

RESOLUTION OF APPROVAL
FOR BIFURCATED USE VARIANCE APPROVAL
FOR THE PURPOSE OF CONSTRUCTING FOURTEEN (14)
NEW THREE-STORY SINGLE FAMILY TOWNHOMES
WHERE SUCH A USE IS NOT PERMITTED

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 138 LOT 11
Application # 13-07
CHARLES PUTH
333 FIRST STREET

WHEREAS, Charles Puth has applied to the Unified Planning Board of the Borough of Keyport for bifurcated use variance approval so as to allow for the construction of fourteen (14) new three story single family townhomes at property commonly known as 333 First Street, and officially designated as Block 138, Lot 11 on the official Tax Map of the Borough of Keyport; and

WHEREAS, the applicants have 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 in the within matter during a regularly scheduled meeting of the Unified Planning Board held on November 21, 2013 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 constitutes a request by the applicant, Charles Puth, as the first part of a bifurcated land use application, to be permitted to construct a total of fourteen (14) new three story single-family townhouses at property commonly known as 333 First Street, which is officially designated as Block 138, Lot 11 as shown on the official tax map of the Borough of Keyport.
2. The property is located within the Borough's Residential District A (RA) Zone which does not permit townhouse developments. As such, use variance relief pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1) is necessitated by this application.
3. At all times during the course of the public hearings, the applicants were represented by Steven P. Gouin, Esquire of the law firm Giordano, Halleran & Cielsa whose office has a mailing address of 125 Half Mile Road, Suite 300, Red Bank, New Jersey 07701.
4. As noted within the Engineering/Planning Review Letter dated November 15, 2013, co-authored by the Board's Engineer Donald J. Norbut, P.E., C.M.E. and the Board's Planner Stan Slachetka, P.P., AICP, and marked into evidence as **Exhibit B-1**, this application was

- originally brought as one seeking Preliminary Site Plan Approval and Use Variance approval, however, the applicant announced its intention to bifurcate the application at the commencement of the public hearing on November 21, 2013. As such, the bulk variances referenced in the engineer's letter were not dealt with during the course of the proceedings.
5. In addition to aforementioned (d)(1) use variance, this application also necessitates relief from the provisions of N.J.S.A. 40:55D-70(d)(5) as the proposal exceeds the permitted density in the zone. 5.8 dwelling units per acre are permitted, whereas 24.5 dwelling units per acre are being proposed.
 6. The applicant also seeks relief pursuant to the provisions of N.J.S.A. 40:55D-70(d)(6) as the proposal exceeds the permitted height in the zone by more than 10 percent. The maximum height in the zone is 2.5 stories and 30 feet, whereas a height of 3 stories and 35 feet are being proposed. The (d)(6) variance was not noted in **Exhibit B-1**, but was noticed for and was acknowledged by all parties at the commencement of the hearing.
 7. Donald J. Norbut, P.E., and the Board's Planner, Martin Truscott, P.P., (sitting in place of Stan Slachetka, P.P.) were sworn and certified as to the information contained within the T&M review letter (**Exhibit B-1**). The letter is incorporated in this Resolution by reference.
 8. As noted within **Exhibit B-1**, the applicant's property consists of a 25,027 square feet (0.57 acres) in an area located on the north side of First Street, at the intersection of First and Walnut Streets. Surrounding land uses are residential uses to the north, west, and south. The land just across Walnut Street to the east and along the Chingarora Creek which is vacant.
 9. In support of the application, the applicant submitted the following exhibits into evidence:
 - A-1: Site Plan package, dated September 25, 2013, consisting of seven (7) sheets, as prepared by Michael T. Carr, P.E., P.L.S., P.P., of Carr Engineering Associates, P.A.
 - A-2: Rendered Architectural Elevation, dated October 31, 2013, consisting of one (1) sheet.
 - A-3: Photograph of the site as it currently exists
 - A-4: Aerial map of the site
 - A-5: Oversized image of the Borough Tax Map
 - A-6: Nine (9) photographs depicting surrounding properties
 - A-7: Oversized image of proposed building elevations
 - A-8: Chart of neighboring property densities labeled - "Borough of Keyport - Densities"
 10. The applicant, Charles Puth, was sworn and testified that his property currently consists of two (2) existing one-story apartment buildings which were heavily damaged as a consequence of Superstorm Sandy on October 29, 2012. He had contemplated restoring the existing buildings and raising them, but the complications with undertaking such a task

were not financially feasible as the structures would have to, amongst other things, be raised to Base Flood 14 in order to comply with the AE Flood Zone. After much consideration, he had come to the conclusion that the property would be better suited for the townhomes which were being proposed.

11. According to Mr. Puth, the current apartment buildings located at the site consist of sixteen bedrooms. Six of the apartments are 2 bedroom units, while the remaining 4 apartments are 1 bedroom units. His proposed townhouse development would have twenty-eight (28) bedrooms. Each of the fourteen (14) proposed units would have two (2) bedrooms.
12. Each residence will be three levels. The ground level will be a garage and the second and third levels will be living space.
13. Mr. Puth indicated that an Townhouse Association would be formed to govern the common elements of the proposed townhouse community. The individual townhouses would be sold to private individuals, who would all be members of the Association by virtue of their ownership interests.
14. The applicant presented testimony from their project engineer, Michael T. Carr, P.E., P.L.S., P.P., of Carr Engineering Associates, P.A., whose offices are located at 110 Main Street, South Amboy, New Jersey 08879.
15. Mr. Carr testified that the existing buildings on the applicant's property would be demolished as a result of this application and be replaced with the proposed new fourteen (14) townhouse units. As depicted on **sheet four of Exhibit A-1**, the townhouses would be built as part of three buildings, placed in a horseshoe configuration, with the entrance of the complex facing Walnut Street. All parking would be internal to the site. Only three of the proposed units would back out onto First Street.
16. Mr. Carr testified that he was familiar with the recommendations contained within **Exhibit B-1** as prepared by the Board's Professionals. The applicant was willing to comply with all of the recommendations that had been made.
17. Mr. Carr also testified that he believed that all site plan issues could be resolved during the site plan phase of the application. He could envision no reason why the requested (d)(1), (d)(5) and (d)(6) variances could not be granted at this time as part of a bifurcated hearing.
18. It was recognized that the driveway serving neighboring Block 138, Lot 10, commonly known as 310 First Street, encroaches upon the applicant's property. (**Exhibit A-1**) The applicant would prefer to not disturb this encroachment and has incorporated it into their plan. However, the applicant would agree to remove the encroachment if required by the Board. This issue would be reserved for the site plan phase of the application for consideration.

19. In addition to the testimony of Mr. Carr, the applicant also presented testimony from his professional planner, John P. DuPont, P.P., whose office is located at 756 Jackson Road, Stewartsville, New Jersey 08886.
20. Mr. DuPont testified as to his belief that the proposed townhouse development was appropriate for the site. He noted that a residential use was already envisioned for the site and had traditionally existed on the property. It was belief however, the existing apartment buildings were not attractive nor really appropriate for the neighborhood. He advocated that the proposed townhouse development would constitute a significant upgrade for the site from an aesthetic standpoint, thereby creating an enhancement to the fabric of the community.
21. Mr. DuPont explained his belief that the only reason townhouses were not included as part of the Borough's masterplan and zoning ordinance is that both were quite old. He noted that the 2012 Master Plan Re-Examination report had recommended townhouses as being a use which the Borough should consider permitting.
22. With regard to the (d)(5) density variance variance, Mr. DuPont testified as to his belief the proposed development fit in well with the densities found on surrounding properties. He made reference to Exhibits A-6 and A-8 in order to demonstrate this point.
23. As to the (d)(6) height variance, Mr. DuPont testified that the proposal was based upon flood zone issues. The properties would be need to elevated high enough so as to ensure all living space was above the flood line.
24. Mr. DuPont could not envision any negatives associated with the proposed application. He believed the entire proposal would act as a benefit for the whole community since it would, as previously noted, enhance the quality of the neighborhood where it would be located.
25. The applicant's belief that any and all concerns related to the ability of fitting the number of proposed units on the property could be adequately addressed during the site plan phase of the application. The applicant's legal counsel, Steven P. Gouin, Esquire, indicated the applicant would be willing to consider reducing the number of proposed units if any site plan complications were to arise which would necessitate such a revision.
26. The following members of the public were sworn and spoke with regard to the application:
 - A) **Sam Minor - 330 First Street, Keyport:** Mr. Minor expressed concerns over the risk of flooding at the site.
 - B) **Lawrence Stonerock - 325 First Street, Keyport:** Mr. Stonerock testified that he felt the proposal was good for the neighborhood as it would eliminate what he felt was an existing "blighted" property. He did however indicate concern over traffic backing out on to First Avenue.

- C) **Michael Lane - 51 First Street, Keyport:** Mr. Lane testified that he supports the application as he believes that homes occupied by their owners are better for the community than those used as rental units. He did however express some concerns over the number of units being proposed and submitted what was marked as "Exhibit L-1" into evidence. This exhibit consisted of a revised version of the applicant's "Exhibit A-2" and depicted the proposed development without the units that would be along First Avenue.
- D) **John Powers - 119 Bloomfield Street, Hoboken:** Mr. Powers indicated that he is the owner of 12 Walnut Street. He expressed concern over the number of units being proposed for the property.
27. No one else from the public spoke with respect to this application.
28. The Board's professionals had no objections, from an engineering or planning perspective, to this bifurcated portion of the application being approved as proposed.
29. In considering this application, the Planning Board finds that the proposed use variance relief can indeed be granted pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1). The Board Members, based upon their collective familiarity with the property and area in question, agree with the testimony presented on behalf of the applicant that the proposal, if constructed, would constitute a significant upgrade from what currently exists at the site. The Board finds that the proposed elevation plans (Exhibit A-2), if adhered to, will act as a great benefit for the surrounding neighborhood and the Borough as a whole.
30. The Board finds that not approving this application would require the applicant to reconstruct the existing apartment buildings on the property. The Board Members agree with the sentiment expressed by neighboring property owner Lawrence Stonerock that the current site is a "blight" on the community and is therefore a detriment to the Borough. If the property is developed in the fashion depicted in Exhibit A-2, it will serve as a much needed aesthetical improvement for the surrounding neighborhood and the Borough as a whole.
31. The Board also finds that the applicant's property is particularly suited for the proposed use. While the Board acknowledges the site is not zoned for townhouse development, it is nevertheless approved for residential development and is surrounded by other residential uses. In fact, the property currently houses apartment buildings which are already a multi-family use. The proposed development will therefore not actually change the residential nature of the site.

32. The Board finds the testimony of the applicant's planner, John P. DuPont, P.P., to be persuasive with regard to his opinion that a reason why townhouses have never been incorporated into the Borough's Master Plan or Zoning Ordinance, is due to the age of both of those documents which predate the wide spread proliferation of such a use. The Board acknowledges the fact that the concept of incorporating a townhouse use into the Borough's zoning ordinance is mentioned within the Planning Board's 2012 Master Plan Re-Examination report.
33. Based upon all of the above, the Board finds that the requisite enhanced proofs for obtaining (d)(1) variance relief have been presented establishing why the requested use is appropriate for this particular location.
34. With regard to the sought after (d)(5) density relief, the Board sees no reason why the applicants' property should be seen as not appropriate for the requested number of townhouses. When considering the evidence presented by the applicant (Exhibits A-6 and A-8), combined with the personal knowledge of the neighborhood held by its Members, the Board finds that it agrees with Mr. DuPont that the proposal fits in with the densities of neighboring properties.
35. The Board finds that the applicant's property can support the densities being proposed at the site. There is nothing about this new proposal that threatens to alter the existing dynamic of the neighborhood in such a manner that could lead anyone to believe the site is not appropriate for such populations.
36. The Board finds that if any site plan issues emerge which would prevent the proposed fourteen (14) townhouses from being built upon the site, these issues can be dealt with during the site plan phase of this bifurcated application.
37. With regard to the proposed (d)(6) height variance, the Board accepts the testimony of the applicant and his witnesses that the proposed 35 foot height is being dictated by the applicant's need to have the proposed townhouses built safely above the flood line. The Board understands that the ground level of the townhouse will have to be non-liveable space, necessitating the requested height so as to provide adequate living space inside.
38. Finally, The Board is hard pressed to envision any negatives associated with this application. Provided the applicant complies with all of the conditions agreed to during the course of this application, and submits a proper preliminary and final site plan application during the second phase of these bifurcated proceedings, then the requested (d)(1), (d)(5) and (d)(6) variance relief may be granted without causing any detriment to the Keyport Zoning Ordinance and Master Plan. In actuality, the proposed project will serve as a much needed improvement from what currently exists at the applicants' property.

39. The Board finds that if the application were not to be granted, the Borough would be negatively impacted as the existing blighted apartment complex would continue to exist at the property. The Board Members cannot imagine how such a result would benefit anyone.
40. Based upon all of the aforesaid reasons, the Board finds that the application for bifurcated use variance relief should and can be granted as proposed, subject to the conditions stated hereafter.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Charles Puth seeking bifurcated variance relief pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1), (d)(5) and (d)(6), so as to be able to construct fourteen (14) new townhomes on premises commonly known as 333 First Street and officially designated as Block 138, Lots 11 be granted subject to the following conditions:

1. Subject to the submission of a complete site plan application and the granting of approval of same by the Unified Planning Board.
2. During the site plan phase of these proceedings, the applicant shall adhere as closely as possible to the plans submitted into evidence as **Exhibits A-1 and A-2**. This approval would not have been granted absent the favorable reaction by the Board to these exhibits.
3. Subject to all requirements contained within the Board Engineer and Planner's review letter dated November 15, 2013 except as might be modified by this Resolution. (**Exhibit B-1**)
4. Subject to the applicant creating a Townhouse Association for the property, with a Master Deed being recorded with the County Clerk's Office. The Master Deed shall be submitted to the Board Attorney for his review and approval prior to such recording taking place.
5. Subject to the understanding that if during the site plan phase of the application it is found that the applicant's property is not suitable for the approved fourteen (14) townhouses, that the applicant will agree to revisit the number of townhouses that will be located at the site.
6. All representations made under oath on behalf of the applicants, or by its agents, shall be deemed conditions of this approval, and any misrepresentations or actions by the applicants contrary to the representations made before the Board shall be deemed a violation of this approval.
7. 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.
8. This approval shall be deemed void by abandonment if the applicants do not seek site plan approval within one year of the date hereof.
9. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.
10. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.

11. 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.
12. 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.
13. 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.

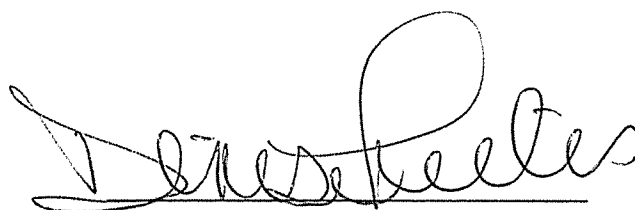
The foregoing was Moved by R. Burlew, Seconded by R. Benedict, and on Roll Call, the following vote was recorded:

Affirmative: R. Burlew, M. Sessa, R. Benedict, D. Fotopoulos, J. Kovacs

Negative:

Abstentions: T. Musson, J. Oviedo

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 19, 2013.

A handwritten signature in black ink, appearing to read "Denise Nellis", written over a horizontal line.

Denise Nellis, Secretary of the Board