

The Keyport Unified Planning Board held a Regular Meeting on October 28, 2021 which was called to order at 7:02 PM. The meeting was called to order by Mark Sessa, the Sunshine Law Notice was read followed by the Flag Salute.

Roll Call: Mayor Kennedy, Councilmember Davidson, H. Aumack, K. Howe, J. Oviedo, J. Royster, M. Sessa, W. McDermott, G. Kotzas

Absent: D. Pacheco, N. Vecchio

Professionals were sworn in: Fran Mullan, Engineer and Kendra A. Lelie, PP, AICP, LLA

MINUTES: SEPTEMBER 23, 2021

Motion to approve was made by H. Aumack, second by Mayor Kennedy

Ayes: Mayor Kennedy, Councilmember Davidson H. Aumack, M. Sessa, J. Royster

Abstain: K. Howe, J. Oviedo, W. McDermott, G. Kotzas

**COMMUNICATION: EMAIL FROM BOROUGH CLERK REGARDING
CANNABIS ORDINANCE TO REVIEW AND COMMENT**

Chairman Sessa stated that everyone has received the email with the ordinance. He reminded the Board that their focus is whether it is alignment with the Master Plan. Mr. Leckstein stated that he knows the Board Planner Ms. Lelie did submit a review letter.

Board Planner, Kendra Lelie stated the responsibility of the Planning Board when the Governing Body refers an ordinance that specifically deals with any Land Use changes or changes to your Land Use Ordinance it is the Boards responsibility to do a consistency review. That consistency review includes taking a look at the Master Plan as it relates to the proposed Ordinance. In this case the Cannabis Ordinance that has been introduced, it then gets referred to the Planning Board at that time the Planning Board makes a consistency determination and then sends it back to the Governing Body. In this particular case the Cannabis Ordinance is allowing certain licenses to occur in specific zoning districts in the municipality. Ms. Lelie referred to page 3 of the proposed ordinance, the cannabis licenses are broken down into three different types of uses. In the industrial zone and certain sections of the GC district cannabis retailer and delivery services are permitted in these districts. There are limits to these uses, one is that there are only two retail licenses permitted within any one district. That would be one type of constraint for that permitted use. There are other types of licenses there is cultivating, distributors, manufacturers and wholesale will only be permitted in the industrial district as proposed in the Ordinance. Looking at the site standards there are specific things that can and can't happen with cannabis businesses it goes from no on site sale of alcohol that are allowed with a cannabis business, there is the hours of operation, there is a lighting requirement, there are conformance with the State requirements. On page 5 the other constraint being placed on these uses is that they can't be within certain distances of certain uses. Ms. Lelie stated that it says no cannabis business can be within 200 feet of a licensed child day care facility, 200 feet of a school, 150 feet of a religious institution.

With regards to the Ordinance this will be a permitted use within those districts that she mentioned and with the constraints that are located in the deferred Ordinance. Ms. Lelie stated that the Boards responsibility is to find that it is consistent, not inconsistent or it is inconsistent with the

Master Plan. Ms. Lelie explains the reason she breaks it into the three pieces is because typically if it is consistent with the Master Plan, the Master Plan would state specific language that says this particular use is proposed or recommended for this district.

When it is not inconsistent with the Master Plan, she basically states that there are several general and/or specific goals and objectives that support this use. In this particular case it is not consistent with the Master Plan there are several general Master Plan goals as it relates to the Economic Plan Development and the Land Use Plan Development and she has listed them for the Board as well as underlined the sections in the memo that relates to what pieces of the Master Plan that support the Ordinance.

Further discussion regarding the 2017 Master Plan objects as well as Ms. Lelie memo. Ms. Lelie stated that in her memo (attached) it gives the Board 20 different goals and objectives in the Master Plan that the Board can point to that shows the Ordinance is not inconsistent with the goals and objectives of the Master Plan.

Mr. McDermott asked if there was any consideration for reputational things in regards to type of business, whether it fits in the Plan specific to what we want in the town is that part of the Boards purview. Ms. Lelie replied that it really has to do if the Board feels that it is inconsistent in general with the overall intention of the Ordinance. Ms. Lelie stated that she couldn't find any language that specifically said that town never wants to see this type of use. She added stating that there are several standards within specifically in the site standards that regulate you can't have signs that show the type of use that is occurring in the building, you can't have open paraphernalia or anything else you can see through the windows. To some degree the Governing Body has looked at the Ordinance and put together some constraints that say they don't want to broad cast this but they would like to offer this type of use but limited. Mr. Leckstein stated that he agreed with everything that Ms. Lelie said. It is not this Boards role to decide if they like this use or not, it is up to the Governing Body and the Board has no control over that.

Mr. Howe stated given their specific roles in finding whether this is consistent or not inconsistent. Mr. Howe stated that the way it looks is good to go but, he feels that the Board should send a memo to the Council. He feels that it is not consistent with the other zoning rules. Mr. Howe gave examples: conditional things like tobacco in the zoning ordinance it states that tobacco use is not permitted within 1,000 feet of churches, schools and parks. He stated it is 1,000 feet for tobacco but 250 or 150 feet for weed depending on what you want to do. There are ten sub standards on bed and breakfast including one that stated you couldn't place a sign against the house, another speaks about off street parking. One item that is inconsistent with the Ordinance is they are talking about security guards being there when they are opened that would be one additional person that would be working there that would need to park their vehicle either on the street or in the parking lots. Mr. Howe's recommendation is that he agrees that it is not inconsistent with the Master Plan but, he believes the Board should send a note stating it is not consistent with the existing zoning ordinance. Further discussion regarding the zoning ordinance and the consistency with the Ordinance being presented to the Board. Would like to send a note to the Governing Body for them to consider them to look at the existing zoning ordinance and either mirror them or consider changing the other one so they are all the same.

Mr. Aumack feels it is a thorough Ordinance and reads well. As one of the former zoning officers in Keyport he felt it would probably be better if this was made a conditional use. It would be a lot easier for the zoning officer to deal with this brand new industry that a lot of things still need to be worked out. It would be a lot easier for the zoning officer as a conditional use or also would make it easier for the person if they have any doubts. Mr. Aumack stated that this is going to be allowed highway commercial but in Keyport there is highway commercial that back up into residential zones. He stated that there is a good chance that one of these outlets back up within 40 or 50 feet of a house. If it is a conditional use the zoning officer could send it to the Board where there are professionals to deal with it and to give some insight.

Mr. Leckstein asked Mr. Aumack what the conditions would be if this was a conditional use; Mr. Aumack stated that they can set stipulations. Mr. Aumack stated that one condition could be that it doesn't back up to a residential district.

Councilmember Davidson stated that if there are stipulations of a criteria that they would like outlined, she felt that they should do that at this meeting. Mr. Leckstein stated that he agrees with Councilwoman Davidson but that it couldn't be done this evening, because the Board would be discussing all night with different things. Mr. Leckstein explained if that is what the Board would like to do he suggested that you recommend that it is not inconsistency with the Master Plan and send that the Governing Body with a note stating that there should be other conditions and stipulations that the Board could not address this evening. Mr. Leckstein explained the options that the Governing Body would have after receiving the information from the Board. There was further discussion regarding the Boards options.

The Board decided to send a memo to the Governing Body stating that the Ordinance is not inconsistent with the Master Plan, however the Board is concerned that it not consistent with the zoning ordinance and that the Board has formed a subcommittee to come up with recommendations which they will finalize at the next Planning Board meeting on December 2nd. There was further discussion regarding what the process would be.

Mayor Kennedy stated that Councilwoman Davidson is on the committee and feels that she would be the person to give direction to the Board. Councilmember Davidson stated that she feels the more information the more exact it could be it would be beneficial. Councilmember Davidson stated that it goes to the Planning Board for a reason, so if the Board feels that is a viable thing and the Board is all in agreement it should go back to Council to discuss. Councilmember Davidson stated that she agrees there has to be more exact things proposed. Mr. Leckstein asked if Councilmember Davidson felt it was worth to a memo; yes, she does know that they are dealing with a timeline with Council; however, this ordinance will be with the Borough for many years to come and she in not comfortable as a Councilmember, Planning Board member or resident saying let it slide ant they will amend it later. Councilmember Davidson stated that she would like to get it right the first time to the best of their ability and give the recommendations to the Council to review.

Mr. Leckstein recommended that they form a subcommittee at the meeting. Mr. Lane stated that he would like to be on the subcommittee, Mr. Leckstein mentioned that would be difficult since he wasn't a member of the Board. Mr. Leckstein suggested that Mr. Lane send his comments to the subcommittee since he couldn't be on the committee. Mr. Leckstein stated the subcommittee

would have to consist of four members. Chairman Sessa asked if there were any volunteers that would like to serve on the subcommittee. The subcommittee will be the following Boardmembers Councilmember Davidson, Mr. Kotzas, Ms. Royster and Mr. Howe. Mr. Leckstein confirmed that D. Nellis will send a memo to Mayor and Council stating that the ordinance is not inconsistent with the Master Plan, however, the Board has other concerns.

Mayor Kennedy suggested opening to the public so that the Board can hear Mr. Lane's concerns.

Motion to the public at 7:26pm was made by Mayor Kennedy, second by J. Royster with ayes by all present.

Mike Lane, 51 First Street suggested that the Attorney mentioned has to be done. Mr. Lane feels that having a subcommittee to update the Land Use requirements. For example, first goal in the Master Plan is to protect and enhance single family neighborhoods. There is a map showing what type of cannabis businesses can go in what zone. Mr. Lane described what businesses can be in what zones. Mr. Lane stated that in every zone there is a conditional use. In the highway district there is a conditional use for a fast food restaurant. A fast food restaurant is a permitted use by it has conditions. Mr. Lane spoke about the conditions. Mr. Lane stated that if you are going to have a cannabis business on the highway, which is what the ordinance allows he feels that you need conditional use to define the same kind of criteria that you define for a fast food restaurant. He stated that he feels it would be fantastic for the Board to work that into the ordinance because conditional use allows you to define development standards to protect and to meet to the number one goal in the Master Plan to protect residential neighborhoods. Mr. Lane stated the same thing in the industrial area where you have a factory to grow cannabis. Mr. Lane feels there needs to be perimeters just like they have now. Mr. Lane stated that if you read the developers standards the industrial area is very restricted in regards to clean operations. If you have a growth operation in the industrial area they would have to follow the developer standards. Mr. Lane spoke about some of the standards. He encourages the Board to take the action best as possible to define the development standard.

Motion to close to the public at 7:31 PM was made by Mayor Kennedy, second by K. Howe with ayes by all present.

Motion to send a memo to the Council stating that the Board finds the Ordinance not inconsistent with the Master Plan was made by K. Howe, second by J. Royster.

Ayes: Mayor Kennedy, Councilmember Davidson, H. Aumack, K. Howe, J. Oviedo, J. Royster, M. Sessa, W. McDermott, G. Kotzas

APPLICATION: KUPB # 21-11 (will be heard at the December 2nd Applicant will notice for that meeting)

**30 SOUTH SECOND LLC
23 BROOK AVENUE
BLK 102, LOT 6
VARIANCE RELIEF**

Chairman Sessa stated if anyone was present for that application it will be heard at the December 2nd meeting. Mr. Howe asked why the application did not notice for the meeting. Chairman Sessa stated that they didn't get their paper work in on time. D. Nellis explained that they were supposed to submit an amended plan and thought they would submit it in a timely manner. She added them to the agenda so they didn't have to wait, they submitted the plan on October 22nd.

**APPLICATION: KUPB # 21-10 (will notice with new meeting date application was not noticed properly for the October meeting)
KEYPORT PROFESSIONAL PLAZA, LLC
25 EAST FRONT STREET
BLK 80, LOT 1.02
USE VARIANCE**

Chairman Sessa stated that the applicant did not notice correctly. Mr. Leckstein stated that the application technically isn't carried because the Board didn't have jurisdiction because of the notice. Mr. Leckstein stated that they will notice. D. Nellis will work with the attorney for a date.

**APPLICATION: KUPB 21-06 ROBERT DEVINO (carried from the September meeting)
5 THERESE AVENUE
BLK 9 LOTS 35 & 36
MINOR SUB DIVISION AND VARIANCE RELIEF**

Exhibits A1 – Minor Subdivision
A2 – Plot Plan Lot 35 block 9
A3 – Plot Plan Lot 36 Block 9
A4 – Architectural
A5 – Tax Map consisting of two pages that have been marked up by the applicant to show what is happening in the neighborhood.
B1 – T&M letter dated August 2, 2021

Louis Granata, Attorney filling in for Richard Mongelli

Mr. Robert Devino was sworn in. Mr. Devino introduced himself and explained that he has been a general contract developing homes since 1978. Mr. Devino described the property and what had existed on the property and why he needed a subdivision. In the T&M report it stated it is two lots that were merged because it was under common ownership. Mr. Granata asked Mr. Devino to explain to the Board what he has done to prepare for this application. Mr. Devino described Exhibit A5 which is the Tax Map of the area of Therese Ave which consists 174 lots that are on Broadway and Front Street to Route 35 over pass section of Keyport. In the black and white copy, it shows 174 lots, 117 lots are 40 feet lots and there are 15 additional lots that are under 40 feet. There are 132 houses on 40 foot lots in that area. Mr. Granata asked if his application is consistent to what was there; yes.

Mr. Devino stated that the other map shows 174 lots, there are 102 of the 40 foot lots that have either side yard or front yard variances. Mr. Devino stated that his application is consistent to what is in the neighborhood.

Mr. Granata asked if Mr. Devino had any objection to any item in the T&M letter; no. Mr. Granata asked about the parking. Mr. Devino looked at Exhibit A1 and asked if the side yard setbacks requirements for driveway; Mr. Mullan replied no. Mr. Devino stated he can make the driveway wider to accommodate the parking. There was discussion regarding making the driveway wider and taking away part of the side yard. Mr. Mullan stated they can have one car in the garage and one in the driveway is adequate. There is the question regarding complying with the minimum RSIS requirement, does the applicant technically have to appeal for some type of exemption. Mr. Mullan feels that would be satisfactory in his perspective in lieu of having a double wide driveway. Mr. Leckstein stated it would be up to the Board regarding what they would like to have.

Mr. Granata spoke about Item #12 in the T&M report regarding fencing and landscaping; Mr. Devino stated he wasn't planning on placing fencing, was going to plant trees and shrubs on the property and across front and around the air conditioner unit.

Mr. Granata asked about Item #16 regarding easement, Mr. Devino stated he did a search and nothing came up.

Mr. Mullan asked for clarification regarding the fencing and landscape. Mr. Mullan stated that is a judgement for the Board if the Board wants it they can ask to have it included it is not required. He does mention that in the future if either owner wants to add a fence that they would have to get a fence permit.

Mr. Mullan stated that there is a list of completeness waivers on page 3 and 4 of their review letter, T&M has no objections to granting these waivers.

Mr. Mullan stated that one thing he would ask the applicant to agree on is showing the lateral utility connections, there is a note stating that they will be added. Mr. Mullan also asked for the applicant to agree to restore pavement from trench limit to the other trench limit. Mr. Mullan asked from one trench limit to the other end of the trench so there is one continuous pavement. There was further discussion regarding installing the utility lines.

There was discussion regarding paving the entire street, Mr. Devino stated that it would be very costly.

Mr. Howe stated that he loves single family homes, all about neighborhood. Having two houses creeping the other side but would north side and east side that doesn't. Mr. Howe asked if neighbors want fencing would you be willing to supply fences; Mr. Devino replied yes.

Mr. Howe stated that the grass is high on this property; Mr. Devino stated he had it done three times, he will make sure it gets cut.

Mr. Howe mentions section 11 location of the steps in the rear. A-4 shows footing, not steps; no steps on outside.

Mr. Howe again stated it is all about the neighbors.

Mr. Mullan asked if the applicant will comply with all rear elevations in regards to the French doors. The set of stairs, no decks there are only three treads.

There was further discussion regarding placing a fence for the side yards.

Motion to open to the public at 7:59 PM was made by Councilmember Davidson, second by J. Royster with ayes by all present.

Joe Wedick, 17 Therese Avenue, stated that the project was a great improvement to the neighborhood. Mr. Wedick spoke about the property. He mentioned that the parking in the neighborhood is limited since it is a dead end and there is a park at the end of the street. He stated that there is not handicapped parking designated at the park and no sidewalks so the residents walk on the street and the cars sometimes back out. He asked that the Board keep in mind that there are basketball games played at the park and the town places all the snow at the park in the winter. He is glad to hear that there is off street parking. The neighborhood is quiet. Mr. Wedick stated that the fire trucks and garbage trucks have to back out of the street.

Ms. Westphal, 8 Therese Avenue stated that she had to look at the mess for 30 years that was across the Street. Her main concern is that her car has been hit numerous times because cars/trucks can't turn around during the winter. She suggested possibly only having parking on one side of the Street.

Michael Lane, 51 First Street, stated he liked the application. Mr. Lane spoke about the side yards of the houses.

Motion to close to the public at 8:07 PM was made by K. Howe, second by Councilmember Davidson with ayes by all present.

Motion to approve application was made by K. Howe, second by H. Aumack

Ayes: Mayor Kennedy, Councilmember Davidson, H. Aumack, K. Howe, J. Oviedo, J. Royster, M. Sessa, W. McDermott, G. Kotzas

Mayor Kennedy asked about possibly having two meetings a month and instead of the 11PM end time make it 10PM. She stated that would move things quicker. Mr. Leckstein stated that the Board could do that. There was further discussion regarding having two meetings instead of one a month or possibly having two meetings every other month.

Chairman Sessa asked when they set up the calendar; D. Nellis stated they usually do it at the Re-organization meeting in July. She stated that she did give the November and December dates to the administrator so that it wasn't a conflict with the court. Mr. Leckstein stated if they go to two meetings a month it would have to be another day not Thursday. Mayor Kennedy stated that she would speak to other Mayors to see if they are having any problems with applications being asked to be carried and what they do about it. Mr. Leckstein stated one way the Board can penalize an applicant when this happens is to put their application off to another month. There was discussion regarding the Marina application and their responsibility to re-notice for the meeting. Mr. Leckstein stated he didn't know about any penalty because there are times that something happens that the

applicant can't control and they would have to ask to be carried at the last moment. Further discussion regarding possibly having some type of penalty for applicants asking to be carried at the last moment.

Motion to open to the public at 8:23 PM was made by Mayor Kennedy, second by M. Sessa with ayes by all present.

Joe Wedick suggested that you go every other month and if the Board doesn't need to meet to cancel the meeting. Mr. Leckstein stated that the problem is that they have to announce the dates, and find when the room is available.

Mr. Howe stated that he is fine with having two meetings every other month as long as it is not a marathon session. This will be discussed further at the Re-Organization meeting.

Motion to close to the public was made and carried at 8:30PM.

Motion to adjourn the meeting at 8:30PM was made by K. Howe, second by H. Aumack with ayes by all present.

The next scheduled Special Planning Board Meeting will be Thursday, December 2, 2021