

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

**RESOLUTION GRANTING USE VARIANCE RELIEF
TO CONVERT A NON-CONFORMING SINGLE FAMILY DWELLING
INTO A CENTER FOR PUBLIC USE**

**UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT**

BLOCK 39, LOT 32

**Application # 23-12
PAUL MILLER
80 WEST FRONT STREET**

WHEREAS, Paul Miller has applied to the Unified Planning Board of the Borough of Keyport for use variance relief so as to convert a non-conforming single family dwelling located at property commonly known as 80 West Front Street which is officially designated as Block 39, Lot 32 on the tax map of the Borough of Keyport in a center of public use;

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, a public hearing was held in the within matter at a regularly scheduled meeting of the Unified Planning Board held on May 23, 2024 during which all persons having an interest in said application were heard; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicants;

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

1. The applicant, Paul Miller, is seeking a use variance relief so as to convert an existing non-conforming single family dwelling located at property commonly known as 80 West Front Street which is officially designated as Block 39, Lot 32 on the tax map of the Borough of Keyport into a center dedicated to providing public programs.
2. The subject property is a through lot located on the southern side of West Front Street and the northern end of Kearney Street, and is situated within the Borough's GC (General Commercial) Zoning District and the Front Street Historic District. The property consists of 23,204 SF, with 79.81 feet of frontage on West Front Street and 35 feet of frontage on Kearney Street.
3. The site is developed with a historic two-and-a-half-story, single-family frame dwelling which was constructed back in 1860. It is a landmark structure within the Borough of Keyport.
4. The applicant desires to place the existing structure under the control of "The Theodore J. Miller Foundation" which would be a § 501(c)(3) organization dedicated to the preservation and maintenance of the historic property.

5. The Foundation would also serve the following purposes¹:
 - (a) Conduct educational, arts and museum-related programs which enhance and benefit both the immediate Keyport, NJ area and the entire world;
 - (b) Utilize the site in support of spiritual education and personal advancement;
 - (c) Pursuit and encouragement for the preservation of other area historical sites;
 - (d) Provide educational and cultural programs for the community;
 - (e) Provide assistance to historical, civic and educational organizations;
 - (f) Encourage arts and cultural operations to develop and to assist such organizations in the development and presentation of programs to the community.
6. Neither the existing single-family home nor the proposed public use center are permitted uses within the Borough's GC Zoning District. As such, to accomplish the proposed conversion, the applicant does require use variance relief pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1).
7. Although (d)(1) use variance relief is required, the GC Zone does permit numerous small service type uses such as studios for yoga, personal training, exercise, gyms, photography, art, music and dance. This means that the use being proposed by the applicant here (ie: spiritual advancement, arts preservation) would bring the site into better conformity with the GC Zone than leaving it as the existing non-conforming single-family dwelling.
8. There are no bulk variances required for this application. With the exception of the proposed use, the property itself fully complies with the parameters of the GC Zone.
9. During all portions of these proceedings, the applicant was represented by Salvatore Alfieri, Esquire of the law Cleary, Giacobbe, Alfieri, Jacobs, LLC which has offices located at 955 State Route 34, Suite 200, Matawan, New Jersey.
10. In support of the application, the following was offered into evidence:

Exhibit A-1: "Change of Use Plan" prepared by Walter Joseph Hopkin, P.E. dated December 7, 2022.

Exhibit A-2: "The Theodore J. Miller Foundation By-Laws"

Exhibit A-3: "Change of Use Plan" in color and dated November 7, 2023
11. Beyond the applicant's exhibits, the Board also marked its own Exhibits:

Exhibit B-1: T&M Planning and Engineering Review dated September 28, 2023.

Exhibit B-2: Colliers Review Letter dated August 18, 2023

Exhibit B-3: Chief Torres e-mail dated August 28, 2023

Exhibit B-4: Fire Marshal e-mail dated September 19, 2023

¹ These purposes are taken from Article 2 of "The Theodore J. Miller Foundation By-Laws" which were marked into evidence as **Exhibit A-2**.

12. In furtherance of its application, sworn testimony was presented by the applicant's site engineer, Mark Zelina, P.E., who confirmed for the Board that the applicant was not proposing any changes to the subject site.
13. It was noted patrons would utilize public parking as no parking was available on site.
14. In response to inquiries from the Board as to an existing gravel driveway located to the rear of the property, Mr. Zelina made clear that this would not be utilized except for maintenance reasons. This would be a condition of approval.
15. It was further agreed, as a condition of approval, that there would not be any busing of patrons to the site as there was no space to park such buses at the site.
16. Testimony was also presented from Justin Auciello, P.P., a professional planner.
17. Mr. Auciello reiterated the idea that the proposal being made by the applicant would bring the subject property into greater conformity with the provisions of the GC Zone than leaving it as a non-conforming dwelling would.
18. He further noted that the applicant was not looking to overwhelm the site or town. In fact, the site would only be open Mondays, Wednesdays and Fridays from 10 am to 1 pm and on Sundays from 12 pm to 5 pm. Even with those times, visitations to the site would only be by appointment only and would never consist of more than ten (10) guests at a time. These would all be conditions of approval.
19. With the above said, it was further noted that the property had a celebrated history of being utilized as a site for fund-raising events. Members of Board and Public expressed concern over the Keyport community losing the ability to have such events in the landmark home. As such, it was further agreed, as a condition of approval, that the applicant could hold up to four (4) fund-raising events each year at the site without any cap on attendance or limitations on hours.
20. As further conditions of approval, Mr. Auciello noted that the applicant would not rent out any portions of the property. Still it was understood that guests of the Foundation may stay in one of the bedrooms in the home on occasion. However, no cooking would be performed at the site. If food was ever served, it would be catered.
21. As a condition of approval, the applicant would be providing the Board Planner with floor plans of the home detailing the proposed uses of each room. This way the Borough would have a record of which rooms would be preserved as bedrooms, bathrooms, museum space, and so forth.
22. Finally, Mr. Auciello confirmed that the applicant was not proposing any signage for the site. Based upon the limited nature of the use, there was no need for such.
23. The final witness for the proposal was the applicant himself, Mr. Paul Miller who indicated that the home had been in his family since 1976 and he wanted nothing more than to preserve the structure and its historic contents. The creation of the Foundation was the best way he could envision accomplishing that goal.

24. Mr. Miller did agree as a condition of approval that there would never be any amplified music at the center. He wanted to keep the site very low key, hence the reason he was agreeing to so many restrictions on its use.
25. It was stated that the back yard area of the property would be utilized on occasion for meeting. Still, it would be a limited number of people when that occurred.
26. He anticipated relying upon locals to manage the site and to open and close it when the home was being utilized for an event.
27. He believed that "word of mouth" would be the best way to advertise the home and its preservation and educational goals.
28. As a condition of approval, smoking would not be allowed inside the home.
29. As a further condition of approval, Mr. Miller agreed to specifically abandon the right to continue operating the home as a pre-existing non-conforming residential dwelling.
30. No one else testified on behalf of the applicant.
31. The following members of the public testified with respect to the application:
 - (a) George Walling of 54 Second Street who spoke of the past of the site and inquired about code compliance.
 - (b) Michael Lane of 51 First Street who indicated his concern over the appropriateness of the use being proposed for the site.
 - (c) Nancy Smalling of 107 Maple Place who expressed support for the site and urged that fund-raising events be allowed to continue.
 - (d) Paul McKeefry of 107 Maple Place who supported the application.
32. The Board's Engineer, Francis W. Mullan, P.E., C.M.E. and the Board's Planner Raymond Savacool, P.P., were placed under oath and testified that they had no objection to the application being granted from an engineering or planning perspective provided the comments contained in T&M's review letter (**Exhibit B-1**) were adhered to. This would be a condition of approval.
33. In considering this application the Board has reviewed the materials submitted into evidence and finds that granting the requested variance relief can be accomplished without causing any harm to anyone. Based upon the plans and testimony submitted it is clear that granting the proposed use variance relief would serve as a benefit for the municipality as it will lead to the preservation of a landmark structure within the Borough in a manner that will make it publicly accessible rather than keeping it as a non-conforming private residence.
34. The Board cannot envision why the proposed change would negatively impact anyone and no evidence has been presented which would demonstrate otherwise. In fact, denying the use variance relief would lead to the home remaining as a non-conforming single family dwelling which would benefit absolutely no one, nor would it guarantee that the historic structure would remain in its current condition.

35. The Board finds that the applicant has also demonstrated an enhanced quality of proof in that the uses being proposed (ie: spiritual advancement, arts preservation) are very much in line with uses already permitted within the GC Zone such as studios for yoga, personal training, exercise, gyms, photography, art, music and dance. The Zone Plan and Master Plan would not be damaged in any way by approval of the application.
36. The Board finds that the proofs required for (d)(1) variance relief have been more than met and therefore should be granted in its entirety.
37. The Board believes granting of this application will provide a benefit for the entirety of Keyport and beyond as it will lead to the preservation of a landmark structure within the community so that it may be experienced for generations to come.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport, that the application of Paul Miller, seeking use variance relief, may be granted subject to the following conditions:

1. The proposed use must be in conformance with the exhibits marked into evidence.
2. Floor plans must be provided to the Board Planner identifying the specific uses of each room within the structure.
3. Subject to the existing gravel driveway located to the rear of the property not being utilized except for maintenance reasons.
4. Subject to there not being any busing of patrons to the site.
5. Subject to the site only being open Mondays, Wednesdays and Fridays from 10 am to 1 pm and on Sundays from 12 pm to 5 pm.
6. Subject to visitations to the site being by appointment only and never consisting of more than ten (10) guests at a time.
7. Notwithstanding the above, the applicant may hold up to four (4) fund-raising events each year without any cap on attendance or limitations on hours.
8. Subject to the applicant being prohibited from renting out any portions of the property. With that said, guests of the Foundation may stay in one of the bedrooms in the home on occasion.
9. Subject to no cooking being performed on site. If food is served, it must be catered.
10. Subject to the condition there not be any amplified music at the site.
11. Subject to the condition smoking not be allowed inside the structure.
12. Subject to the applicant abandoning the right to continue operating the home as a pre-existing non-conforming residential dwelling.
13. Subject to compliance with the comments raised within the Planning and Engineering letter marked into evidence as **Exhibit B-1** as well as the other professional comments **Exhibits B-2 through B-4**.
14. Subject to all representations made by the applicant during the application.

15. 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.
16. Subject to any and all other approvals as may be required by the Borough or any other governmental entity, prior to the issuance of any permits.
17. Subject to compliance with any applicable affordable housing requirements.
18. Subject to the payment of any fees, escrows and taxes as may be due to the Borough, prior to the issuance of any permits.
19. 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.
20. 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 M. Sessa, second by W. McDermott
and on Roll Call, the following vote was recorded:

Affirmative: H. Aumack, W. McDermott, J. Oviedo, M. Sessa, C. Demarest,
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 during its meeting on June 27, 2024.


Denise Nellis, Secretary of the Board