

**RESOLUTION OF APPROVAL
USE VARIANCE WITH PRELIMINARY AND FINAL SITE PLAN APPROVAL TO
CONSTRUCT A 2.5 STORY, FOUR UNIT TOWNHOUSE DEVELOPMENT**

**UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT**

**BLOCK 1.01 LOTS 43, 44 and 45
Application # 17-09
KEYPORT 44 REALTY, LLC
193 CHINGARORA AVENUE**

WHEREAS, Keyport 44 Realty, LLC has applied to the Unified Planning Board of the Borough of Keyport for Use Variance relief with Preliminary and Final Site Plan Approval as to property located at 193 Chingarora Avenue which is officially designated as Block 1.01, Lots 43, 44 and 45 on the official tax map of the Borough of Keyport so as to construct a 2.5 story, four unit townhouse development; and

WHEREAS, the applicant has provided notice to all property owners within two hundred feet and have 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 was held in the within matter during a regularly scheduled meeting of the Unified Planning Board held on March 22, 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. The applicant, Keyport 44 Realty, LLC, is seeking approval to develop property at 193 Chingarora Avenue, which is officially designated as Block 1.01, Lots 43 through 45 on the tax map of the Borough of Keyport, so as to construct a 2.5 story, four (4) unit townhouse.
2. The subject site currently consists of a vacant single family home on a 9,000 square foot lot located on the east side of Chingarora Avenue south of Route 35 near Rollo Place. There is a law office across the street to the north, Mavis Tire and Platinum Car Wash across the street to the west and low-density residential uses immediately to the south and east.
3. The applicant proposes to construct a wood deck at the rear of each of the proposed units, and a single car garage, a shared bituminous driveway for each unit, and a concrete walkway to each unit's entrance. Additionally, the applicant also proposes to construct a 6' high vinyl fence around the rear perimeter of the lot, proposed sidewalk and curb improvements, and regarding of the existing lot.
4. The property is located in the Borough's Highway Commercial (HC) District which does not currently permit the proposed four (4) unit townhouse. As a result, this application requires use variance relief pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1).

5. There are no bulk variances triggered by this application.
6. Throughout the course of this application, the applicant was represented by Salvatore Alfieri, Esquire of the law firm of Cleary, Giacobbe, Alfieri, Jacobs, LLC which has offices at 5 Ravine Drive, Matawan, New Jersey 07747.
7. In support of the application, the applicant marked into evidence the following exhibits:

Exhibit A-1:	Application package dated August 29, 2017.
Exhibit A-2:	Site Plan package dated August 21, 2017, last revised February 9, 2018, as prepared by Walter Joseph Hopkin, P.E. of WJH Engineering (consisting of 5 sheets)
Exhibit A-3:	Architectural plans dated August 21, 2017 as prepared by James J. Monteforte, AIA of Monteforte Architectural Studios
Exhibit A-4:	Stormwater Management Report dated October 27, 2017 as prepared by Walter Joseph Hopkin, P.E. of WJH Engineering
Exhibit A-5:	Sanitary Sewer & Potable Water Report dated February 9, 2018 as prepared by Walter Joseph Hopkin, P.E. of WJH Engineering
Exhibit A-6:	Colored rendering of site plan dated March 20, 2018
Exhibit A-7:	Colored rendering of proposed units
Exhibit A-8:	Six (6) images of nearby properties and of existing house prepared by Confone Consulting Group.
8. In addition to the exhibits presented by the applicant, the Board marked its own Exhibits into evidence as follows:

Exhibit B-1:	Completeness, Planning and Engineering Review letter dated October 18, 2017 as authored by the Board's Engineer, Francis W. Mullan, P.E., C.M.E. and its Planner, Donna Miller, AICP, PP.
Exhibit B-2:	Second Completeness, Planning and Engineering Review letter dated November 30, 2017 as authored by the Board's Engineer, Francis W. Mullan, P.E., C.M.E. and its Planner, Donna Miller, AICP, PP.
Exhibit B-3:	Borough Traffic Safety Officer review letter dated February 1, 2018.
9. 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 Planning and Engineering Review letters (**Exhibits B-1 and B-2**) which are incorporated into this Resolution by reference.
10. The applicant indicated, as a condition of approval, that it was willing to comply with all of the recommendations contained within the Planning and Engineering Review letters unless such were modified by this Resolution. (**Exhibits B-1 and B-2**)
11. The applicant presented sworn testimony from its engineer Walter Joseph Hopkin, P.E.
12. Mr. Hopkin explained that the applicant was seeking to tear down an existing vacant single family home and replace it with a 2.5 story, four (4) unit townhouse along with the amenities referenced in Paragraph 3 of this Resolution. The proposal would be consistent with what was depicted in the Exhibits marked into evidence.

13. The applicant would be providing ten (10) off street parking spaces for the development. The site plan (**Exhibit A-2**) would be revised to reflect this. The driveway would be blacktopped.
14. Mr. Hopkin noted that all of the utilities for the site would be located underground as to help improve the aesthetics for the premises.
15. Mr. Hopkin testified that all water runoff will drain to the street and not to neighboring properties. This was reflected within the Stormwater Management Report. (**Exhibit A-4**)
16. In furtherance of the requirement that water runoff drain to the street, the applicant agreed as a condition of approval to revise its plans so as to provide for a new drainage connection pipe so that drainage from the rear of the property would connect to the front and then travel across the driveway into the front gutter. Such a revision would need to be reviewed and approved by the Board's Engineer and Planner.
17. The applicant would be installing street trees at the property. Zelkova trees were currently proposed. Additionally, the applicant would plant arborvitae (preferably Green Giant) along the proposed fence line. As a condition of approval it was agreed the final landscaping plan would be subject to the review and approval of the Board's Engineer and Planner.
18. With respect to the vinyl fencing that would be installed around the perimeter of the property, in order to provide additional screening for the neighboring properties, it was agreed, as a condition of approval, that the fence line would be extended from where it is currently depicted on **Exhibit A-6** and brought forward to run up against the back of the pads situated immediately before the front doors of the two outermost units. The Board recognized it might need to grant additional variance relief in order to permit this extension of the fence line and felt that such relief would be appropriate since it would create a better condition for the development than strict adherence to the zoning ordinance would otherwise allow.
19. Mr. Hopkin testified that the site had been designed in an appropriate manner would function safely as designed.
20. The proposed town homes would be governed by a condominium association. The Master Deed and By-Laws of the association would be subject to the review of the Board's Attorney, Planner and Engineer prior to their recording with the Monmouth County Clerk's Office. It was agreed as a condition of approval that the Master Deed of the Association would include the following restrictions which could not be altered by the Association without having first received approval, upon notice to the public, from the Borough of Keyport Planning Board, or its successor of similar jurisdiction:
 - (A) So as to avoid unsightliness, all garbage cans must be kept inside of the townhouse garages except for on garbage pick-up day. The storage space for the garbage cans within the garages may not interfere with the ability to also park a car inside.

- (B) Due to the limited space available at the site, the townhouse garages must be kept storage free (with the exception of the aforementioned garbage cans) so as to ensure the ability to park a car inside.
- (C) Due to the limited space available, the driveway space at the development shall be restricted to residents only.
- (D) The Association would be required to maintain all landscaping as approved by this Resolution.
- (F) The attic of each unit shall be prohibited from becoming habitable space.
- (G) The Association shall not be permitted to change the approved facade (**Exhibit A-7**) of the townhouses.
- (H) All fencing approved by this application must be maintained by the Association.
21. In addition to testimony from its site engineer, the applicant also presented testimony from its professional architect James J. Monteforte, AIA.
22. Mr. Monteforte testified with respect to the architectural plans and colored renderings of the unit which had been marked into evidence. (**Exhibits A-3 and A-7 respectively**) He indicated that the applicant fully intended to construct as depicted within the plans.
23. Mr. Monteforte noted that there would be three (3) bedrooms in each unit and that the townhomes would be 25 ½ feet high, within the limits of the Borough's height ordinance.
24. When considering the existing vacant home located on the property (**Exhibit A-8**), he believed the proposed townhomes be an aesthetic improvement for the neighborhood.
25. The applicant also heard testimony from a representative of the applicant, Leonard Rubenstein, who indicated that he was very familiar with the neighborhood where the subject property was located because he used to own the carwash which was located nearby.
26. Mr. Rubenstein testified that he had explored building a commercial use on the property, which would have been permitted as of right under the existing zoning ordinance, but felt that such a use was not appropriate for the location. As a result, the applicant had now turned to the townhouse concept since, in his opinion, it would be a better fit.
27. The Board's Planner, Donna Miller, recognized that the Master Plan which had been adopted by the Planning Board in 2017 had recommended that areas located south of Route 36 in the HC Zoning District would be appropriate for high-density uses. This meant that what was being proposed by the applicant actually complied with the new Master Plan. The Borough had not yet adopted ordinances to comply with those new Master Plan recommendations which was the reason 'use variance' relief was required for this application.
28. The final witness presented by the applicant was its professional planner, Christine Nazzaro Cofone, P.P. of the Cofone Consulting Group.

29. Ms. Cofone testified that in her professional opinion, the applicant's proposed multi residential use was appropriate for the site. She did not believe a commercial operation would fit at this the location as the property did not have any highway frontage. She also believed the site was too small to support a commercial use, and that if such a use were nevertheless built it would be detrimental to the residential uses which were immediately adjacent to the property. As a result, the site was particularly suitable for the proposed townhouse development.
30. Ms. Cofone further noted that the Planning Board's newly adopted Master Plan already recognized the property would be appropriate for a high destiny residential use and that the Borough Council was in the process of revising its Zoning Ordinance to reflect the recommendations contained within that Plan. As a result, the proposal could certainly be harmonized with the current vision the Borough had for its Highway Commercial District.
31. It was further testified that Ms. Cofone believed the townhouse proposal would act as an aesthetic improvement for the neighborhood over the vacant single family home which was currently located on the property. (**Exhibits A-7 and A-8**)
32. Ms. Cofone believed that since the application would conform to the Master Plan and would act as an improvement for the neighborhood, such facts would outweigh any negatives which might be created by the proposal.
33. The Board's Professionals had no objections to this application being granted from an engineering and planning standpoint provided the comments raised in their review letters (**Exhibits B-1 and B-2**) were adhered to and that the applicant abided by the testimony and exhibits which had been submitted into evidence.
34. The following members of the public also spoke on the proposed application:
- 1) **Michael Lane - 51 First Street, Keyport** : Supported the application as long as the Resolution and the applicable codes and regulations were followed.
 - 2) **Elmer Graham - 22 St. Peter's Place, Keyport** : Supported the application and believed it would be an improvement for the neighborhood.
 - 3) **Dorothy Scuorzo and Frank Scuorzo - 201 Lapatong Avenue, Keyport**: Live directly behind the subject property and are concerned about the height of the proposed townhomes and how it will infringe upon their privacy. They did however agree that the site should be developed with a residential rather than a commercial use. The board indicated that the landscaping improvements being proposed should ameliorate much of the privacy concerns.
 - 4) **Gloria Stone - 408 Sunset Place, Port Monmouth**: Owns the property located at 195 Chingarora Avenue which is immediately next door to the applicant's. She is concerned about her privacy and available parking. She offered the Board what was marked as **Exhibit S-1**, a series of 9 photographs of the property, into evidence. She did agree however that the site should be developed with a residential rather than a commercial use. The Board believed Ms. Stone's concerns had been ameliorated by the proposed revisions to the landscaping plan as well as the relocation of the perimeter fence line. Additionally, the Board believed the 10 proposed off-site parking spaces should be sufficient for the site.

- 5) **Lance Lupi - 36 Van Dorn Street, Keyport:** Did not believe the proposal was appropriate for the location and believed that the applicant was overcrowding the Board noted however that it had determined, in its recent Master Plan, such high residential housing was appropriate for the HC Zoning District.
35. No one else testified with respect to the application.
36. In considering this application, the Board agrees with the testimony of the applicant's professionals and with the testimony of the Board's own professionals, that the proposed site plan will function correctly as long as the submitted plan, with the proposed modifications, is adhered to.
37. With respect to the requested use variance relief, the Board finds that the proposed townhouse development is particularly suited for the applicant's property. The Board agrees with what was an unanimous sentiment during the public hearing that the site is not appropriate for a commercial use, which is the currently permitted use. The site does not have the characteristics, such as size and highway frontage, that would be conducive to a successful commercial operation. This is exactly why the Planning Board has recommended in its 2017 Master Plan that high density residential housing be permitted within the Highway Commercial Zoning District at sites such as this one.
38. The Board recognizes that the applicant must establish enhanced proofs establishing that the proposed uses can be implemented without causing any damage to the Borough's Master Plan or Zoning Ordinance. On this point, the Board agrees with the testimony of both the applicant's planner, Ms. Cofone and the Board's own Planner, Ms. Miller, that the use being proposed by the applicant is exactly the type which is reflected within the newly adopted Master Plan of the Borough. Although the zoning ordinance may not have been updated yet to reflect the new Master Plan goals, the Borough Council is working on enacting such. As such, the Board finds that sufficient enhanced proofs have been established and there will not be any damage to the zoning plan of the Borough if the use variance is granted.
39. Finally, the Board does appreciate the privacy concerns expressed by the neighboring property owners. With those concerns in mind, the applicant has agreed to revise its landscaping plan and perimeter fence line so as to provide better privacy protection for these neighbors. As such, the Board feels comfortable holding that whatever negatives might be created by the application are surely outweighed by the benefits which an approval will provide. The site is currently the location of a vacant home. The applicant is proposing to do away with this abandoned structure (**Exhibit A-8**) and will bring new life to the neighborhood by constructing an architecturally attractive (**Exhibit A-3 and A-7**) townhouse development. This application proposes exactly the type of use which the Planning Board just recently indicated would be appropriate for the location by way of its new Master Plan. Additionally, the applicant is proposing sufficient parking to accommodate the site.

40. The Board notes the subject property currently consists of an abandoned home. If this application is denied, thereby prohibiting the applicant from constructing its proposed development, the Board would be thwarting the type of improvement just recommended within its new Master Plan for the Highway Commercial Zoning District. Additionally, if the application were denied and then the Borough Council follows through with amending the Borough Ordinances so as to allow this type of development, the applicant would be able to re-file its application without having to seek any variance relief. Forcing the applicant to wait in order to engage in such a process would make absolutely no sense and might actually lead to a less preferable development since the Board might not be able to obtain the type of positive revisions to the site plan which were obtained during the course of the 'use variance' process.
41. The Board can think of no legitimate reason why this application should be denied and instead can only find reasons why the application should be approved. The application provides proper density, proper parking and proposes a proper use for the subject property as envisioned by the Planning Board within its Master Plan.
42. Based upon everything which has been presented to the Board, as well as the Board Members' own familiarity with the municipality and the property in question, it is hereby concluded that the benefits of granting this application outweigh the detriments and the application can therefore be granted without impairing the public good and Zone Plan.
43. Finally, the proposed preliminary and final site approval may be granted as the Board finds that the proposed development will function properly as designed if all of the agreed upon revisions to the plans are made.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Keyport 44 Realty, LLC, for premises commonly known as 193 Chingarora Avenue and officially known as Block 1.01, Lots 43, 44 and 45 on the tax map of the Borough of Keyport, be granted subject to the following conditions:

1. Subject to the applicant adhering to all of the exhibits marked into evidence unless otherwise modified by this Resolution.
2. Subject to the applicant complying with all conditions contained within the T&M Review Letters which were marked into evidence as **Exhibits B-1 and B-2** unless otherwise indicated by this Resolution. All revisions to the plans as required by this condition shall be submitted to the Board's Engineer and Planner for their review and approval.
3. Subject to the plans being revised so as to provide for a new drainage connection pipe which would allow drainage from the rear of the property to connect to the front and then travel across the driveway into the front gutter.

4. Subject to the applicant revising its site plan to provide ten (10) off street parking spaces for the development.
5. Subject to the applicant revising its landscaping plan, including the planting of trees, so as to provide proper screening for neighboring properties. (Zelkova trees and Green Giant arborvitae are preferred)
6. Subject to the plans being revised so that the perimeter fence line will be extended from where it is currently depicted on **Exhibit A-6** and brought forward to run up against the back of the pads situated immediately before the front doors of the two outermost units. Any variances necessitated by this change, if any do exist, are hereby granted.
7. Subject to the proposed townhouse development being governed by a condominium association. The Master Deed of the Association, which must be reviewed and approved by the Board's Attorney, Engineer and Planner prior its recording with the Monmouth County Clerk's Office, shall include the following restrictions which shall not be altered by the Association without having first received approval, upon notice to the public, from the Borough of Keyport Planning Board, or its successor of similar jurisdiction:
 - (A) So as to avoid unsightliness, all garbage cans must be kept inside of the townhouse garages except for on garbage pick-up day. The storage space for the garbage cans within the garages may not interfere with the ability to also park a car inside.
 - (B) Due to the limited space available at the site, the townhouse garages must be kept storage free (with the exception of the aforementioned garbage cans) so as to ensure the ability to park a car inside.
 - (C) Due to the limited space available, the driveway space at the development shall be restricted to residents only.
 - (D) The Association would be required to maintain all landscaping as approved by this Resolution.
 - (F) The attic of each unit shall be prohibited from becoming habitable space.
 - (G) The Association shall not be permitted to change the approved facade (**Exhibit A-7**) of the townhouses.
 - (H) All fencing approved by this application must be maintained by the Association.
8. All representations made under oath by the applicant or its agents shall be deemed conditions of this approval, and any misrepresentations or actions by the applicant contrary to the representations made before the Board shall be deemed a violation of this approval.
9. 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.
10. 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.

11. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations, including but certainly not limited to, CAFRA approval.
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 of the Borough of Keyport 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. This approval shall be deemed void by abandonment if a permit is not applied for within one year of the date hereof.
14. The applicant must publish adequate notice of this Resolution in the official newspaper of the Borough of Keyport at his sole cost, within ten days, and provide proof of publication to the Board Secretary within thirty days.

The foregoing was Moved by J. Kovacs, seconded by N. Vecchio and on Roll Call, the following vote was recorded:

Affirmative: N. Vecchio, M. Sessa, R. Benedict, L. Davidson, D. Fotopoulos, J. Kovacs, K. Howe

Negative:

Abstentions:

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 22, 2018.



Denise Nellis, Secretary of the Board