

KEYPORT UNIFIED PLANNING BOARD

The Keyport Unified Planning Board held a Regular Meeting on July 28, 2016 which was called to order at 7:00 PM in the Council Chambers at Borough Hall, 70 West Front Street, Keyport, NJ, called to order by Roger Benedict, the Sunshine Law Notice was read followed by the Flag Salute.

ROLL CALL:

PRESENT: Mayor Harry Aumack II, Councilman Goode, R. Benedict, D. Fotopoulos, J. Kovacs (arrived at 7:03pm), T. Musson, G. Sappah, J. Carlos Oviedo, J. Kovacs-Olsen

Fran Mullan, Engineer, Donna Miller, Planner, Marc Leckstein, Planning Board Attorney

ABSENT: R. Burlew, M. Sessa

Minutes: April 28, 2016 meeting

Motion to approve made by T. Musson, second by M. Goode with ayes by all present.

Mr. Kantor asked that his client's application Harry Muradi, KUPB 16-02, 36 Atlantic Street, block 92, lots 2&3 be carried over to the August 25th meeting at 7pm with no further notice.

Motion to carry without further notice was made by Mayor Aumack, second by T. Musson with ayes by all present.

APPLICATION: PATRICK DEVENNY
KUPB 15-01
Blk 15, Lot 18
138 Washington Street
Bulk Variance, Site Plan

Exhibits A1 – Zoning Denial dated 1/7/2016
 A2 – Planning Board Application dated 1/12/2016
 A3 – Survey dated 5/28/2015
 A4 – Architectural prepared by Robert Gorski dated 2/23/2015
 B1 – T&M Review letter dated 6/16/2016

Mr. Devenny was sworn in. Mr. Leckstein asked a property inspection failure dated 3/12/15 not sure why it was there. Wanted to make sure why it was included. Mr. Devenny not sure why it wasn't there. There was discussion regarding this document. Recording secretary stated she could find out but Mr. Leckstein stated it wasn't necessary didn't have to do anything with the application.

Mr. Devenny spoke about his application. He explained that this was a ten year plan that had to be put on hold for financial reasons and now he can go ahead with it. Mr. Devenny spoke about the variance that he would need to add two (2) bedrooms and a bathroom upstairs to increase his quality of life.

Mr. Leckstein asked if the deck was being replaced by this application; Mr. Devenny replied yes. There was discussion regarding the deck and what Mr. Devenny would like to add to the house.

Mr. Fotopoulos questioned if any non-conforming issues were going to change with this; no. Mr. Devenny was the owner and was he occupying the building; yes.

Mr. Benedict asked if the front is staying the same; Mr. Devenny replied yes. Mr. Fotopoulos asked if there were any site line issues in the front; Mr. Devenny replied it was staying the same.

Mr. Leckstein stated that this house dates back to 1922 and it was made as a subdivision in 1909.

Mr. Fotopoulos asked Mr. Mullan if he had anything to add. Mr. Mullan replied nothing to add.

Mr. Mullan asked about the small landing coming out of the back of the house. Mr. Devenny stated that the deck will be gone. Mr. Mullan asked if the rear deck would be replaced with a small landing with steps down; Mr. Devenny replied yes it is just a way to get to the backyard.

Mr. Mullan spoke about the setbacks and described how each one was going to be changed due to the application. There was discussion regarding the T&M letter.

Mr. Leckstein confirmed that no trees would be removed and that Mr. Devenny would get whatever building permits were needed. Mr. Mullan asked about any easements; Mr. Devenny stated none that he is aware of.

Mr. Devenny agreed to everything that was in the T&M letter dated June 16, 2016.

Councilman Goode asked about the condition of the sidewalk in front the house mentioned that if the front of the house; Mr. Devenny replied that they were in good shape. Mr. Mullan asked if the sidewalk was to get damaged during the construction that it be replaced; Mr. Devenny agreed.

Mr. Fotopoulos asked about the downspouts; Mr. Devenny replied that the front isn't going to change the downspout for the addition will go into the back will be in the back not facing toward his neighbor's property.

Mr. Mullan didn't think that a grading plan would be needed; Board agreed that they didn't need a grading plan.

Mayor Aumack mentioned that the building department may have an issue with one of the windows on the right hand side and this should be discussed with the construction official. Mr. Devenny said he will speak to the official regarding this.

Motion to open to the public at 7:15pm was made by J. Kovacs, second by M. Goode with ayes by all present.

Bob Ludwig, 50 Beers Street, asked about the safety issue in having the water drain down the driveway to the street, Mr. Benedict clarified that the applicant said it would go the other way. Mr. Mullan clarified that it would not be a safety issue if the water went into the street. There was further discussion regarding the drainage.

Mike Lane, 51 First Street, stated he drove by the site and asked if the applicant was going to continue with the white siding; Mr. Devenny replied yes.

Motion to close to the public at 7:40pm was made by D. Fotopoulos, second by J. Kovacs with ayes by all present.

APPLICATION VOTE:

Motion to approve application was made by T. Musson, second by M. Goode

D. Fotopoulos spoke about the amount of non-conforming homes in Keyport and appreciates that Mr. Devenny came before the board.

Ayes: Mayor Aumack, M. Goode, R. Benedict, T. Musson, D. Fotopoulos, J. Kovacs, G. Sappah

Absent: R. Burlew, M. Sessa

Mr. Leckstein explained what will be the next steps for Mr. Devenny's application.

Motion to go into a five minute recess was moved and carried.

Motion to re-open meeting at 7:50pm was moved and carried.

ROLL CALL:

PRESENT: R. Benedict, D. Fotopoulos, J. Kovacs, T. Musson, G. Sappah, J. Carlos Oviedo,
J. Kovacs-Olsen

Fran Mullan, Engineer, Donna Miller, Planner, Marc Leckstein, Planning Board
Attorney

ABSENT: Mayor Harry Aumack II, Councilman Goode, (cannot participate in this part of the
hearing since it is for a "D" variance), R. Burlew, M. Sessa

**APPLICATION: ANTOUN GREISS
KUPB 16-01
Blk 51, Lot 18.2
317 Beers Street
D Variance, Site Plan**

Exhibits: A1 – Zoning Denial dated 1/14/2016
A2 – Application dated 3/1/2016
A3 – Survey of property prepared by William J. Fiore dated 6/13/2011 last revised
12/3/2015
A4 – Deed between Rio Partners, LLC and Joseph Merla dated 12/18/06 and recorded in
the Monmouth county clerk's office 1/30/07
A5 – Photo Board of property and surrounding property eight (8) photo and surveys
A6 – Original survey prepared by William J. Fiore dated 5/13/2011 (no revisions)
A7 – Certificate of Occupancy dated 2-11
A8 – Tax records

A9 – Realtor Listing
A10 – Permits for Pool installation

B1 – T&M letter dated 6/13/2016

Mark Breitman, Attorney for applicant spoke about the history of the property and how it was listed when his client purchased it as a short sale back in 2011. Mr. Breitman stated that when the property was listed as a two family house. The front house located on Beers and the rear house that was called a bungalow. In 2011 client applied for a mortgage they were granted a mortgage the applicant took into consideration the rental unit in the back. At the time of the sale there was a tenant living in the rear house and they received a Certificate of Occupancy with no conditions stated. The CO listed four (4) Bedroom, there is three (3) bedrooms in the front house and one (1) in the rear house in 2011.

Mr. Fotopoulos asked if they got one CO; Mr. Breitman stated that if they look at the CO it states there are four bedrooms. There will be testimony that in order to get four (4) bedrooms there was three (3) bedrooms in the front and one (1) bedroom in the rear house.

Mr. Fotopoulos asked if they had plans for the front house; Mr. Breitman replied no; his clients did not build the house they just purchased it as is.

Ms. Kovacs – Olsen stated that if it is a multi-family dwelling you would have to get a CO for each unit. Mr. Breitman explained that they are well aware of that but his client relied on the fact that the Borough issuing a CO. Ms. Kovacs asked if there was an office in the front house; Mr. Breitman replied no.

Mr. Breitman explained that his client applied for a pool/electric permit a couple of years later and it was approved by the Borough and the pool was installed.

Mr. Breitman explained that in 2015 his client found out there was no approval for the rear house. Someone must have built the house without any knowledge of the town and started renting it out. At that time they found out the town never issued any building permits for the rear house. Mr. Breitman client is now in the position to defend themselves for an existing condition on the property they bought and they are now before the Board to get permission for a site plan for a use variance but for second family to use.

Mr. Leckstein advised the Board that from a legal standpoint the fact that the building department may have issued CO's that has nothing to do with zoning. The Board is not subject to the fact that since the building department issued a CO the Board has to approve the application. The two have nothing to do with each other.

Mr. Fotopoulos asked if the owner has rented the back house; Mr. Breitman replied no.

Claire Younes co-owner of the house was sworn in. Mr. Fotopoulos asked if there are any leases or is Ms. Younes renting the house at this time. Mr. Breitman explained that they cannot rent the back house because of the town. There was discussion as to whether the applicant accepted rent for the back house since she owns it. Ms. Younes explained what happened when the town came to the house and told her she couldn't use the back house.

Mr. Leckstein explained to the Board that the fact whether the applicant is going to rent it or not is not the issue. The zoning prospective is that there is a second principal structure on the property that is not permitted.

Mr. Fotopoulos asked if there was no kitchen or bathroom in the back house would it still be considered a principal structure. Mr. Mullan stated that it would be rendered it uninhabitable; you would designate it as a pool house or cabana. Not an office because then it would be commercial.

Mr. Mullan explained that since they haven't collected rent possibly placing a deed restriction stating that only family members can utilize the back house. Mr. Mullan asked if the back house had its own mailing address; Mr. Breitman stated that there is only one address but the tax assessment has two (2) parcels. Mr. Mullan stated there would have been no inspections for the addition as well.

There was discussion as to whether the second house was inspected. Mr. Fotopoulos asked about the purchase of the house; Mr. Breitman explained that it was a short sale the town came and gave CO.

Mr. Leckstein explained that the tax records have nothing to do with the town. Mr. Musson asked when the applicant purchased the property why didn't they question the deck and the shed; Mr. Breitman replied that would have been an issue with the neighboring property not the Borough.

Mr. Leckstein explained that it was not uncommon that properties encroach on other owners properties. He has warned owners all the time but it does happen.

There was discussion to what the properties are used for surrounding the property.

Mr. Kovacs asked if the title insurance noticed there was two (2) buildings; Mr. Breitman responded that it wasn't a title issue. Mr. Leckstein explained what a title company checks when they do their search.

Mr. Breitman stated that if the CO was denied in 2011 his client would not have purchased the property.

There was discussion as to what the zoning board has the power to allow. Mr. Breitman spoke about the houses that are next door has four (4) car garage with four (4) apartments, feels the neighborhood is really a mixed use area.

Mr. Mullan asked if this was approved would the applicant be willing to go back to the building department for all permits; yes they would have to go back and get all the permits if the variances are approved.

There was discussion regarding the subdivision application back in 2007. The back house appeared sometime between the years 2007-2011 the other home appeared. They are not sure who built the second house. The property was purchased by Sheila Hutchinson. The second house was there in 2008.

Mr. Leckstein explained that the Board is within its power to grant the use variance. Not stating the Board should just wanted make sure the Board understood. Mr. Kovacs mentioned that he was having a hard time trying to figure out who signed the CO. There was discussion as to who might have signed the CO.

Mr. Fotopoulos asked for clarification as to who Anton Greiss, Ms. Younes replied that he was her husband.

PUBLIC SESSION:

Motion to open to the public at 8:02pm was moved by G. Sappah second by D. Fotopoulos with ayes by all present.

William Kirshner, 90 St. Peters Place, Mr. Kirshner spoke about the previous application that was before the Board. There was discussion regarding the shed. Mr. Kirshner gave history regarding the initial subdivision. There was discussion regarding the amount of bedrooms in the front house. Mr. Leckstein read the tax records to the Board.

Mr. Kirshner stated that the garage was never permitted on the original plans. The CO was issued for the building. He spoke about the other properties that had apartments above their garage. He spoke about the other properties that had garage apartments, there was discussion regarding these properties.

Mr. Kirshner spoke about emergency vehicles accessing the rear. His recommendation would be to take everything out of the back house.

There was discussion regarding the CO and what can be done with the rear house.

Mr. Benedict stated that he stopped that and confirms that the rear house is not being lived. There was discussion regarding the size of the house.

Mr. Fotopoulos asked if they could get a roll call on what Board members were able to visit the site.

Roll Call for members that visited the site:

Ayes: R. Benedict, D. Fotopoulos, G. Sappah

Nays: T. Musson, J. Kovacs, J. Oviedo, J. Kovacs-Olsen

Mr. Kirshner stated he would be okay with the house if it wasn't being used as a dwelling. If the applicant wanted to use it as a pool house he didn't object.

Mr. Lane, 51 First Street, asked if the owner did their due diligence to research the property before purchasing. Mr. Breitman stated they went to Title Company, they checked the deed to make sure there was no mortgage or lien. The applicant didn't check with the county.

Mr. Leckstein explained that has never had a real estate attorney or buyer do research themselves on the property.

Mr. Lane stated that the area behind the shed/deck was behind the property line, DEP wetland. Mr. Leckstein asked if this application was approved and one of the conditions was to remove the shed would the applicant be willing; Mr. Breitman stated that would be acceptable.

Mr. Leckstein asked Mr. Lane to show the document he was reading from to Mr. Breitman to see if he had any objection. Mr. Breitman had no objection.

Mr. Lane's Exhibits:

- L1 - NJDEP letter dated 9/7/2005 to Raymond Walker, Maser Consulting
- L2 – County website Information dated 2006 property owner Blk 51 lot 22 - Rio Partnership
- L3 – Planning Board Resolution for subdivision dated 6/22/2006
- L4 – Use variance resolution for single family home dated 8/8/06
- L5 – Map from application that was included in the resolution for subdivision dated 6/22/06
- L6 – 11/12/07 survey - single family in front construction slab framing in back

Mr. Breitman objects that he doesn't understand the why these exhibits are relevant. They know that the house is there illegally that is why his client is before the Board.

Mr. Lane stated that when Mr. Merla sold the property Ms. Sheila Hutchinson there was a concrete slab on the property. Between 2007 and 2011 there was extensive work that was done on the property. Mr. Breitman asked Mr. Lane where he was getting the information from. Mr. Lane shows the updated survey. Mr. Leckstein compares both surveys. There was discussion regarding the surveys.

Mr. Lane asked when the CO was signed was the owner present, Mr. Breitman stated that the inspector came out to look at the house. Mr. Leckstein explains what a CO Officer does. There was further discussion regarding the CO for the house.

Mr. Breitman asked Ms. Laura Piccinich, Re Max but at the time of this purchase Better homes. She was the applicant's buyer agent. Ms. Piccinich explained the process that she did prior to the closing of the property. Explained that the back house was there and nothing was said regarding it. The real estate listing had three (3) bedrooms and bonus guest house with one (1) bedroom totaling four (4) bedrooms which matched the CO.

Mr. Leckstein explained that the house is still illegal. There was further discussion regarding the property. Mr. Breitman explained that there are legal issues regarding this property.

Ms. Kovacs-Olsen stated if the grant variances the back house is still on the property line then we would have to grant set back variances. Mr. Breitman would need all variances.

Mr. Ludwig, 50 Beers Street, stated he had environmental concerns regarding the wetlands with the property.

Motion to close to the public at 8:37pm was made and carried.

Ms. Piccinich asked to describe her experience in her real estate field. Mr. Breitman asked Ms. Piccinich about the property and to please describe the rear house. Ms. Piccinich describe the

pictures in Exhibit A5. Mr. Breitman asked if she considered this area to be a mix use; yes and in her opinion she considered this property to fit into the neighborhood.

Motion to open to the public at 8:46pm was moved by J. Kovacs-Olsen, second by G. Sappah with ayes by all present.

Mr. Breitman asked Ms. Younes if in 2013 she applied for a pool permit; yes. At the time that the pool permit was issued was there any discussion regarding the second dwelling, were there any issues regarding the rear house. No issues, the inspectors had to go back to the property twice.

Mr. Breitman asked if the rear house was there when she purchased the property. Ms. Younes explained that was one of the reasons she purchased the property.

At 8:54pm Mr. Musson stepped down from the dais he wasn't feeling well.

Meeting back in session at 9pm.

Mr. Breitman stated that while the client was away for two (2) years there was a rental she wanted to correct herself.

Ms. Miller address the T&M letter regarding the variances. Ms. Miller spoke about the master plan and mentioned that the Borough is working on undertaking a new masterplan.

Mr. Benedict spoke about it being used as a cottage; there was discussion on use of the building.

Mr. Fotopoulos asked about specific criteria for a mother/daughter house. Ms. Miller stated that the zoning ordinance does not permit mother/daughter houses.

Mr. Mullan stated that if existing uses were different he would advise the Board different. The proof of burden would be on the applicant to remain on one tax lot which is not permitted.

Ms. Miller stated that use variances carries burden not determent to neighborhood what the positives to the town are. If the Board is seeing some public good.

Mr. Fotopoulos stated there has been recent application denied for the use. Mr. Leckstein reminded the Board that each application is a standalone.

Motion to open to the public at 9:17pm was moved by G. Sappah, second by J. Kovacs-Olsen with ayes by all present.

Mr. Kirshner stated that he summed up his feelings before. Feels the board to adhere to the ordinance. Mr. Breitman asked beside the rear house what else was wrong with the lot; nothing.

Motion to close to the public at 9:27pm was moved by G. Sappah, second by D. Fotopoulos with ayes by all present.

Mr. Fotopoulos stated that he feels that the applicant was the victim here; he does feel bad but still couldn't vote yes.

Mr. Kovacs stated that he can't vote yes for it.

Mr. Benedict stated that even though he is sympathetic with applicant the one thing it is a very small building one family structure zoning says we would have to take a CO leaning a little relief, feels the vote would fail.

Ms. Kovacs-Olsen stated if this came before the board as a new application they would deny it. She stated she feels horrible for applicant.

Mr. Leckstein explained to Mr. Breitman if he would like to carry over since Mr. Musson had to leave and they need five (5) members to approve. He can ask the members that were not at the meeting to listen to the tape and carry this application to the next meeting.

Mr. Breitman would like the application to be carried without further notice.

Motion to carry to the next meeting without further notice was moved by J. Kovacs-Olsen, second by D. Fotopoulos with ayes by all present.

MOTION TO ADJOURN MEETING:

Motion to adjourn meeting at 9:37pm was moved by J. Kovacs, second by J. Kovacs-Olsen with ayes by all present

The next regularly scheduled Planning Board Meeting will be Thursday, August 25, 2016.