

RESOLUTION OF APPROVAL
FOR BIFURCATED USE VARIANCE APPROVAL
FOR THE PURPOSE OF CONSTRUCTING NEW SINGLE FAMILY DWELLING UNITS
WHERE SUCH A USE IS NOT PERMITTED

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 22 LOTS 30 and 31
Application # 13-06
MICHAEL AND CATHERINE CUMMINS
44 BEERS STREET

WHEREAS, Michael and Catherine Cummins have applied to the Unified Planning Board of the Borough of Keyport for bifurcated use variance approval so as to allow for the construction of nine (9) new single-family dwelling units on existing vacant lots located at property commonly known as 44 Beers Street, and officially designated as Block 22, Lots 30 and 31 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 October 24, 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 applicants, Michael and Catherine Cummins, as the first part of a bifurcated land use application, to be permitted to construct a total of nine (9) new single-family dwelling units on existing vacant lots located at property commonly known as 44 Beers Street, which is officially designated as Block 22, Lots 30 and 31 as shown on the official tax map of the Borough of Keyport.
2. The property is located within the Borough's General Commercial (GC) Zone which does not permit single-family dwelling units. 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 Paul N. Mirabelli, Esquire whose office is located at 3400 Highway 35, Suite 3, Hazlet. .
4. According to the Engineering/Planning Review Letter dated October 18, 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**, there are no bulk variances associated with this application.

5. 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 into this Resolution by reference.
6. As per the engineering review letter, the proposed project site, as revised at the public hearing, consists of 36,700 square feet +/- in area which equates to approximately .84 acres. It is located on the west side of Beers Street and is surrounded by commercial uses to the north, single-family and multifamily residences to the east, a high rise multi-family apartment building (Keyport Legion Apartments) to the south and the Luppataong Creek to the west.
7. Mr. Norbut and Mr. Truscott noted that the proposed development will result in the construction of nine (9) dwelling units. The proposed density for the site would be 10.7 dwelling units per acre based on lot area within the lot lines.
8. In support of the application, the applicant submitted the following exhibits into evidence:
 - A-1: Original application package
 - A-2: "Variance Application Plans", dated August 29, 2013, last revised September 25, 2013, consisting of four (4) sheets, as prepared by Robert S. Larsen, P.A., P.P. of Chester, Ploussas, Lisowsky Partnership, LLC.
 - A-3: Oversized arial image depicting the site location and surrounding properties
 - A-4: Colorized version of Sheet 3 of Exhibit A-2 depicting lot layout.
 - A-5: Colorized version of Sheet 4 of Exhibit A-2 depicting proposed elevations.
9. In support of the application, testimony was elicited from the applicant, Mr. Michael Cummins.
10. Mr. Cummins explained that he and his wife had owned the subject property at 44 Beers Street for approximately 15 years.
11. Mr. Cummins noted that this property had previously been approved by the Unified Planning Board for 28 town home units. However, that application had included additional lots. The approved project had not been built as the developer, Kara Homes, had gone bankrupt. He was now looking to return to the Board with the hope of constructing the nine (9) single family homes which were being proposed.
12. The applicants presented testimony from their project engineer, Thomas T. McGrath, P.E. whose offices are located at 100 Matawan Road, Suite 100, Matawan, New Jersey 07747.
13. Mr. McGrath testified that the existing property at 44 Beers Street is currently a vacant gravel lot with a flood elevation of 14. He noted the property is located within an AE flood zone.

14. Mr. McGrath indicated that when the applicants had looked into developing the lot with a commercial use that would be permitted in the GC Zoning District, it became clear that any such venture would have to be built at an elevation of 7 feet. It therefore was apparent to the applicants that a residential use would be more practical for the site since parking can be placed at the ground level, with all residential areas built safely above sea level.
15. Mr. McGrath indicated his belief that all nine (9) units could comfortably fit on the available property.
16. Mr. McGrath noted that the proposed units would be built on wood pilings with flood drains in the garages. The garages would not be water tight as they would be intended to allow water to come in and then flow back out. The driveways will also be graded slightly. All utilities would be placed above the flood grade.
17. It was recognized by Mr. McGrath that there is a gabion wall located along the side of the property facing Luppatatong Creek, which serves to protect the site from flooding waters. He was unclear whose responsibility it was to maintain the wall. As a condition of approval, the applicants agreed that they would discern whose responsibility it is to maintain the wall and present that information as part of their site plan application.
18. Finally, Mr. McGrath noted that there would be a 15 foot wide easement proposed through the center of the site to accommodate an existing drainage pipe. This would limit the manner and size of the homes which would be constructed at the property. As a condition of approval, said easement would need to be recorded with the County Clerk's Office. The Easement would need to be submitted to both the Board Engineer and Board Attorney for review prior to its recording.
19. In addition to their professional planner, the applicants also presented testimony from their professional architect, Robert S. Larson, P.A., P.P., of Chester, Ploussas, Lisowsky Partnership, LLC, which has offices at 100 Matawan Road, Suite 100, Matawan.
20. Mr. Larson, referring to Exhibits A-4 and A-5, noted that the project had been intentionally designed to have architecturally different structures so that it would not look like a planned development. From an architectural perspective, he felt the development would be a great addition to the Borough and the immediate neighborhood.
21. He indicated that higher grade vinyl siding would probably be used for the exterior of the proposed home, but cautioned that this had not actually been determined yet.
22. Mr. Larson agreed with the testimony presented by Mr. McGrath that nine (9) single-family homes could fit comfortably on the proposed property. He indicated the proposed lots would have different sizes with the smallest lot consisting of 3,000 square feet. He also anticipated there being approximately ten (10) feet between each home. However, the exact lot sizes

had yet to be determined and would instead be dealt with during the site plan phase of the application.

23. The final witness presented by the applicants was their professional planner, Christine Cofone, P.P. who has offices at 125 Half Mile Road, Suite 200, Red Bank, New Jersey.
24. Ms. Cofone testified that she had examined the site and believed that from a planning perspective, it would be inappropriate to construct a commercial use there as it is surrounded by predominately residential uses. She also echoed the concerns over having to elevate a commercial use which had been expressed by Mr. McGrath.
25. She noted her belief that the site was particularly suitable for residential homes. The site is located near the water and is within walking distance from the Keyport downtown area. As such, building residential single-family homes, which would be filled by people who could enjoy the nearby water and shop at the nearby downtown area, would help promote smart growth for the Borough.
26. Ms. Cofone testified that she believed special reasons existed for granting the proposed application. She noted the development would meet several of the goals of zoning as proscribed by the Municipal Land Use Law at N.J.S.A. 40:55D-2. These included (1) providing for adequate light, air and open space for new residents to enjoy, (2) helping to promote the establishment of appropriate population densities that will contribute to the well-being of persons and neighborhoods by allowing for new residents to frequent the nearby business district, (3) providing for sufficient space to allow for a variety of residential, recreational and commercial areas and (4) helping to create a desirable visual environment through creative development techniques by way of building an aesthetically pleasing new development along Beers Street where only a vacant lot currently exists.
27. Ms. Cofone further testified that she could not foresee any negatives associated with this application. Since she did not envision this property as being appropriate for commercial use, she did not believe there would be any detrimental impact to the Borough's Zoning plan. In fact she felt it would act as a positive for the surrounding neighborhood since it would lead to the creation of a good transition area from the nearby multifamily developments to a single family one.
28. The following members of the public also were sworn and spoke in support of the application, indicating they felt it would be extremely good for Keyport see this type of single-family development occur.
 - A) **Michael Lane - 51 First Street, Keyport**
 - B) **Lawrence Vecchio - 2100 Grand Central Avenue, Lavallette**
29. No one else from the public spoke with respect to this application.

30. The Board's professionals had no objections, from an engineering or planning perspective, to the application being approved as proposed.
31. 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 commercial development at the proposed site would not be appropriate. Rather, when considering the neighboring residential uses, a single-family home development would make far more sense. The Board finds that the proposed architectural plans (**Exhibit A-5**), if adhered to, will act as a great benefit for the surrounding neighborhood and the Borough as a whole.
32. The Board finds that having a vacant lot on the applicant's property is a detriment to the aesthetics of the Borough. If the property is developed in the fashion depicted in **Exhibits A-4 and A-5**, it will serve as a much needed aesthetical improvement for the surrounding neighborhood and the Borough as a whole.
33. 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 such residential use, it has nevertheless, been developed with residential uses in the area. The Board agrees with the testimony of Ms. Cofone as to the fact that based upon the property's location along a creek and within walking distance of the Borough's downtown area, it is would be far more appropriate for the site to be developed in a residential fashion than a commercial one.
34. The Board also agrees with Ms. Cofone's testimony regarding the requisite special reasons having been met since it is quite clear the proposed development will lead to the introduction of appropriate population densities for the neighborhood in question. It will also lead to the creation of desirable environment for those new residents, and those living on nearby properties, to live within.
35. The Board notes and accepts the practical hardships noted by Mr. McGrath which would be associated with developing the property as a commercial use. Any commercial venture would have to be elevated 7 feet in order to deal with the reality of the property being located along Luppataong Creek. This is not a concern with single family homes since garage space can be located on the lower level with all residential living space being placed safely above.
36. Based upon all of the above, the Board finds that the requisite enhanced proofs have been presented establishing why the requested use variance relief is appropriate for this particular location.

37. Finally, 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.
38. The Board is hard pressed to envision any negatives associated with this application. Provided the applicants comply 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 use and bulk 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. 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 Michael and Catherine Cummins seeking bifurcated use variance relief so as to be able to construct nine (9) new single-family homes on premises commonly known as 44 Beers Street and officially designated as Block 22, Lots 30 and 31, 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 plans submitted into evidence as **Exhibits A-2, A-4 and A-5**. 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 October 18, 2013 except as might be modified by this Resolution. **(Exhibit B-1)**
4. Subject to the condition that the applicants submit, as part of the site plan phase of this application, information as to who holds responsibility for maintaining the gabion wall located at the site, and establish how that wall will continue to be maintained after the proposed development has been constructed.
5. Subject to the condition that a 15 foot wide easement be established at the center of the site to accommodate an existing drainage pipe. Said easement will need to be recorded with the County Clerk's Office and would need to be submitted to both the Board Engineer and Board Attorney for review prior to that recording.

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 applicants 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 applicants 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.

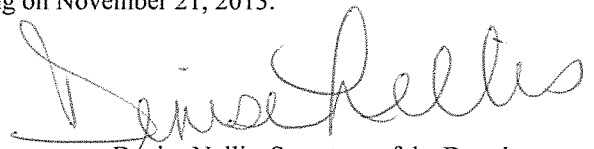
The foregoing was Moved by J. Oviedo Seconded by R. Burlew and on Roll Call, the following vote was recorded:

Affirmative: J. Oviedo, R. Burlew, M. Sessa, R. Benedict

Negative:

Abstentions: D. Fotopoulos, J. Kovacs

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 November 21, 2013.

A handwritten signature in cursive script, appearing to read "Denise Nellis", written in dark ink.

Denise Nellis, Secretary of the Board