

RESOLUTION
GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 21.02, LOTS 15 through 21
Application # 17-03
149 W. FRONT STREET, LLC
149 WEST FRONT STREET

WHEREAS, 149 W. Front Street, LLC has filed an application seeking Preliminary and Final Site Plan approval for the purpose of constructing an elevated building containing a 3,021 square foot bar and restaurant with a 2,598 square foot deck on the site of the former Ye Cottage Inn located at 149 West Front Street which is officially known as Block 21.02, Lots 15 through 21 on the official tax map of the Borough of Keyport; 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 in the within matter during a regularly scheduled meeting of the Unified Planning Board held on March 14, 2018; 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 for Preliminary and Final Major Site Plan approval for 149 W. Front Street, LLC to construct an elevated building containing a 3,021 square foot bar and restaurant with a 2,598 square foot deck on the site of the former Ye Cottage Inn located at 149 West Front Street which is officially known as Block 21.02, Lots 15 through 21 on the official tax map of the Borough of Keyport.
2. The property is located within the Borough's GC (General Commerical) District on which the proposed use is permitted. There are no variances required by this application.
3. During all portions of these proceedings, the applicant was represented by Lawrence W. Luttrell, Esquire who has law offices located at Holmdel Corporate Plaza, 2137 State Highway 35, 3rd Floor, Holmdel, New Jersey 07733.
4. In support of the application, the following exhibits were marked into evidence by the applicant:

Exhibit A-1 : Application Package submitted on June 21, 2017

Exhibit A-2 : Preliminary and Final Site Plan dated March 10, 2017 as prepared by Michael James Monroe, Architect (consisting of 10 sheets)

Exhibit A-3 : Coastal Jurisdictional Determination letter dated April 3, 2017 from the State of New Jersey, Department of Environmental Protection

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

Exhibit B-1: Planning and Engineering Review letter dated October 12, 2017 as prepared by Francis W. Mullan, P.E., C.M.E. and Donna Miller, A.I.C.P., P.P. of T&M Engineering.

6. Both the Board Engineer, Francis W. Mullan, P.E. and Board Planner Donna Miller, AICP, PP, both of T&M Engineering were present at the meeting. Both professionals were sworn and certified as to the information contained within the T&M Engineering Review letter which was marked into evidence as **Exhibit B-1** and incorporated into this Resolution by reference.
7. In support of the application, the applicant presented sworn testimony from one its principals, Michael Nosti, who testified that he and his family own the Keyport Fishery which is located across the street from the subject property.
8. Mr. Nosti noted that the Ye Cottage Inn which had existed on the property for years, had been destroyed as a consequence of Super Storm Sandy on October 29, 2012 and that the property had been vacant since that time. He now wanted to bring life back to the property by constructing a bar and restaurant on the site.
9. Mr. Nosti acknowledged that the bulkhead in the rear of the property had been compromised, but that he had already seen to effectuating repairs to those areas in anticipation of bringing the application before the board.
10. In addition to Mr. Nosti, the applicant also presented sworn testimony from its professional architect, Michael James Monore, P.A. who has offices located at 12 Broad Street, Red Bank, New Jersey 07701.
11. Mr. Monroe relying upon the site plan package marked into evidence as **Exhibit A-2**, explained the general overview of what the applicant was proposing.
12. As testified to by Mr. Monroe, the applicant is looking to construct a 3,021 square foot bar and restaurant with a 2,598 square foot deck.
13. The restaurant would be elevated and built upon pilings so as to protect it from future flooding events.
14. Access to the building would be obtained by way of both a stair case and a ramp that winds up from the ground to the restaurant deck. The ramp would be fully ADA accessible. The applicant was not proposing the installation of any elevators.

15. The applicant would be providing 29 parking spaces which Mr. Monroe believed were more than adequate to satisfy the needs of the proposed use. He noted the site is adjacent to a public parking lot. The applicant would be willing to provide the Borough with a cross access easement so that the two parking lots would be able to function together. The applicant would remain responsible for all maintenance of its own property under the terms of this easement. The creation of such an easement would be a condition of approval, provided the Borough was willing to enter into such an agreement. The terms of the easement agreement must be reviewed and approved by the Planning Board's Attorney, Engineer and Planner prior to its recording with the County Clerk's Office in order to ensure it is consistent with this approval. However, in the event the Borough is unwilling to enter into such an easement, the applicant would be entitled to proceed with its project.
16. With regarding to drainage from the site, it was agreed, as a condition of approval, that all roof water would need to drain into dry wells. It would not be permissible for any roof water to drain directly into the bay. The applicant would have to provide a full drainage plan to the Board's Engineer and Planner for their review and approval.
17. The site plan submitted into evidence (**Exhibit A-2**) depicted a proposed garbage enclosure area located along the bulkhead near Front Street. Mr. Monroe testified that the applicant would be redesigning its site plan so that the garbage enclosure area would now be constructed under the proposed building, ensuring it was hidden from public view. The garbage would then be removed from the site by a private hauler who would be contracted by the applicant. The plans (**Exhibit A-2**) would be revised to show the relocated trash enclosure area, with the revisions being subject to the review and approval of the Board's Engineer and Planner. This would be a condition of approval.
18. With respect to landscaping, Mr. Monore indicated the applicant would be utilizing indigenous species throughout the site as much as possible. A revised landscaping plan shall be submitted to the Board's Planner and Engineer for their respective review and approval.
19. Public access will be provided along the bulkhead area of the site. A right of way easement will be dedicated to the Borough so as to create a walkway along the bulkhead, commencing at Front Street and extending to the end of the applicant's property where it meets the adjacent Waterfront Promenade owned by the Borough. Maintenance of the walkway would remain the responsibility of the applicant. The exact location of the easement and the materials utilized to construct it would be subject to the review and approval of the Board's Engineer and Planner, however said walkway shall match the existing walkway along the Waterfront Promenade. The easement language would be subject to the review and approval of the Board's Attorney, Engineer and Planner prior to its recording with the County.

20. It was noted that significant work needs to be completed in order to ensure that the applicant's property was fully safe for pedestrian traffic. As the site is situated along the waterfront, everyone agreed that the bulkhead area would be a draw for patrons of the proposed restaurant and bar as well as those seeking to utilize the public access easement along the bulkhead area . (See **Paragraph 19 of this Resolution above**) As recognized within Paragraph 5.10 of the Board's Engineering and Planning Review Letter (**Exhibit B-1**), the waterfront area currently consists of broken asphalt paving and bare dirt. In consideration of the anticipated costs for making the proper repairs to this area, it was agreed that the applicant should be able to construct and open its new establishment prior to being required to make the improvements to the bulkheading and the public accessway. This would allow the applicant to acquire a source for financing the improvements which will be required. With this consideration in mind, it was agreed, as a condition of approval, that the applicant must complete the necessary waterfront repairs, improvements to the bulkheading, and construct the permanent Waterfront Promenade matching walkway, within five (5) years of it being granted a Certificate of Occupancy for its restaurant and bar.
21. It would also be a condition of approval that until the site improvements referenced in Paragraphs 19 and 20 above are completed and prior to the issuance of a building permit for the construction of the proposed restaurant and bar, the waterfront area of the property must be properly improved, as deemed appropriate by the Board's Planner and Engineer, so as to create a safe and stable walking surface in the area of the public access easement. This temporary condition will be permitted to persist and be required to be maintained by the applicant until such time as the permanent waterfront promenade improvements referenced in Paragraphs 19 and 20 above are constructed, which, as indicated in Paragraph 20, must be completed within five (5) years from the date of the issuance of the Certificate of Occupancy for the restaurant and bar.
22. The applicant agreed that prior to the issuance of any building permits, it would secure appropriate bonding, the cost of which would be determined by the Board's Engineer and Planner, so as to ensure completion of the site improvements envisioned by Paragraphs 19 and 20 of this Resolution.
23. The applicant agreed it would comply with all of the comments contained within the Board Engineer and Planner's Review Letter dated October 12, 2017 (**Exhibit B-1**) with the following exceptions which the Board's Engineer and Planner agreed could be waived:
Item A(7) - The review letter recommends that the applicant submit an environmental impact statement. However, since the applicant would need to obtain a CAFRA permit, the Board's Engineer did not believe such a statement would be necessary.

Item (C) 9.1 - The review letter recommends that the applicant's plan be revised to show all existing structures and wooded areas on site and within 200 feet of the tract. The Board's Engineer and Planner agreed such a condition would not be necessary for this application due to the location of the property along the waterfront and adjacent to a public parking lot.

24. The following members of the public also spoke on the proposed application and stated their support for same provided the applicant adhered to all required ordinances, building codes and other requirements.
 - 1) Michael Lane - 51 First Street, Keyport
 - 2) Elmer Graham - 22 St. Peter's Place, Keyport
25. The Board's Professionals, Francis W. Mullan, P.E. and Board Planner Donna Miller, AICP, PP, both of T&M Engineering, who were sworn, both indicated that they had no issues with the application provided the applicant adhered to the comments of their review letter (**Exhibit B-1**), with the exceptions noted above in Paragraph 22 of this Resolution, and adhered to all of the testimony given during the course of the public hearing.
26. After considering the testimony and evidence presented, and assuming all representations are adhered to, the Board finds the proposed site will function properly as proposed under the site plan (**Exhibit A-2**) once it has been revised to meet the conditions of this Resolution.
27. The Board finds that the development of the applicant's property will act as a benefit for the Borough since the property, which sits along the Borough's waterfront, has been vacant since the Ye Cottage Inn was destroyed back in 2012. The Board cannot envision any negative impact which the proper utilization of this property, such as what is being proposed by the applicant, could have on the community. To the contrary, it would be a rejection of this application which would create a negative for the community since it would result in the property being left vacant.
28. 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.
29. Based upon all of the above, the Board finds that the applicant has met its burden in establishing that it is entitled to the requested preliminary and final site plan approval, and therefore such should be granted.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of 149 W. Front Street, LLC seeking preliminary and final site plan approval for premises located at 149 West Front Street and officially designated as Block 21.02, Lots 15 through 21 on the official Tax Map of the Borough of Keyport be granted subject to the following conditions:

1. Subject to substantial compliance with the site plan submitted into evidence unless otherwise modified by this Resolution. (**Exhibits A-2**)
2. Subject to the applicant's compliance with the Engineering and Planning Review letter marked into evidence as **Exhibit B-1** with the exception of items (A)(7) and (C)9.1 as noted in paragraph 22 of this Resolution above.
3. Subject to the condition that the applicant enter into a cross access easement with the Borough of Keyport so as to ensure that the applicant's parking lot works in conjunction with the adjacent parking lot owned by the Borough. The applicant would remain responsible for all maintenance of its own property under the terms of this easement. The terms of the easement agreement must be reviewed and approved by the Planning Board's Attorney, Engineer and Planner prior to its recording with the County Clerk's Office. In the event the Borough is unwilling to enter into such a cross access easement, the applicant will nevertheless be entitled to proceed with its approvals.
4. Subject to the condition that condition all roof water must drain into dry wells. Run off may not drain directly into the bay. The applicant shall provide a full drainage plan to the Board's Engineer and Planner for their review and approval.
5. Subject to the condition the site plan submitted into evidence (**Exhibit A-2**) shall be revised so as to depict the garbage enclosure area as being constructed under the proposed building, ensuring it is hidden from public view. Said revised plans will be subject to the review and approval of the Board's Engineer and Planner.
6. Subject to the condition all garbage from the site generated by the approved restaurant/bar will handled by a private hauler contracted by the applicant.
7. Subject to the condition the applicant utilize indigenous species for landscaping throughout the site, as much as possible. A revised landscaping plan shall be submitted to the Board's Planner and Engineer for their respective review and approval.
8. Subject to the condition that the applicant dedicate a public access easement along the bulkhead of its property and dedicate same to the Borough. The applicant shall be required to construct a walkway along this easement commencing at Front Street and extending to the end of the applicant's property where it meets the adjacent Waterfront Promenade owned by the Borough. Maintenance of the walkway will remain the responsibility of the applicant. The exact location of the easement and the materials utilized to construct it shall be subject to the review and approval of the Board's Engineer and Planner, however said walkway shall match the existing walkway along the Waterfront Promenade. The easement language shall be subject to the review and approval of the Board's Attorney, Engineer and Planner prior to its recording with the County Clerk's Office. The walkway required by this condition

must be completed within five (5) years of the applicant obtaining its Certificate of Occupancy for the approved restaurant and bar.

9. Subject to the condition that the applicant must complete necessary waterfront repairs and improvements to the bulkheading, as to be determined by the Board's Engineer and Planner, within five (5) years of the applicant being granted a Certificate of Occupancy for its restaurant and bar.
10. Subject to the condition that prior to the issuance of a building permit for the approved Restaurant and Bar, the applicant must secure appropriate bonding so as to ensure the site improvements required by Conditions 8 and 9 of this Resolution are completed. The cost for the bonds shall be determined by the Board's Engineer and Planner.
11. Subject to the condition that prior to a building permit being issued for the proposed restaurant and bar, and until the site improvements required by Conditions 8 and 9 of this Resolution are completed, the waterfront area of the property must be properly improved, as deemed appropriate by the Board's Planner and Engineer, so as to create a safe and stable walking surface in the area of the public access easement required by Condition 8. This temporary condition will be permitted to persist and be required to be maintained by the applicant until such time as the permanent waterfront promenade improvements referenced in Conditions 8 and 9 above are completed, which, as indicated in those conditions, must be finished within five (5) years from the date of the issuance of the Certificate of Occupancy for the restaurant and bar.
12. 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.
13. 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.
14. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.
15. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.
16. This approval shall be deemed void by abandonment if a building permit is not applied for within one year of the date hereof.
17. 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.
18. 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.

19. 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 J. Kovacs, second by K. Howe

Affirmative: M. Sessa, L. Davidson, D. Fotopoulos, J. Kovacs, K. Howe, J. Kovacs-Olsen

Negative:

Abstentions: R. Benedict

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 May 24, 2018.



Denise Nellis, Secretary of the Board