant's vehicles use that driveway at all; Mr. Maltese stated they do not.

Mr. Mullan stated on the west side line it looks like the survey shows the adjoining building on lot 20 along Second Street that existing building encroaches on the subject lot by two or three feet, he was pointing it out as a point of reference. Mr. Mullan stated that they have no interest or concern about it he stated he wanted to acknowledge the encroachment.

Mr. Mullan stated for housekeeping he wanted to point out the page two of their review letter there is approximately fifteen specific waivers being requested by the applicant. Many of the are mapping and base information for the area and the adjoining streets and nearby properties non of which T&M has any concerns about.

Mr. Leckstein stated that he would mark in the architectural as Exhibit A3.

Mr. Vecchio stated that he feels that one thing that adds character to the town is their front porches, he understands that removing the side porch brings in into conformity but he feels that removing it loses the charm. Further discussion regarding removing the porch on the side. Mr. Alfieri stated that the applicant didn't want to remove the porch. Mr. Leckstein asked Mr. Mullan if they had any objection to the applicant keeping the porch. Mr. Mullan stated that he didn't, he stated if it is a neighborhood character thing or ecstatic's, he doesn't feel there is a lot gained by removing the porch to eliminate some degree of non-conformity. He feels it has been well said regarding the benefits to keeping the porch. Mr. Leckstein stated that they can make it as a condition that all the plans get revised to reintroduce the front porch subject to the planner and engineer review. Mr. Alfieri stated that his client would prefer keeping the porch.

Motion to open to the public at 9:56PM was made by J. Royster, second by D. Pacheco with ayes by all present.

There being no comments or questions motion to close to the public at 9:56PM was made by J. Royster, second by N. Vecchio with ayes by all present.

Christine Nazzaro Cofone, Planner for the applicant. Ms. Cofone stated that they are seeking a D2 variance so the Board will not hear things like particular suitability because as Mr. Alfieri and Mr. Leckstein indicated that use exists in the neighborhood today. Ms. Cofone spoke about the case law requires them to testify that the use could be expanded with no substantial determinant to the negative criteria but the negative criteria need to be looked at with greater morality because it already exists in the neighborhood. Ms. Cofone stated in her review there was approximately eight two family homes and some even more than two family homes on Second and Waverly Street in the immediate area. Ms. Cofone spoke about the negative and positive criteria being satisfied with the application before the Board. Ms. Cofone stated that the applicant is willing to accept as condition of approval that the inlet in the area be cleaned out so they facilitate proper drainage, and any concerns regarding curbs or the handicapped access would be addressed. Ms. Cofone stated when you look at the zone plan for the area and what the zone envisioned. The building coverage in this zone is allowed to be forty percent and the applicant is at twenty-eight percent. The total lot coverage is allowed to be sixty percent and they are at fifty percent. Even though this is an existing non-conforming use with respect to the use of the structure she feels that it is a situation where they are having a substantial negative impact because the bulk criteria are consistent with what would be allowed in the zone. Ms. Cofone stated that she agrees with Mr. Vecchio regarding the porch, she stated she likes the porch. When dealing with situations like that is when the C2 flexible criteria exists. When there is situation where there is really no hardship, the C2 is when you have a better zoning alternative and she agrees with Mr. Vecchio regarding keeping the porch. Further discussion regarding the curb appeal by keeping the front porch on the subject property.

Chairman Sessa asked if any of the Boardmember had any questions of Ms. Cofone, there being no comments or questions there was a motion to open to the public at 10:01 PM made by N. Vecchio, second by J. Royster with ayes by all present.

Michael Lane, 51 First Street, asked if there could be a condition that the porch not be enclosed in the future. Mr. Alfieri stated that wasn't a problem.

Mr. Lane asked if the property was going to be owner occupied; yes. Mr. Lane stated then the owner is familiar with the yard and recreation space.

Ms. Angela Mateo, 153 Second Street, asked if there was anything available for the residents to view. Mr. Leckstein explained that the full application is on Keyport's web site.

Motion to close to the public at 10:04PM was made by N. Vecchio, second by J. Royster with ayes by all present.

Motion to approve application was made by N. Vecchio, second by D. Pacheco

Ayes: M. Sessa, W. McDermott, J. Oviedo, D. Pacheco, J. Royster, N. Vecchio

PLANNING BOARD PROFESSIONALS: No updates

Motion to adjourn was made at 10:06pm was made and carried with ayes by all present.

The next regularly scheduled Planning Board Meeting will be Thursday, May 26, 2022