

RESOLUTION DENYING
USE VARIANCE TO CONSTRUCT EIGHT TOWNHOUSES
WHERE MULTI FAMILY RESIDENCES ARE NOT PERMITTED

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 128, LOTS 2,3, and 4.01
APPLICATION # 18-02
KEYPORT HOMES, LLC
26 WAVERLY STREET

WHEREAS, Keyport Homes, LLC has applied to the Unified Planning Board of the Borough of Keyport for a use variance with preliminary and final site plan approval to allow for the construction of eight townhouses on property which currently houses the Keyport Fire Patrol building and is located at 26 Waverly Street which is officially designated as Block 128, Lots 2, 3, and 4.01 on the Tax Map of the Borough of Keyport; 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, a public hearing was held in the within matter at a regularly scheduled meeting of the Unified Planning Board held on May 22, 2018 at which time all persons having an interest in said application were heard; and

WHEREAS, Board Members John Kovacs, Jacqueline Kovacs-Olsen and Roger Benedict did recuse themselves from all aspects of this application due to their membership in a fire company which owns property into which the Keyport Fire Patrol would relocate to if the application were granted; 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, Keyport Homes, LLC, is seeking approval to develop property at 26 Waverly Street, which is officially designated as Block 128, Lots 2, 3, and 4.01 on the tax map of the Borough of Keyport, so as to construct an eight (8) unit townhouse development which will be operated as a condominium association.
2. The property in question is located on the southeast corner of the intersection of Waverly Street and First Street and currently developed with the Keyport Fire Patrol building.
3. The proposed townhouses will be 16 feet wide by 45 feet long and will front of Waverly Street. The overall length of the building is 128 feet, with only a pair of units offset three feet from the front building line. Each townhouse will have a one-car garage, a 10 foot patio and 10 foot by 16 foot second story deck at the rear of each unit. The applicant also proposes new sidewalk and curb improvements along the property frontage, the installation of new landscaping and a gazebo.

4. The property in question is located within the Borough's "RA Single Family Residential District" in which multi-family dwellings are not a permitted use.
5. Pursuant to § 25-1-5.1 of the Borough's Zoning Ordinance, the following uses are permitted in the Borough's RA Zoning District:
 - (a) Single-family detached dwelling;
 - (b) Church, Sunday school, and other places of worship;
 - (c) Eleemosynary and philanthropic institutions;
 - (d) Public school, park, playground, fire house, library, municipal building.
6. As the sought after use is not permitted within the RA Zone, a use variance, pursuant to the provisions of N.J.S.A. 40:55-70(d)(1), needs to be obtained from the Unified Planning Board before the eight (8) family townhouse development can be built.
7. The total density proposed by this application is 17 dwelling units per acre (2,616 sq. ft. per unit), whereas the RA Zone District permits one unit on a 7,500 sq. ft. lot or 5.8 units per acre.
8. The following bulk variances, pursuant to provisions of N.J.S.A. 40:55D-70(c) have also been triggered by this application and are as follows:

Variance	Ordinance Requirement	Proposed
Front Yard Setback	20 feet	18.3 feet
Maximum Building Coverage	30 %	37 %

9. Throughout the course of this application, the applicant was represented by Salvatore Alfieri, Esquire of the law firm of Cleary, Giacobbe, Alfieri, Jacobs, LLC which has offices at 5 Ravine Drive, Matawan, New Jersey 07747.
10. In support of the application, the following exhibits were submitted into evidence:

Exhibit A-1: Application Package submitted by the applicant.

Exhibit A-2: Site Plan package dated December 5, 2017, last revised February 9, 2018, as prepared by Walter Joseph Hopkin, P.E. of WJH Engineering (consisting of 5 sheets)

Exhibit A-3: Architectural plans dated January 18, 2018 as prepared by Michael V. Testa AIA. (consisting of 5 sheets)

Exhibit A-4: Sanitary Sewer & Potable Water Report dated December 5, 2017, last revised February 9, 2018, as prepared by Walter Joseph Hopkin, P.E. of WJH Engineering.

Exhibit A-5: Stormwater Management Report, dated December 5, 2017, as prepared by Walter Joseph Hopkin, P.E. of WJH Engineering

Exhibit A-6: Monmouth County Planning Board Approval Letter

Exhibit A-7: Colorized Rendering of Site Plan dated May 21, 2018 as prepared by WJH Engineering.
11. The Board also marked into evidence the following exhibit of its own:

Exhibit B-1: Completeness, Planning and Engineering Review and Fee Determination Review letter dated May 10, 2018 authored by Francis W. Mullan, P.E., C.M.E. Donna Miller, A.I.C.P., P.P., and Dennis M. Dayback, C.F.M. of T&M Engineering.

Exhibit B-2: Review Letter from the Borough Traffic Safety Officer dated February 21, 2018.

Exhibit B-3: Site Plan Review Letter from Property Maintenance Department dated February 20, 2018

12. During the course of the application, Michael Lane, a resident who resides at 51 First Street, Keyport, and who objected to the application, presented his own Exhibits into evidence as follows:

Exhibit L-1: A document captioned "New Single Family Construction Thriving In RA Zone"

Exhibit L-2: Series of seven (7) photographs depicting new single family dwellings in Keyport.

13. The Board Engineer, Francis W. Mullan, P.E. and Board Planner Donna Miller, AICP, PP, both of T&M Engineering, were present at the meeting. Both professionals were sworn and certified as to the information contained within the T&M Planning and Engineering Review letter (**Exhibits B-1**) which is incorporated into this Resolution by reference.
14. The applicant agreed that it would adhere to all of the comments raised within the review letters marked into evidence (**Exhibits B-1, B2 and B-3**) as well as any other reasonable conditions the Board wished to create.
15. The applicant first presented sworn testimony from Tom Gallo, who resides at 50 St. Peters Place, Keyport, and serves as the President of the Keyport Fire Patrol which currently owns the subject property.
16. Mr. Gallo testified that the Keyport Fire Patrol is looking to sell its current property and move into the existing Consolidated Fire House located elsewhere in town. He urged the Board to grant the application so the Fire Patrol could afford the move and cease having to pay the expenses associated with the upkeep of its existing building.
17. The applicant presented sworn testimony from its engineer Walter J. Hopkin, P.E.
18. Mr. Hopkin explained that the applicant was seeking to demolish the existing Keyport Fire Patrol building and construct a new eight (8) townhouse development in its place which would front upon Waverly Street. The proposal would be consistent with what was depicted in the Exhibits marked into evidence.
19. Mr. Hopkin testified that the applicant would be providing three (3) parking spaces per each of the eight (8) proposed units. The parking spaces would be accomplished by the stacking of vehicles, with one vehicle being parked within the garage and two vehicles being parked bumper to bumper in the driveway. In response to concerns raised by the Board as to the parking alignment, Mr. Hopkin conceded that wider driveways would function better than what was proposed. However, he did insist that what was being proposed was adequate.

20. The applicant next offered sworn testimony from its architect, Michael Testa, AIA who described the architectural features of the proposed building as depicted within the plans marked into evidence as **Exhibit A-3**.
21. The applicant also offered sworn testimony from Leonard Rubenstein who indicated he was a representative of the applicant.
22. Mr. Rubenstein acknowledged that the number of units being proposed by the applicant was based upon financial reasons. The applicant needed to make sure it would make a sufficient profit after purchasing and developing the property.
23. The final witness presented by the applicant was its professional planner, James W. Higgins, P.P.
24. Mr. Higgins testified that the proposed development would act as a benefit for the community as it would replace the non-conforming building which currently exists at the site with a new residential use.
25. Mr. Higgins did not believe the proposed density of the project (17 dwelling units per acre) was anything for the Board to be concerned about since the development completely fit upon the property site.
26. He further testified that since the property location was a short distance from downtown, the proposal would be a proper smart growth initiative for the Borough since the residents of the development would be able to frequent the businesses located in the center of town. He believed this met the goal of the Borough's Master Plan encouraging development which would support the business district.
27. Mr. Higgins could not envision any negatives associated with the proposed development.
28. There were no further witnesses presented on behalf of the applicant.
29. The Board did hear testimony from the following members of the public, all of whom objected to the granting of the application:
 - 1) **Michael Lane - 51 First Street, Keyport** : Believed the applicant was proposing too many units and there was no reason why a conforming single family home could not be built on the subject property. He urged the Board to adhere to the instructions of the Borough's Master Plan and Zoning Ordinance which both held that only single family homes should be built in the RA Zone.
 - 2) **Scott McClary - 225 First Street, Keyport** : Indicated concern over the number of units being proposed for the site. It would not conform with the neighborhood.
 - 3) **Angela Mateo - 153 Second Street, Keyport**: Owns property directly behind the site. She indicated concern over the proposed development being overwhelming for the established neighborhood. She also did not believe the proposed architecture fit in with the other homes in the area.
 - 4) **Jacqueline Kovacs-Olsen - 45 Church Street, Keyport**: Indicated concern over the size of the proposal and whether the streets could handle such traffic. She did not believe the proposal was appropriate for the neighborhood.
 - 5) **Robert Zwingraf - 36 Cedar Street, Keyport**: Urged the Board to please adhere to the Master Plan guidelines which called for single family homes in the zone. He did not believe the proposal was appropriate.

30. The Board also heard comments from Borough resident **Elmer Graham of 22 St. Peter's Place, Keyport** who indicated his belief that the proposal was a positive for the neighborhood and should therefore be approved.
31. No one else testified with respect to this application.

CONCLUSIONS

32. In considering the merits of this application, the Board first notes that on April 27, 2017 it adopted a completely new Master Plan for the Borough of Keyport.
33. As recognized in the Board's Engineering and Planning Review Letter (**Exhibit B-1**), "...[t]he recently adopted Master Plan reaffirms a tenant from the 1979 Land Use Plan, that the '...the predominant housing type in Keyport has been the one-family house. The land Use Plan recognizes this characteristic of the Borough and seeks to preserve those existing single family residences at a low to moderate density' and recommends this land use continue as the preferred land use throughout the Borough."
34. As further recognized by the Engineering and Planning Review Letter (**Exhibit B-1**), "Further, a goal of the Master Plan that is specified in the Housing Element is to protect and preserve the character of existing neighborhoods and communities. 'In particular, all single-family homes existing in the RA zone are envisioned to be maintained as such and it is strongly discouraged that any of these homes be converted to multi-family.'"
35. As to the specifics of the within application, the Board focuses upon the necessary criteria for approving a primary use variance pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1) and as further articulated in case law such as Medici vs. BPR, Co., 107 NJ 1 (1987).
36. The Board recognizes one of the most basic tenants of zoning is that absent special circumstances, zoning changes should be made by ordinance rather than by variance.
37. The Board notes that the existing Borough Ordinance and Master Plan already permit and envision a valid use for the applicant's property, specifically that of the aforementioned single family residential use. It is also noted that the existing use on the property, the Keyport Fire Patrol building, is a permitted use in the RA Zone.
38. The Board finds there was no credible argument presented as to why such an extreme divergence from a permitted single family residential use to an eight (8) multi-family structure should be granted. The only real argument made in support of the sought after higher density was that of meeting the financial needs of the developer. Such an argument is not a legitimate basis for ignoring, or granting a variance from, the determination of the Borough in its zoning ordinance, and the conclusions reached by the Planning Board's in its newly adopted Master Plan, that the appropriate residential use for the applicant's property should be that of a single family dwelling.

39. There is absolutely no evidence in the record that would even remotely tend to establish that there is something special about the applicant's property which would make it particularly suitable as the site for an eight (8) townhouse development. In fact, the very site plan submitted by the applicant tends to refute this fact. The parking scheme proposed by the applicant of having three cars stacked bumper to bumper in the driveway is in no way desirable. Even the applicant's own site engineer, Mr. Hopkin, was forced to acknowledge that wider driveways would function better than what is being proposed for the site.
40. Based upon the evidence submitted, the Board cannot possibly find the property is "particularly suited" for the proposed use. In fact just the opposite appears to be true.
41. The Board also finds that both the Zoning Ordinance and Master Plan are clear that multi-family housing is not permissible in the RA Zone. The Board finds it next to impossible to conclude that an eight (8) unit townhouse development, equating to a density of 17 dwelling units per acre, could ever be found as being in harmony with a Zoning Ordinance and Master Plan which only permit single family residences.
42. Based upon the above findings and conclusions, the Board finds that the applicant has failed to demonstrate sufficient special reasons to warrant the granting of a use variance pursuant to the provisions of N.J.S.A. 40:55-70(d)(1).
43. Beyond the lack of sufficient special reasons, the Board also finds that the applicant has failed to demonstrate the necessary enhanced quality of proof for warranting the grant of use variance relief. There was simply no evidence submitted into evidence that permitting a two-family residence to operate in the Borough's "RA Single Family Residence District" would not cause harm to the Borough's Master Plan, which was only just adopted on April 27, 2017, as well as harm to the Borough's existing zoning ordinances. In fact, the proposed use runs directly contrary to what is envisioned for the zone on all counts.
44. The Board also finds that in light of the recent adoption of the new Master Plan, the applicant has failed to meet the necessary negative criteria. The Board finds it impossible to conclude that permitting such an intense development in a zone which was just recently re-confirmed as being only appropriate for single-family residences would not cause extreme damage to the intent of the Master Plan.
45. While the Board certainly appreciates the concessions which the applicant was willing to make toward obtaining approval of the application, the Board nevertheless holds that it is obligated by the Municipal Land Use Law, and the relevant case law, to make decisions based upon the proper legal criteria as outlined above. The applicant has not been able to establish the required criteria for obtaining use variance relief and the Board believes that is because the proposed multi-family use is inappropriate for the single family residential district where the property is located.

46. In conclusion, based upon all of the testimony and evidence presented by the applicant and members of the public, the Board finds that it has no choice but to deny the applicant's request for use variance relief as the necessary prerequisites for obtaining same have not been met. The applicant has failed to establish "special reasons", "enhanced proofs" or meet the "negative criteria".
47. Finally, the members of the Board of Adjustment are all residents of the Borough of Keyport and therefore intimately familiar with the property at the center of this application and its surrounding neighborhood. Based upon that personal knowledge, the Board finds that even if one were to put the legal criteria aside, the sought after eight (8) multi-family development is completely out of character with the community where it would be located. Nothing like what is being proposed is located nearby. This multi-family project simply does not belong at this site and it would be inappropriate to grant a variance which would allow otherwise.
48. For all of these reasons, the Board finds that it has no choice but to deny the applicant's request for use variance relief.
49. Finally, the Board wishes to note that as it has denied the applicant's request for use variance relief, it makes no determination as to the "bulk variance" relief and "site plan" approval requests which were being sought.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport, that for all the reasons stated above, the application of Keyport Homes, LLC, for premises known as 26 Waverly Street and officially designated as Block 128, Lots 2, 3 and 4.01 is hereby denied; and The Board's Secretary is hereby directed to publish adequate notice of this Resolution in the official newspaper of the Borough within ten days of the adoption of this Resolution and to keep a copy of the proof of such publication in the Board's File.

The foregoing was moved by D. Fotopoulos, second by L. Davidson

Seconded by and on Roll Call, the following vote was recorded:

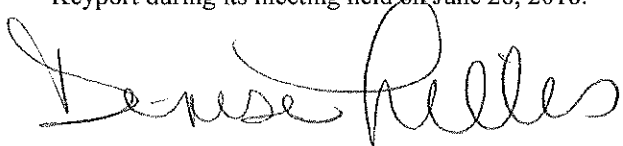
Affirmative: M. Sessa, L. Davidson, D. Fotopoulos, K. Howe

Negative:

Abstentions: Councilman Goode, J. Kovacs, J. Kovacs-Olsen

Absent: Mayor Aumack, N. Vecchio, J. Oviedo

The foregoing is a true copy of a Resolution adopted by the Unified Planning Board of the Borough of Keyport during its meeting held on June 28, 2018.

A handwritten signature in black ink, appearing to read "Denise Nellis". The signature is fluid and cursive, with the first name "Denise" written in a larger, more prominent script than the last name "Nellis".

Denise Nellis, Secretary of the Board