

Resolution prepared by:
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**RESOLUTION
GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH BULK VARIANCE RELIEF**

**UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT**

**BLOCK 110, LOT 24
Application # 23-02
NICKAY CONSTRUCTION, INC.
105 HIGHWAY 35**

WHEREAS, Nickay Construction, Inc. has filed an application seeking Preliminary and Final Site Plan approval for the purpose of constructing a one-story retail commercial building to be situated on property located at 105 Highway 35 which is officially designated as Block 110, Lot 24 on the Borough of Keyport's Tax Map; 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, public hearings on the application were conducted on the within matter during a regularly scheduled meeting of the Unified Planning Board held on June 22, 2023; 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 seeks Preliminary and Final Site Plan approval to construct a one-story retail commercial building, having a footprint of 2,758 square feet, to be situated on property located at 105 Highway 35 which is officially designated as Block 110, Lot 24 of the Borough of Keyport's Tax Map.¹
2. The property consists of 14,608 square feet in area. It is triangular-shaped with frontage on Route 35. The property is located approximately one fifth of a mile southeast of the Route 35 and Route 36 interchange and is currently vacant. The only existing improvements are the foundation of a previously demolished building and an existing billboard.

¹ During the course of the hearing the Board was advised by a resident, Michael Lane of 51 First Street, Keyport, that a cannabis dispensary was intended for the site. The Board wishes to make clear, and the applicant did agree on the record, that this application was not being reviewed with respect to whether the proposed site plan is appropriate for a cannabis dispensary. The Board has only considered the application with respect to a site plan which would accommodate a general retail commercial building. If the Borough's Zoning Officer believes the Borough's Zoning Ordinance, or any other regulations, require something more as part of a site plan to open a cannabis dispensary, such will be dealt with at the time such a use actually applies for permits from the Borough. Amanda Moscillo, Esquire, an attorney from the Fox Rothchild law firm, which represents the cannabis dispensary was present at the hearing and indicated she also understood what was occurring.

3. The property is located within the Borough's HC (Highway Commercial) District which permits the proposed retail use.
4. Adjacent to the north and west of the subject property is a Stop and Shop supermarket and associated surface parking, also located within the HC Zone. Adjacent to the north and east are the Holmdel Pointe Apartments, a multi-family residential housing complex, located along Clark Street and Center Street. To the west of the property, opposite Clark Street and along NJ State Route 35, are a variety of commercial and retail uses located in both Hazlet Township and the Borough of Keyport.
5. In order to construct the proposed retail commercial building, the applicant would require bulk variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(c), as follows:

VARIANCE	PERMITTED	PROPOSED
Minimum Front Yard Setback (NJ Route 35)	50 feet	11.13 feet
Minimum Parking Setback from Residences	5 feet	2 feet

6. The applicant is proposing a total of eleven (11) parking spaces for the site. Only nine (9) spaces are required by ordinance. As a result, the proposal is in compliance with the applicable parking regulations.
7. During all portions of these proceedings, the applicant was represented by Lawrence D. Carton, Esquire who has law offices located at 2814 Route 35, Second Floor, Hazlet, New Jersey 07730.
8. In support of the application, the following exhibits were marked into evidence:
 - Exhibit A-1 :** Application Package
 - Exhibit A-2 :** Preliminary and Final Site Plan dated March 31, 2021, last revised May 12, 2023, as prepared by Joseph N. Bachi, P.E. of EKA Associates (consisting of 6 sheets)
 - Exhibit A-3 :** Elevations for Building dated March 29, 2021, as prepared by Zen Architecture and Engineering (consisting of 4 sheets)
 - Exhibit A-4:** Revised First Place of Elevations Package, revised as of April 18, 2023.
 - Exhibit A-5:** Stormwater Management Report dated March 13, 2023, as prepared by Joseph N. Bachi, P.E.
9. Beyond the exhibits marked into evidence by the applicant, the Board also marked its own exhibits into evidence as follows:
 - Exhibit B-1:** Second Engineering and Planning Review letter of T&M Associates dated June 15, 2023.
 - Exhibit B-2:** Special Flood Hazard Area Review by Colliers Engineering dated March 14, 2023
 - Exhibit B-3:** Review Letter of Borough Fire Marshal dated February 7, 2023

10. In addition to the aforementioned exhibits, the applicant also presented sworn testimony from its owner, Filipe Agostinho, who testified as the basics of the proposed building. He made clear that the building would only have one tenant. This would be a condition of approval.
11. Mr. Agostinho also agreed that whatever tenant rented the building would not have the need for a loading dock. Accordingly, a loading dock was not part of the plans. This would also be a condition of approval.
12. The applicant also presented testimony from its professional engineer, Joseph Batchi, P.E., who referred to the site plan marked into evidence as **Exhibit A-2**.
13. Mr. Batchi agreed, as a condition of approval, that he would work with the Board's Engineer to resolve any storm water management issues. This could be a condition of approval.
14. It was further agreed all signage for the property would meet Borough Ordinances. If not, the applicant understood it would need to return to the Board for further relief. This would also be a condition of approval.
15. Mr. Batchi confirmed a final lighting plan would be submitted to the Board's Engineer for his review and approval. Additionally, all lighting would be designed so as to ensure it would not shine onto neighboring properties. These would be conditions of approval.
16. A final landscaping plan would also be submitted for the Board Engineer and Planner's approval. It was made clear that this plan would include the installation of evergreens so as to provide appropriate screening for the neighboring residences.
17. With respect to site circulation, Mr. Batchi indicated it would function appropriately, however he indicated that the applicant would agree to install a speed bump at the entrance in order to slow traffic down as it enters the site. This would be a condition of approval.
18. It was agreed that the applicant would comply with all of the comments contained within the letters submitted by the Board's Professionals. **Exhibits B-1 through B-3**.
19. Mr. Batchi believed the site plan had been appropriately designed and would function as intended.
20. During Mr. Batchi's testimony, a concern was raised on behalf of the neighboring commercial property owner, BLDG Management, (where Stop & Shop is located) by its attorney Frankie J. Alvarez, Esquire of the Law Offices of Matthew M. McDowell, Inc., which has offices located at 39 North Main Street, Cranbury, New Jersey. Specifically, Mr. Alvarez indicated that his client was concerned over the possible elimination of a curb cut which his client's research showed as being half on his client's property and half on the applicant's property. BLDG Management would like this curb cut retained in the event it ever wished to restructure the layout of its property. With this said, there was some question as to whether the curb cut actually belonged to either BLDG Management or the applicant

as it might actually be part of the New Jersey Department of Transportation's (DOT) Right of Way and therefore solely within the DOT's control. Nevertheless, it was agreed as a condition of approval that the applicant would not disturb this curb cut unless required to do so by the DOT. It was further agreed that the applicant would be required to keep Mr. Alvarez advised as to all discussions with the DOT on this issue.

21. The final witness to appear on behalf of the applicant was its professional Planner, Nicholas Graviano, P.P., who testified that in his position the two variances required by the application could be granted without creating any negative impacts. Additionally, they were necessary in order that the now vacant property could be properly developed. Due to the shape of the property, which is triangular in nature, it would be extremely difficult to develop the property in any other manner.
22. No one else testified with respect to the merits of the application.
23. As previously indicated at footnote 1, Borough Resident Michael Lane of 51 First Street, did speak during the hearings as to concerns over a cannabis dispensary being located at the site. As noted within said footnote, such an issue was not before the Board. Mr. Lane had no other stated concerns regarding the application.
24. The Board's Professionals, who were sworn, indicated they had no issues with the application provided the comments of their review letter were adhered to. **(Exhibit B-1)**
25. After considering all the testimony and evidence, and assuming all representations were adhered to, the Board finds that proposed site will function properly as proposed under the site plan once it has been revised to meet the conditions of this Resolution.
26. The Board agrees with the testimony of the applicant's planner that the two variances required by this application are necessary in order to ensure that the site can be properly developed. The Board is hard pressed to envision any negatives which would occur by a granting of relief and none have been presented to the Board for its consideration.
27. It was also noted that the proposed location of the building places it in line with other buildings in the area. This only adds to the positives associated with the application.
28. Based upon the evidence presented, the Board finds that the requested variance relief can be granted pursuant to the provisions of both N.J.S.A. 40:55D-70(c)(1) and (2) since the the shape of the subject property creates a natural hardship for the applicants and the benefits of granting the variance and approving the entire project, so as to ensure the site is properly developed, far outweighs whatever benefit would be obtained by strictly adhering to the ordinance requirements.

29. 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.
30. Based upon all of the above, the Board finds the applicant has met its burden in establishing that it is entitled to the requested preliminary and final site plan approval, with bulk variance relief. As such, the sought after application should be granted in its entirety.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Nickay Construction, Inc., seeking preliminary and final site plan approval, with bulk variance relief, for premises located at 105 Route 35, which is officially known as Block 110, Lot 24 on the official tax map of the Borough of Keyport be granted subject to the following conditions:

1. Subject to substantial compliance with the plans submitted into evidence unless otherwise modified by this Resolution.
2. Subject to the condition that the site will only accommodate a single tenant which will not have the need for a loading dock.
3. Subject to the condition the applicant work with the Board's Engineer to resolve any storm water management issues. The plans shall be revised for the review and approval of the Board's Engineer.
4. Subject to the condition all signage for the property shall meet Borough Ordinances.
5. Subject to submission of a final lighting plan for the review and approval of the Board's Engineer. Said lighting shall be designed so as to ensure it will not shine onto neighboring properties.
6. Subject to the submitting of a final landscaping plan for the review and approval of the Board's Engineer and Planner. Said plan shall include the installation of evergreens so as to provide appropriate screening for the neighboring residences.
7. Subject to the adding of a speed bump at the entrance of the subject site in order to slow traffic down as it enters the site. Said speed bump shall be added to the applicant's plan and be subject to the review and approval of the Board's Engineer.
8. Subject to the applicant not removing the existing curb cut at the site unless required to do so by New Jersey's Department of Transportation. The applicant must keep counsel for neighboring property owner, BLDG Management, advised as to all communications with the DOT on this subject. Currently said counsel is Frankie J. Alvarez, Esquire of the Law Offices of Matthew M. McDowell, Inc., which has offices located at 39 North Main Street, Cranbury, New Jersey.

9. Subject to the applicant's compliance with the review letters submitted on behalf of the Board's Professionals. (Exhibits B-1 through B-3)
10. 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.
11. 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.
12. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.
13. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.
14. This approval shall be deemed void by abandonment if a permit is not applied for within two years of the date hereof.
15. 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.
16. 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.
17. 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 N. Vecchio, second by H. Aumack
and on Roll Call, the following vote was recorded:

Affirmative: Mayor Aranco, Chairman Sessa, H. Aumack, N. Vecchio, J. Merla,

J. Kovacs-Olsen

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 August 24, 2023.


Denise Nellis, Secretary of the Board