

Resolution prepared by:
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RESOLUTION
GRANTING MINOR SUBDIVISION AND USE VARIANCE RELIEF, AS WELL AS
RELIEF FROM A PREVIOUSLY AGREED UPON CONDITION OF APPROVAL,
SO AS TO ALLOW FOR OPERATION OF A STAND ALONE USED CAR DEALERSHIP

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 112, LOT 1
Application # 19-06
STRAUB MOTORS
400 HIGHWAY 35

WHEREAS, Straub Motors has filed an application seeking approval for a minor subdivision and use variance relief, as well as relief from a previously agreed upon condition of approval, so as to permit the operation of a stand alone used car dealership on property located at 400 Highway 35 which is officially known as Block 112, Lot 1 on the official 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 on the application was conducted on the within matter during a regularly scheduled meeting of the Unified Planning Board held on December 5, 2019; 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 minor subdivision approval and use variance relief so as to subdivide an existing property located at 400 State Highway 35, and officially known as Block 112, Lot 1 on the official tax map of the Borough of Keyport.
2. The subject site consists of 9.19 acres, has 1101.82 feet of frontage along the Garden State Parkway Ramp and State Highway 35. Access to the property is from State Highway 35, Beers Street and Clark Street.
3. There are three buildings located at the site. These include (1) the Straub Motors Buick GMC Car Dealership, (2) the Sansone Jr.'s EZ Auto Used Car Dealership and (3) the R&D Auto Body shop. The site also has large paved areas used for vehicle sales parking and storage.
4. The applicant is seeking a minor subdivision so as to create two (2) new lots. Proposed Lot 1.01, will contain the existing Buick/GMC Car Dealership on 5.1149 acres. Access to this lot will be from Clark Street by way of a cross access arrangement. The second lot, proposed Lot 1.02, will be 4.04316 acres in area and contain the used car dealership and auto body repair shop. Access will be maintained from State Highway 35, Beers Street and Clark Street.

5. The existing property is located entirely within the Borough's HC (Highway Commercial) District which does not permit standalone used car dealerships. As a result, this application requires use variance approval pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1).
6. The application also necessitates use variance approval pursuant to the provisions of N.J.S.A. 40:55D-70(d)(2) so as to allow the continuation of the auto body shop on proposed Lot 1.02 since said use is also not a permitted use in the HC District and only exists at the location pursuant to a previous grant of "(d)(1)" use variance relief granted by the Planning Board by way of a Resolution (Application # 11-07) adopted on December 15, 2011 which provided Use Variance and Preliminary and Final Major Site Plan Approval to an entity known as Carsmetics of Keyport, LLC. (**Exhibit B-2**)
7. The December 15, 2011 Resolution (**Exhibit B-2**) contained the following condition of approval:
 5. Subject to the Applicant not being permitted to store any materials or vehicles outside of the building. The only exception to this prohibition will be the occasional vehicle left outside for an owner who has indicated they will be picking up their vehicle after hours.

As part of this new application, Straub Motors is seeking relief from this condition.

8. Throughout the course of the application, the applicant was represented by Martin Pfleger, Esquire of the law firm Harter & Pfleger which has offices located at 21 County Road 537 # 1, Colts Neck, New Jersey 07722.
9. In support of the application, the following exhibits were marked into evidence by the applicant:

Exhibit A-1 :	Application Package filed on September 20, 2019.
Exhibit A-2 :	Minor Subdivision Plan & Survey dated April 30, 2019, last revised September 12, 2019, as prepared by Richard K. Heuser, P.L.S.
Exhibit A-3 :	Description of Road Widening Easement, dated August 15, 2019, as prepared by Richard K. Heuser, P.E. & L.S.
10. Beyond the exhibits marked into evidence by the applicant, the Board also marked its own exhibit into evidence as follows:

Exhibit B-1:	Review letter of Board Engineer and Planner, CME Associates, dated October 22, 2019.
Exhibit B-2:	Resolution of Approval (Application # 11-07) in favor of Carsmetics of Keyport, LLC, adopted by the Planning Board on December 15, 2011.
11. The Board's Planner Trevor J. Taylor, P.E., P.P., CME and Board Engineer Peter Van den Kooy, P.E., both of CME Associates, were present at the hearing and placed under oath, so as to certify the information within the CME review letter (**Exhibit B-1**).

12. In support of the application, sworn testimony was presented from the applicant's Engineer and Land Surveyor, Richard Karl Hauser, P.E., L.S., who testified as to the accuracy of the subdivision plans marked into evidence as **Exhibit A-2**. The lot was essentially being divided right down the middle as it provided the cleanest division of the property.
13. Mr. Hauser further testified that a cross easement would be put into place for the two properties so as to allow access across proposed Lot 1.02 to proposed Lot 1.01 via Clark Street. The applicant also intended to widen Clark Street and have a portion dedicated to the Borough of Keyport. As a condition of approval, the cross easement would need to be prepared and submitted to the Board's Attorney and the Board's Engineer for their respective review and approval before its recording with the Monmouth County Clerk's Office. Additionally, the proposed property dedication deed would need to be prepared and submitted to the Board's Attorney, the Board's Engineer and the Borough Attorney for their respective review and approval before its recording with the Monmouth County Clerk's Office.
14. It was noted that the subject site is a New Jersey Environmental Management System (NJEMS) site and participates in the "Pollution Prevention-Right to Know" program run by the New Jersey State Department of Environmental Protection (NJDEP). The site is also located within a Tier 2 Wellhead Protection Area which is regulated pursuant to Borough Code § 25:1-15.19. As a condition of approval, Mr. Hauser indicated the applicant would supply the Board Engineer with evidence that the application was in compliance with the applicable regulations associated with these designations.
15. The applicant next provided sworn testimony from the following three witnesses: (1) Remsen Straub, the principal owner of Straub Motors, (2) Paul Sansone, Jr., the principal owner of Sansone Jr.'s EZ Auto Used Car Dealership, and (3) Larry Kemp, the principal owner of R&D Auto Body. All three of these witnesses confirmed that nothing new was being proposed as part of this application. All three of the buildings already have their own separate utilities, so even that was not an issue. The reality was that all the three businesses would continue exactly as they exist today. As far as the outside observer would be concerned, nothing will have changed as a result of the subdivision.
16. It was noted that under the new configuration, R&D Auto Body would become a tenant of Lot 1.02's new owner, Sansone Jr.'s.
17. Mr. Sansone did note that he intended to eventually knock down the existing used car dealership building and build a new structure in its place. This was not definite however and would require a future application before the Planning Board if it were to happen.

18. With respect to the issue of the original December 15, 2011 Resolution of approval to Carsmetics (**Exhibit B-2**) which had allowed construction of the auto body shop on the property, the Board noted that its primary concern had been the appearance of disabled vehicles and related materials along the frontage of the property. This had been the reason why Condition # 5 had been placed within that Resolution. (See Paragraph 7 of this Resolution above) On this point, Mr. Straub noted that the Carsmetics business model, which promised one day turn around on auto body repair, had turned out to be a failure and the business had abandoned the site without fulfilling its lease. The building had now been occupied by R&D Auto Body for the past five years without the issuance of any code violations. Mr. Kemp confirmed that his business required the ability to store vehicles outside in order to survive. With that said, it was agreed as a condition of approval, that the outside storage of vehicles requiring auto body work would be limited to five (5) parking spaces to be located to the rear of the auto body shop building. (A total of 25 parking spaces were being made available for the auto body shop) This would serve to protect the frontage of the property from becoming a storage yard for vehicles requiring auto body work. The five (5) spaces to be used for such vehicle storage would be specifically indicated on revised plans (**Exhibit A-2**) which would need to be submitted to the Board's Engineer and the Board's Planner for their respective review and approval. Outside storage of materials would continue to be prohibited at the site.
19. The final witness to appear on behalf of the applicant was its planner, James W. Higgins, P.P. It was his sworn testimony that due to the fact that nothing new was being proposed as a part of this application and all of the businesses have long existed at the site, there would not be anything detrimental to the community if the proposal were to be approved. He noted that the site is part of the highway commercial district and all of the businesses are appropriate for such a location.
20. No one else testified on behalf of the applicant with respect to the merits of the application.
21. The Board's Professionals, who were all sworn, also indicated that they had no issues with the application provided the applicant adhered to the comments of their review letter. (**Exhibit B-1**).
22. A member of the public, Michael Lane, who resides at 51 First Street, Keyport, did appear and spoke in support of the application.
23. After considering the testimony and evidence presented, the Board Members, who are all residents of the Borough of Keyport, find that the current operations on the subject property have existed for several years now without any issues having arisen. As a result, the Board is hard pressed of to envision any negatives associated with the proposed application.

24. The Board notes that it previously granted use variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1) to allow an auto body shop to operate on the property. Nothing has changed since the granting of that relief which would alter the findings made in that original resolution as to such a use being appropriate for the site. (**Exhibit B-2**). The auto body shop will still operate next door to a car dealership (albeit a used car dealership rather than a new & used car dealership) and such shops are still regularly associated with such dealerships. With the additional condition that vehicles needing repair will be limited to five (5) parking spaces located in the rear of the auto body shop building, the viewshed of the property will not be changing from what was previously approved. There is absolutely no legitimate reason why the applicant should be denied relief pursuant to N.J.S.A. 40:55D-70(d)(2) so as to allow the auto body shop to continue to operate, nor is there any legitimate reason why condition # 5 of the December 15, 2011 Resolution (**Exhibit B-2**) should not be lifted since it will be replaced by an equally protective condition requiring that vehicles in need of repair be situated in the rear of the property.
25. With respect to allowing a used car dealership to exist on proposed Lot 1.02 without an associated new car dealership operating on the same site, the Board again focuses upon the fact that such a dealership already exists at the location, thereby establishing that the property is particularly suited for such a use. The property is located along Highway 35 which is exactly where one would expect to find such a business. Beyond this fact, the Board recognizes that Straub Motors will continue to exist next door on proposed Lot 1.01, making it appear to everyone concerned that nothing about the current state of the property has changed. Even if a new car dealership were to cease operating on proposed Lot 1.01 at some point in the future, the used car dealership on proposed Lot 1.02 would nevertheless have long been present at the site meaning that everyone will have already become accustomed to its existence. The Board cannot envision any negatives associated with permitting a used car dealership to operate upon proposed Lot 1.02.
26. With respect to the enhanced quality of proof required for "(d)(1)" relief, the Board focuses upon the fact that proposed Lot 1.02 is fully located within the Borough's HC Zoning District wherein car dealerships are already a permitted use in that zone. The Board acknowledges the fact that standalone used car dealerships are not permitted under the provisions of the zoning ordinance, but in this particular case, being that the dealership already exists, the Board finds that there would not be any detriment to the Master Plan or Zoning Ordinance were that dealership to be permitted to continue at its present location.

27. Based upon the above, the Board finds that the applicant has established the criteria necessary to warrant use variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1), so as to allow a standalone used car dealership to operate upon proposed lot 1.02.
28. With respect to the proposed subdivision, the Board cannot think of any reason why such should not be granted as proposed. The division of the properties has been made in the logical place, the center of the property, and the reality is that the property, with its three different businesses upon it, already appears to be subdivided to the public eye. There are no bulk variances being created here. Additionally, the cross access easement that will be recorded by the applicant will allow circulation upon the properties to remain unchanged. There is simply no evidence before the Board that the subdivision would not be appropriate.
29. It seems clear to the Board that there are no detriments associated with the granting of this application and as such it may be granted in its entirety, subject to the conditions which have been agreed to.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Straub Motor, Inc. seeking minor subdivision and use variance approval for premises located at 400 Highway 35, which is officially known as Block 112, Lot 1 on the official tax map of the Borough of Keyport, be granted subject to the following conditions:

1. Subject to the applicant substantially complying with the plans marked into evidence as **Exhibit A-2** except as indicated below.
2. Subject to the condition that the outside storage of vehicles requiring auto body work on proposed Lot 1.02 will be limited to five (5) parking spaces which shall be located to the rear of the auto body shop building. Outside storage of materials will continue to be prohibited.
3. **Exhibit A-2** is to be amended so as to specifically show where these five (5) parking spaces will be located. The revision to **Exhibit A-2** shall be subject to the review and approval of the Board's Engineer and the Board's Planner.
4. Subject to a cross access easement being prepared and submitted to the Board's Attorney and the Board's Engineer for their respective review and approval before its recording with the Monmouth County Clerk's Office.
5. Subject to a property dedication deed being prepared and submitted to the Board's Attorney, the Board's Engineer and the Borough Attorney for their respective review and approval before its recording with the Monmouth County Clerk's Office.
6. Subject to the applicant providing the Board Engineer with evidence that the application is in compliance with the NJEMS "Pollution Prevention-Right To Know" program run by the NJDEP as well as in compliance with the Tier 2 Wellhead Protection Area regulated pursuant to the Borough Code.

7. Subject to all conditions contained within the Resolution dated December 15, 2011 (**Exhibit B-2**), with the exception of Condition # 5 as such has been lifted.
8. Subject to the filing of the appropriate maps in compliance with the current "New Jersey Map Filing Law". If the applicant proposes to file the subdivision by deed, deeds perfecting the subdivision must be prepared. Documents must be submitted to the Board Attorney and Engineer for review and approval prior to filing.
9. Subject to the applicant's compliance with all other conditions of the CME review letter marked into evidence as **Exhibit B-1**.
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 any permit by the municipality.
14. 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.
15. 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.
16. 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

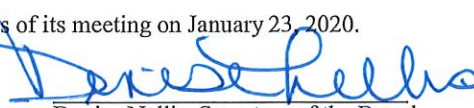
Seconded by _____ and on Roll Call, the following vote was recorded:

Affirmative:

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 January 23, 2020.


Denise Nellis, Secretary of the Board