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LLM in Trial Advocacy
† Member Nat'l Academy of Elder Law Attorneys
▪ Certified by the Supreme Court of New Jersey as a Civil Trial Attorney
Certified By The National Board of Trial Advocacy As A Civil Trial Advocate
Rule 1:40 Qualified Mediator

BERKELEY TOWNSHIP OFFICE
HOLIDAY CITY PLAZA III
600 MULE ROAD, SUITE 16
TOMS RIVER, NJ 08757

BRICK AREA
(732) 451-0800

MANCHESTER AREA
(732) 408-9455

June 16, 2025

Via E-Mail & FedEx Overnight
Denise Nellis
Planning Board Secretary
70 W. Front Street
Keyport, NJ 07735
dnellis@keyportonline.com

RE: 3 Cass Street
Block 33 Lot 16
Our File No.: 15851

Dear Ms. Nellis,

With regard to the above referenced application, enclosed please find the following which we intend to use as exhibits for the June 26, 2025, hearing:

- Existing Conditions Plan;
- Resolution for App#24-13, adopted on March 27, 2025.

Naturally, should you have any questions or wish to discuss the enclosed, please feel free to contact me. If I am not available, please ask to speak with my paralegals, Kelsey Nolan and/or Marie DiBella.

Very truly yours,

ROBERT C. SHEA

RCS/kjn
Enclosure

EXISTING CONDITIONS* FOR:

3 CASS STREET

BLOCK: 33, LOTS: 16, 17, 20, 20.01

BOROUGH OF KEYPORT

MONMOUTH COUNTY, NJ

EXISTING OCCUPANCY GROUP S-1 & B-NP*
TYPE OF CONSTRUCTION III-B*
BUILDING IS FULLY SPRINKLERED*

*BASED ON SURVEY PROVIDED BY OWNER

ZONING DATA

	REQUIRED (I INDUSTRIAL)	LOTS 16, 17, 20 & 21.01
MIN LOT AREA	15,000 SF	+/- 374,844 SF
MIN LOT WIDTH	100'	+/- 245' / 280' / 220' / 260'
MIN FRONT YARD SETBACK	15'	*
MIN REAR YARD SETBACK	25'	*
MIN ONE SIDE YARD SETBACK	5'	*
MIN BOTH SIDE YARD SETBACK	10'	*
MAX BUILDING COVERAGE	50% MAX	+/- 34%
ALL BUILDINGS AND IMPERVIOUS SURFACE COVERAGE	90% MAX	+/- 51%
MAX BUILDING HEIGHT	45'	27' - 8"

*EXISTING NON-COMPLIANCE

SITE PLAN OF _____
BLOCK _____ DATE _____ APPLICANT _____
ADDRESS _____

I CONSENT TO THE FILING OF THIS PLAN WITH THE PLANNING BOARD

(OWNER) (DATE)

I HEREBY CERTIFY THAT I HAVE PREPARED THE PLOT PLAN AND THAT ALL DIMENSIONS AND INFORMATION THEREON DEPICTED IS CORRECT.

(NAME) (TITLE AND LICENSE)

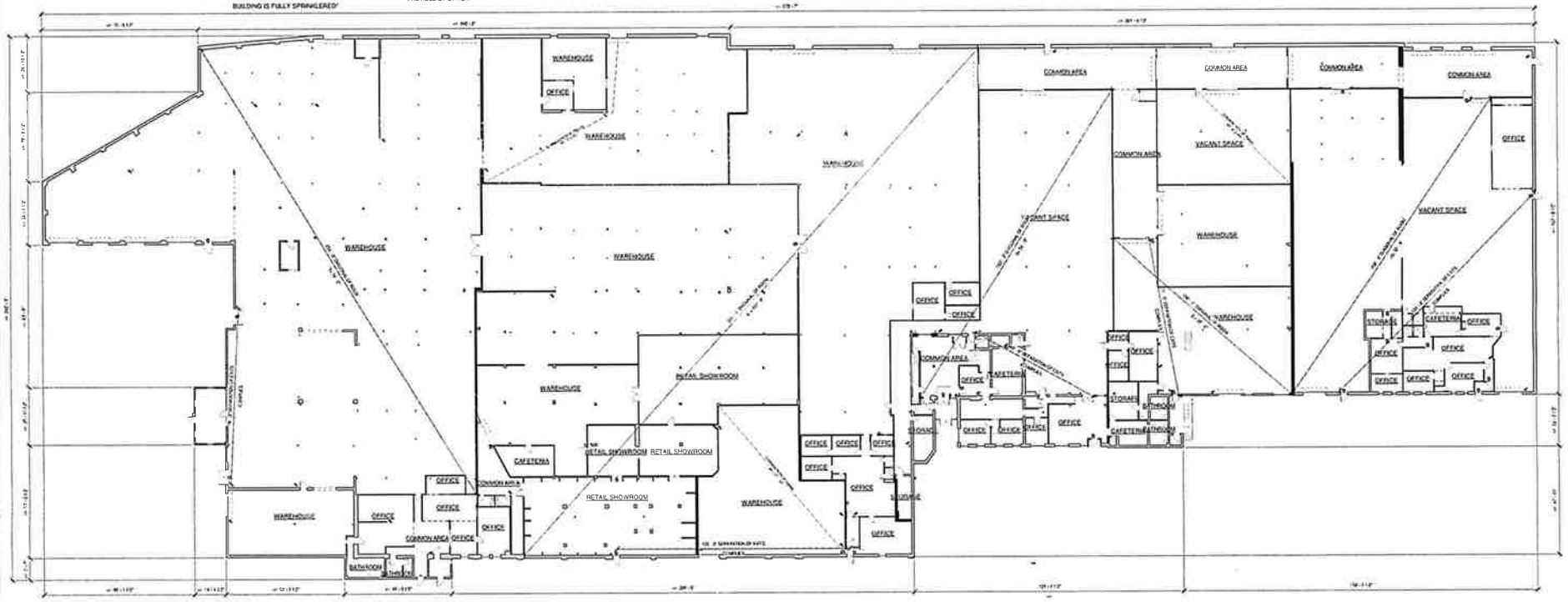
I HAVE REVIEWED THIS PLOT PLAN AND CERTIFY THAT IT MEETS ALL CODES AND ORDINANCES UNDER THAT JURISDICTION

(DATE) (MUNICIPAL ENGINEER)

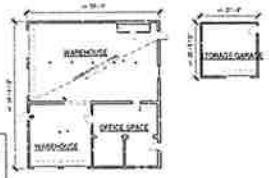
APPROVED BY PLANNING BOARD

PLOT PLAN FINAL _____

(CHAIRMAN) (DATE)



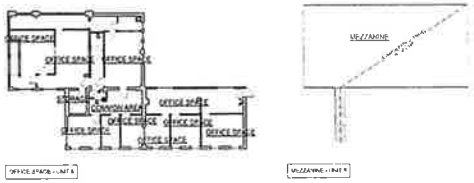
FIRST FLOOR EXISTING CONDITIONS PLAN
Scale: 1/16" = 1'-0"



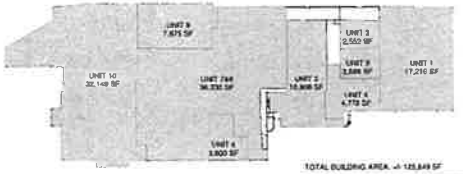
TAX MAP
Scale: 1" = 400'-0"

LEGEND

LIFE SAFETY	FIRE ALARM
TRAVEL DISTANCE TO EXIT OR EXIT ACCESS DOOR	PULL STATION
EXIT SIGN	FIRE ALARM CONTROL PANEL
EXIT DOOR	SMOKE DETECTOR
EMERGENCY LIGHTING UNIT	HORN STROBE
EMERGENCY LIGHTING UNIT WITH REMOTE HEADS	BELL ALERT
EMERGENCY LIGHTING UNIT WITH EXIT SIGN	SPRINKLER
EMERGENCY LIGHTING UNIT WITH EXIT SIGN AND REMOTE HEADS	SPRINKLER CONTROL VALVE
PORTABLE FIRE EXTINGUISHER	SPRINKLER FLOW SWITCH
FIRE RATED WALL	SPRINKLER TAMPER SWITCH
1 HR FIRE RATED CEILING	WATER FLOW DETECTION SYSTEM
	PORTABLE FIRE EXTINGUISHER



SECOND FLOOR EXISTING CONDITIONS PLAN
Scale: 1/16" = 1'-0"



KEY PLAN
Scale: 1/64" = 1'-0"

TOTAL BUILDING AREA: +/- 125,849 SF

UNIT #	CURRENT TENANT	CURRENT USE
1,2	VACANT	N.A.
3	PHILSTICK KITCHENS	F
4	KASTLE FUNDRAISING	S-1 B
5	VACANT	N.A.
6	CRAFTSMEN NAILING	F
7,8	BEST TILE	S-1 B
9	VACANT	N.A.
10	AUTOMOBY	F
11	SERVICE AIR	S-1 B

EXISTING CONDITIONS FOR:
3 CASS STREET
BLOCK: 33, LOTS: 16, 17, 20, 20.01
BOROUGH OF KEYPORT
MONMOUTH COUNTY, NJ

REVISION LEGEND

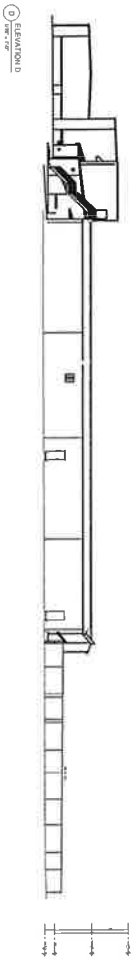
No.	Date	Description
1	09/25/2023	REVISED AS PER REVIEW LETTER

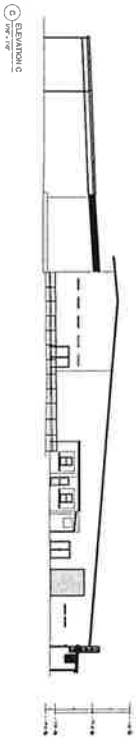
LIFE SAFETY

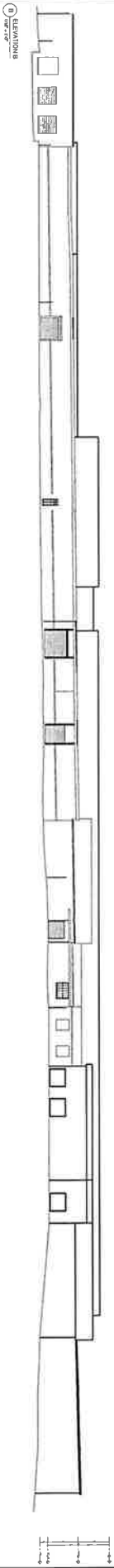
Scale	1/16"=1'-0"
Drawn	MS
Checked	BF
Date	04/20/2023

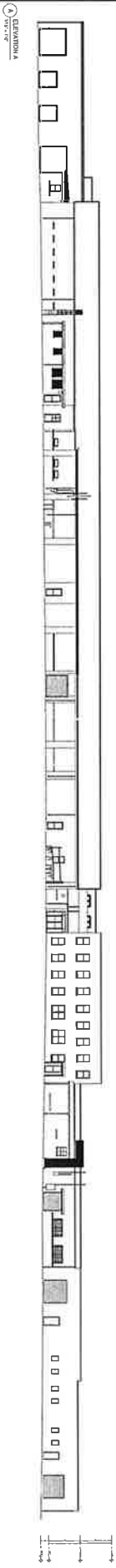
DRAWING NO.
A-100

BF DESIGN
ARCHITECTURE & PLANNING
33 MONMOUTH AVENUE, UNIT 207
LINCROFT, NEW JERSEY 07738
P 732-842-0002 E BF@BFDESIGN.COM









A-101

ELEVATIONS

REVISION LOG-END		
No.	Date	Description
1	10/25/2023	REVISED AS PER REVIEW LETTER

EXISTING CONDITIONS* FOR:

3 CASS STREET

BLOCK: 33, LOTS: 16, 17, 20, 20.01

BOROUGH OF KEYPORT

MONMOUTH COUNTY, NJ

B-F DESIGN

ARCHITECTURAL DRAWINGS

Mayor
Rose P. Araneo, Class I

Planning Board Members
Harry M. Aumack II
William McDermott
J. Christopher Demarest
Donald Pacheco
Thomas Burke

Alternates
Steven Dixon
Kraig Bartolome

The Pearl of the Bayshore℠
Keyport
NEW JERSEY

Class II
William Kane

Class III
Joseph Merla

Chairman
Juan Carlos Oviedo

March 28, 2025

Robert Shea
R.C. Shea & Associates
Counsellors at Law
244 Main Street, Toms River, NJ 08754

RE: Abrohom Schlaff
KUPB 24-13
3 Cass Street

Dear Mr. Shea;

Attached please find the Resolution for Application number 24-13 that was adopted at the Planning Board Meeting dated March 27, 2025.

Notice of this Approval must be published in the public notice section of the Asbury Park Press within 10 days of your receipt of this Resolution.

Proof of Publication should be filed in my office within thirty days.

If you have any questions, please do not hesitate to call me direct at 732-739-5123.

Very truly yours,

Denise Nellis

Denise Nellis
Planning Board Secretary
Borough of Keyport
dnellis@keyportonline.com

Cc: Applicant
G. Falco
M. Clark
L. Amada
T. Taylor
P. Murphy

Resolution prepared by:
Marc A. Leckstein, Esquire
Leckstein & Leckstein, LLC
463 Prospect Avenue
Little Silver, NJ 07739

RESOLUTION
DISMISSING APPEAL AS BEING OUT OF TIME

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 33, LOT 16

Application # 24-13

AVROHOM SCHLAFF / AP CASS STREET LLC
3 CASS STREET

WHEREAS, Avrohom Schlaff / AP Cass Street, LLC the owners of property located at 3 Cass Street, which is officially designated as Block 33, Lot 16 on the tax map of the Borough of Keyport, have (1) filed an appeal pursuant to the provisions of N.J.S.A. 40:55D-70(a) seeking to reverse determinations made within a letter of the Borough Zoning Officer dated September 11, 2024 and (2) seeking an interpretation pursuant to the provisions of N.J.S.A. 40:55D-70(b) as to whether the current use of the applicant's property is permitted by ordinance;

WHEREAS, a public hearing on the appeal was conducted during a regularly scheduled meeting of the Unified Planning Board held on December 5, 2024 in which the applicant was given an opportunity to be heard;

NOW THEREFORE, be it Resolved by the Unified Planning Board of the Borough of Keyport that the following findings of facts are made:

1. AP Cass Street, LLC is the owner of property located at 3 Cass Street, which is officially designated as Block 33, Lot 16 on the tax map of the Borough of Keyport. The principal of the LLC is Avrohom Schlaff.
2. The subject property is located within the Borough's Industrial Zoning District which, pursuant to § 25-1-12.1 of the zoning ordinance permits a myriad of uses, but is very specific in that it does not permit "salvage or junk yards".
3. The subject property is the site of a business, known as Automoby, LLC, which on November 22, 2022, received approval by the Borough's former Zoning Officer, David Olsen, to operate a "Dealership company that buys, sells and does overseas transportation of salvaged cars & parts".
4. Mr. Olsen's approval came by way of a "Change Of Use" certificate in which he noted that the proposed use was "permitted by ordinance".
5. The "Change of Use" Certificate was issued following submital of a Zoning Application by Automoby, LLC which described the proposed business as follows: "Automoby LLC is the Dealership company, that buys, sells, does the overseas transportation of salvage cars and parts as well." No other description of the business appears in the application.

6. Based upon the approval granted by the Zoning Officer, Automoby, LLC was lawfully permitted to commence business operations at the subject site without the need of any relief from the Unified Planning Board.

7. By way of correspondence dated June 28, 2024, authored by the Borough's Interim Zoning Officer, Trevor J. Taylor, P.E., P.P., C.M.E.,, the owner of Automoby, LLC, was advised that the business was operating in violation of the Borough's Zoning Ordinance.

8. Specifically, Mr. Taylor's letter held that after reviewing operations taking place on the premises, he had determined that Automoby, LLC was operating a salvage and junk yard on the property. The letter referred back to the November 22, 2022 "Change of Use" certificate and Automoby LLC's original application, noting the following: "Discernibly, the submitted application did not clearly identify the proposed use. Had the Applicant provided specific details on the actual use that was proposed on the property (the storage of salvaged and junk vehicles), the issuance of the zoning permit for a "Change of Use" could not have been approved as "permitted by ordinance".

9. Mr. Taylor's violation letter went on to note the provisions of § 25-1-12.6 which require: "Any use which is not conducted wholly within a completely enclosed building shall not be less than 50 feet distant from a residential district and shall be screened as required in Subsection 25-1-14.6".

10. The above cited provision was noted due to Mr. Taylor's observation: "It appears that the salvaged vehicles and trailers are within 50 feet of a residential district which is a violation of this section of the Land Use Ordinance.

11. Mr. Taylor's violation letter further held, pursuant to § 25-1-14.6 of the Borough's zoning ordinance that "site plan approval is required from the Borough Planning Board for the installation of lighting within the Industrial District" as such had been installed without firs receiving approval from the Board to do so.

12. Finally, Mr. Taylor's violation letter found the existence of a junk yard at the site was in violation of § 25-1-15.19 of the Borough's zoning ordinance in that such a use was prohibited from operating within a Tier 1 Wellhead Protection Area.

13. Mr. Taylor's letter concluded with the following demand: "Operation of the salvage/junkyard facility on the property shall cease and all junked and salvaged vehicles shall be removed from the premises within 30 days. Penalties may be assessed by the Borough in accordance with section 1-5.2 of the Borough's "Revised General Ordinances of the Borough of Keyport."

14. Although Mr. Taylor's letter was directed to Automoby, LLC, a copy was served by Mr. Taylor upon the property's owner, Avrohom Schlaff / AP Cass Street, LLC.

15. Pursuant to the provisions of N.J.S.A. 40:55D-72, an appeal of a decision of an administrative officer shall be taken within 20 days of that decision having been rendered.

16. The period for appealing Mr. Taylor's violation letter of June 28, 2024 expired on July 18, 2024. That date passed without any appeal being filed.[1]

17. Despite the demand to cease the offending activities, Automoby, LLC apparently continued to operate its business as it had been doing. This led the Borough's Property Maintenance/Zoning Enforcement officer, Paul Murphy[2], to send an e-mail on September 10, 2024 to Avrohom Schlaff, the principal of the property owner AP Cass Street, LLC, advising: "The cease and desist order that was issued on June 28 was given until September 1 to be satisified, and in return for extending the deadline the lighting ordinance, property buffer zone and vehicles traffic regulations were to be followed."

18. A day later, on September 11, 2024, Paul Murphy sent a follow-up e-mail to Mr. Schlaff advising that since the issues at the site had not been abated, he would "...be issuing multiple summons for the unapproved and illegal conditions at the property."

19. On September 19, 2024, Avrohom Schlaff & AP Cass Street, LLC, by way of their legal counsel Robert C. Shea, Esquire of the law firm R.C. Shea & Associates, filed an application with the Unified Planning Board seeking, pursuant to the provisions of N.J.S.A. 40:55D-70(a), an "overturning [of] the Zoning Officer's determination that the current use of the Property violates § 25-1-12.1 of the Keyport Land Use Regulations and requires a use variance" and "finding that the use of the Property is not a salvager or junk yard".[3]

20. Avrohom Schlaff / AP Cass Street, LLC also sought in this same application, an interpretation, pursuant to the provisions of N.J.S.A. 40:55D-70(b), that § 25-1-12.1 of the Borough's Zoning Ordinance allowed the existing use at the property to continue.

21. The appeal/interpretation requests of Avrohom Schlaff/ AP Cass Street, LLC were set down for a public hearing on December 5, 2024. However, prior to that date, the Board's attorney, Marc A. Leckstein, Esquire, did advise the applicant's attorney of his belief that the time for bringing the appeal/interpretation request had expired on July 18, 2024, 20 days after the Interim Zoning Officer, Trevor J. Taylor, had issued his violation letter of June 28, 2024.

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1. The Board recognizes that Automoby, LLC had, by way of correspondence dated March 15, 2024, from its legal counsel, Evan P. Zimmerman, Esquire of the law firm Giordano, Halleran & Ciesla, PC, filed an appeal with the former Zoning Officer David Olsen challenging his decision that the business was operating a "junkyard or salvage yard". This appeal was based upon a "cease-and-desist" letter served by Mr. Olsen upon the property owners, AP Cass Street, LLC, on February 26, 2024. Despite having filed this appeal with Mr. Olsen on March 15, 2024, Automoby, LLC never notified the Planning Board of its filing nor took any further steps to pursue same. The Borough was ultimately notified that Mr. Zimmerman and his firm no longer represented the business.

2. Paul Murphy is also the Borough's Assistant Zoning Officer.

3. The business operator, Automoby, LLC, was not a party to this appeal.

22. During the hearing on December 5, 2024, the applicants were represented by their counsel, Robert C. Shea, Esquire. The Board heard and considered his argument that the appeal/interpretation request had been filed within the required 20 day period as the applicants were not appealing Mr. Taylor's violation letter of June 28, 2024, but rather Mr. Murphy's e-mail of September 11, 2024.

23. When asked what aspect of Mr. Murphy's e-mail was being appealed, Mr. Shea advised the applicants' were seeking to appeal Mr. Murphy's determination that the current operations on the subject property constitute a salvage or junk yard.[4]

24. Mr. Shea further argued that if the Board nevertheless found that the applicant was out of time to bring such an appeal, they should still be entitled to proceed with their interpretation request since there is no time period in which one is required to seek such.

CONCLUSIONS

25. In considering this appeal, the Board wishes to make clear that it is not making a decision on whether the business currently being performed at the site is appropriate. That is not the question before the Board at the moment and nothing in this Resolution should be read as indicating whether or not such uses would be approved if either the property owner or the business operator were to seek site plan approval and/or variance relief from the Board.

26. The sole issue before the Board at this time is whether the applicants, Avrohom Schlaff / AP Cass Street, LLC, are time barred from proceeding with their appeal/interpretation request pursuant to the provisions of N.J.S.A. 40:55D-72 which requires that appeals from the decision of an administrative officer must be brought within 20 days of their rendering.

27. The Board recognizes the applicants' argument that they should be allowed to proceed with their appeal request since they filed said appeal on September 19, 2024, only eight (8) days after the Borough's Property Maintenance/Zoning Enforcement Officer, Paul Murphy, sent his September 11, 2024 e-mail to the property's owner advising that summons would be issued since the property remained in violation of the zoning ordinance.

28. The Board notes that Mr. Murphy's e-mail of the previous day, September 10, 2024, specifically indicates that the violations he is referencing are founded upon "the cease and desist order that was issued on June 28".

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4. Mr. Shea also argued the appeal was timely because it should somehow be viewed as a continuation of Automoby, LLC's appeal filed with the former Zoning Officer back on March 15, 2024. (See footnote 1 above) This argument is rejected since Automoby's appeal is not referenced anywhere in the application filed with the Board by Avrohom Schlaff / AP Cass Street, LLC on September 19, 2024. As noted above, the applicant's appeal focuses solely on Paul Murphy's e-mail of September 11, 2024.

29. The cease and desist order issued on June 28, 2024 was the violation letter authored by the Borough's Interim Zoning Officer, Trevor J. Taylor, which had made clear his findings that the property was operating as a "salvage or junk yard" in violation of § 25-1-12.1 of the Borough's zoning ordinance.

30. The Board also notes that the appeal application filed by the applicants specifically indicates they are seeking relief from the Board "overturning the Zoning Officer's determination that the current use of the Property violates § 25-1-12.1 of the Keyport Land Use Regulations and requires a use variance." This is important to recognize since no where within Mr. Murphy's e-mails of September 10, 2024 or September 11, 2024 does he make any reference to his having made a determination the applicants require use variance relief. Instead, all Mr. Murphy's e-mails do is advise that the property continues to be in violation of the "cease and desist order that was issued on June 28" and therefore summons will be issued. It is in fact the June 28, 2024 letter of Mr. Taylor, and only the June 28, 2024 letter of Mr. Taylor, wherein a determination is made that the current uses on the property violate § 25-1-12.1 and therefore a use variance should be sought.

31. The Board rejects the applicants' argument that they should on September 19, 2024, be entitled to file an appeal of an e-mail from a code enforcement officer indicating that he will be enforcing a determination of the Zoning Officer which was made on June 28, 2024, eighty-three (83) days prior to the filing of the appeal.

32. If the twenty (20) day appeal period mandated by N.J.S.A. 40:55D-72 were found to restart every time a municipality attempted to enforce a decision previously reached by its Zoning Officer, it would render the Municipal Land Use Law's direct limitation of that appeal period completely meaningless. Such a result cannot possibly be what the Legislature intended when enacting the statute.

33. The Board therefore has no choice but to find that the applicant's request to appeal the Zoning Officer's determination that the current operations on the subject property constitute a salvage or junk yard is out of time, being it was not filed until September 19, 2024, eighty-three (83) days after the determination was made on June 28, 2024.

34. With respect to the applicants' argument that even if the appeal was filed out of time, the Board should nevertheless consider its interpretation request pursuant to N.J.S.A. 40:55D-70(b), such must be rejected as well.

35. The Board certainly recognizes that usually the twenty (20) day time limitation found in N.J.S.A. 40:55D-72 does not apply to requests for interpretations. The Board does agree that generally an interpretation request may be brought at any time by an interested party.

36. The Board finds that the request brought by the applicants in this case is not a typical interpretation request. Here, the applicants are asking the Board to interpret "§ 25-1-12.1 to allow the use of the Property to continue." There is no way to read this request other than it asking the Board to overturn the June 28, 2024 decision of the Zoning Officer that the existing use is in direct violation of § 25-1.12.1 and therefore requires use variance relief.

37. The Board concludes that an applicant may not utilize the interpretation powers of a Planning Board as a way to circumvent the twenty (20) day time limitation on taking an appeal of a Zoning Officer's decision. To allow such an alternate avenue to exist would render nugatory the Legislature's establishment of a twenty (20) day window in which administrative decisions may be challenged. Once again, such a result cannot possibly be what the Legislature intended when enacting the statute.

38. For the above reasons, the Board has no choice but to conclude the applicant's attempt to shroud an appeal of the Zoning Officer's determination that the current operations on the subject property constitute a salvage or junk yard in the form of an interpretation request is inappropriate and therefore cannot be permitted. Such a request is out of time, being it was not filed until September 19, 2024, eighty-three (83) days after the determination was made on June 28, 2024.

39. While the Board has no choice but to dismiss the applicants' appeal/interpretation requests as being out of time, it should be noted that if the property owner or business owner wishes to seek approval to continue its current activities at the subject property, they are free to apply to the Planning Board for variance relief to do so. At that time a public hearing, with notice to the public, will occur and whether variance relief should be granted can be determined in the appropriate setting with a full record being established.

NOW THEREFORE, be it resolved by the Unified Planning Board of the Borough of Keyport that for all of the reasons stated, the appeal brought by the applicants in this matter is hereby denied.

NOW THEREFORE, be it further resolved, that the Board Secretary is hereby directed to publish adequate notice of this Resolution in the official newspaper of the Borough of Keyport, at the cost of the applicants, within thirty days, and provide a copy of this Resolution, along with proof of publication to the applicants and the zoning officer.

The foregoing was Moved by W. McDermott, second by D. Pacheco
and on Roll Call, the following vote was recorded:
Affirmative: Mayor Araneo, Councilmember Merla, Chairman Oviedo, C. Demarest,
W. McDermott, D. Pacheco
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 March 27, 2025.

Denise Nellis, Secretary of the Board