

Mayor
Collette J. Kennedy Class I

Planning Board Members

Harry M. Aumack II
W. McDermott
Juan Carlos Oviedo
Donald Pacheco
Joanne Royster

Alternates

C. Dickerson
G. Kotzas



Class II
Nick Vecchio

Class III
Lori Ann Davidson

Chairman
Mark Sessa

April 1, 2022

Salvatore Alfieri, Esq., Partner
Cleary I Giacobbe I Alfieri I Jacobs LLC
955 State Route 34, Suite 200
Matawan, NJ 07747

**RE: Keyport Homes, LLC
Waverly Street
Blk 128, lots 2,3, & 4.01
KUPB 18-06A**

Dear Mr. Alfieri;

Attached please find the Resolution for Application number 18-06A which was adopted at the Planning Board Meeting dated March 29, 2022.

Notice of this Approval must be published in the public notice section of the Asbury Park Press within 10 days of your receipt of this Resolution.

Proof of Publication should be filed in my office within thirty days.

If you have any questions, please do not hesitate to call me direct at 732-739-5123.

Very truly yours,

Denise Nellis
Planning Board Secretary
Borough of Keyport
dnellis@keyportonline.com

Encl.
Cc: Applicant
G. Falco
M. Clark
K. Stencel
T. Taylor

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

**RESOLUTION GRANTING RELIEF
FROM CONDITION OF PREVIOUSLY GRANTED FINAL SITE PLAN APPROVAL**

**UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT**

**BLOCK 128 LOTS 2,3 & 4.01
Application # 18-06A
KEYPORT HOMES, LLC
WAVERLY STREET**

WHEREAS, Keyport Homes, LLC previously received approval from the Unified Planning Board of the Borough of Keyport, by way of a Resolution adopted on October 29, 2018 in Application # 18-06, for Use Variance relief with Preliminary and Final Site Plan Approval so as to construct a six unit townhouse development made up of three (3) separate two family dwelling structures at property officially designated as Block 128, Lots 2, 3 & 4.01; and

WHEREAS, Condition # 5 of the aforesaid Resolution required, in part, for the applicant to install all utilities associated with the development underground; and

WHEREAS, the applicant has now returned to the Planning Board for partial relief from Condition # 5 of the earlier adopted Resolution due to the fact that the electric, cable and telephone utilities were not installed underground but rather from overhead; and

WHEREAS, the applicant has provided notice to all property owners within two hundred feet and have 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 during a regularly scheduled meeting of the Unified Planning Board held on February 24, 2022; 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. Throughout the course of this application, Mr. Agostino was represented by his legal counsel, Salvatore Alfieri, Esquire of the law firm of Cleary, Giacobbe, Alfieri, Jacobs, LLC which has offices at 955 Highway 34, Suite 200, Matawan, New Jersey 07747.
2. The applicant, Keyport Homes, LLC, is seeking partial relief from condition # 5 of a Resolution adopted by the Board on October 29, 2018 in Application # 18-06 which granted final site plan approval to develop property on Waverly Street which is officially designated as Block 128, Lots 2, 3, and 4.01 on the tax map of the Borough, so as to construct a six (6) unit townhouse development, made up of three (3) separate two-family dwellings.

3. Condition # 5 of the aforesaid Resolution required all utilities associated with the development to be installed underground, however this has not occurred as the electric, cable and telephone utilities have all been installed at the site by way of overhead wires.
4. Mr. Len Rubenstein, a principal of the applicant who was in charge of construction of the development, appeared before the Board and provided sworn testimony that it had been his intention to install the utilities underground as directed. However, during a preconstruction meeting with JCP&L to discuss the locations for gas and electric meters, the electric company had pointed out there was an existing utility pole that would have to be relocated per the approved site plan so as to accommodate the new driveways which were going to be constructed. When looking for a place to relocate the utility pole, upon which was a transformer servicing other homes along the street, it became apparent that there was no available area for service to the new development to be situated. For the wiring to be completely underground, it would have required it to be installed underneath the new driveways, thereby making them inaccessible to JCP&L. Additionally, JCP&L noted to Mr. Rubenstein that all of the other homes in the neighborhood were serviced by overhead wiring, and would remain that way, so nothing was being gained by having just the new development serviced by underground lines. Instead, it was the preference of JCP&L to service the new development from above by way of the relocated utility pole, just as the other homes in the neighborhood were going to be.
5. Mr. Rubenstein claimed that he assumed he had no choice but to follow JCP&L's direction and never realized this would be a site plan issue until after all construction had been completed. The issue only came to light during a post construction inspection by the Borough's Engineer, Trevor Taylor, P.E., had picked up on the discrepancy between what had been built and what had been approved. In the interim, the cable and telephone companies had proceeded to follow JCP&L's lead and provide service to the new development from the relocated utility pole as well.
6. Finally, Mr. Rubenstein emphasized that the development had been fully completed, was now fully occupied and was under the control of a condominium association rather than him. While he acknowledged that the electric, cable and telephone utilities could be relocated underground if he was forced to do so, the residents of the new association would be extremely inconvenienced in the process. He therefore asked that the Board consider relieving him of the requirements of Condition # 5 so that the issue could be resolved.

7. Trevor Taylor, P.E., the Borough's Engineer who was present during the hearing, testified that the original condition had been put into place for aesthetical purposes. However, he agreed with the observations of JCP&L, as relayed by Mr. Rubenstein, that all of the other properties in the neighborhood were serviced by overhead wiring coming from the relocated utility pole which was located directly in front of the new development.
8. A member of the public, Michael Lane of 51 First Street, Keyport, appeared and argued against the relief being requested by the applicant. He stated that the utilities being located underground had been a motivating factor in the Board approving the original application and he felt it would be a detriment for the community if that condition were now removed. He also argued that underground utilities had been a condition of the Developer's Agreement entered into by the applicant and the Borough.
9. No one else testified with respect to the application.
10. In considering this application, the Board agrees with the testimony of the applicant that due to the fact the neighborhood in which the subject property is located within is serviced by overhead wiring originating from a utility pole located in front of the new development, the benefits of having the wiring for the complex placed underground was negligible.
11. The Board accepts Mr. Rubenstein's explanation that he mistakenly believed he needed to follow JCP&L's lead when determining how utilities would be brought to the development. The Board does make clear for the record however that JCP&L has no such overriding authority and that the issue should have been brought back to the Planning Board for resolution prior to the work being completed. With that said, based upon the findings of Paragraph 10 above, the Board sees no point in mandating compliance with Condition # 5 of the original Resolution at this point in time. To require such would only serve to severely inconvenience the residents of the new development who had absolutely nothing to do with this situation.
12. While the Board finds that it would have preferred for the utilities to be placed underground as originally envisioned, it also cannot envision any legitimate negatives in allowing the lines to remain above ground as has now been established. Once again, the utility pole serving the neighborhood is located in front of this development, thereby making the benefits of installing underground wiring at the site negligible at best.
13. With respect to Mr. Lane's comments regarding the Developer's Agreement, the Board notes that those agreements are between the Borough and the applicant. The Planning Board is not a party to such. The applicant will have to deal with the Borough directly as to the contents of the Agreement as a result.

14. For the reasons stated above, the Board finds that Condition # 5 of its October 29, 2018 Resolution be rescinded to the extent it required all utilities for the new development to be installed underground.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Keyport Homes, LLC, be granted subject to the following conditions:

1. Subject to all conditions contained within the October 29, 2018 Resolution of the Planning Board with the exception of Condition # 5 to the extent it requires all utilities to be installed underground.
2. The applicant must publish adequate notice of this Resolution in the official newspaper of the Borough of Keyport at his sole cost, within ten days, and provide proof of publication to the Board Secretary within thirty days.

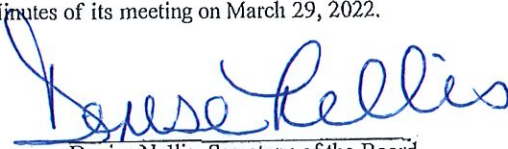
The foregoing was Moved by D. Pacheco, second by J. Royster
and on Roll Call, the following vote was recorded:

Affirmative: M. Sessa, D. Pacheco, J. Royster

Negative:

Abstentions: Mayor Kennedy, Councilmember Davidson (use variance application)

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 March 29, 2022.



Denise Nellis, Secretary of the Board