

Resolution prepared by:
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RESOLUTION DENYING USE VARIANCE APPROVAL
TO ALLOW FOR A TWO FAMILY DWELLING

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 23, LOT 14

Application # 22-07
KATHERIN CHANDUVI
117 BROADWAY

WHEREAS, Katherin Chanduvi has applied to the Unified Planning Board of the Borough of Keyport for use variance relief so as to operate an single family structure located at 117 Broadway, and officially designated as Block 23, Lot 14 on the Tax Map of the Borough of Keyport, as a two-family home; 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, public hearings were held in the within matter at regularly scheduled meetings of the Unified Planning Board held on January 26, 2023 and February 23, 2023 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, Katherin Chanduvi, seeks approval to convert her existing single family home located at 117 Broadway, and officially designated as Block 23, Lot 14 on the official Tax Map of the Borough, into a two-family home.
2. The site in question is located within the Borough's RA (Single-Family Residential) Zone which does not permit two-family homes.
3. The Board notes that the Borough's Master Plan was adopted by way of a Resolution dated April 27, 2017 which re-affirmed the fact that the RA District should be limited to single family residences.
4. The applicant, who appeared before the Board along with her friend Christian Morris, who acted as a translator, indicated that she had purchased the home sixteen years ago in 2007. She indicated that at that time she had been led to believe the property was a two-family home by her Realtor. She stated that the house was divided into two residential spaces, albeit connected ones. There are two (2) electrical meters for the units.

5. The applicant advised the Board that at the time of her purchase she knew there might be issues with the home operating as a two-family structure since there was only one water meter serving the address, the certificate of occupancy did not list the property as having two units and there was only one mailing address for the property, meaning the post office only recognized one unit of record. Despite these issues, she had never pursued anything with the municipality toward having the property recognized as a two-family since she had been utilizing the premises as a “mother-daughter” structure with family residing in the second unit. She was no longer going to be sharing the property with her family however and she therefore was finally reaching out to the Borough to make sure the structure was now recognized as a legal two-family home.
6. Since two family homes are not permitted within Borough’s RA Zoning District, the applicant requires use variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1) in order to obtain the right to operate the premises as a single family home.
7. In support of the application, the following exhibits were placed into evidence:
 - Exhibit A-1 :** Unified Planning Board application
 - Exhibit A-2:** Survey of Subject Property, prepared by Stephen L. Koestner, P.E.,
L.S. of Koestner Associates, dated January 16, 2007
 - Exhibit A-3:** Layout of existing home showing 1st and 2nd floors
 - Exhibit A-4:** List of believed 2 Family Dwellings in Keyport
 - Exhibit A-5:** Board with Survey, Tax Records and
Photos of Home Entrance and Old Kitchen
8. In addition to those exhibits introduced by the applicant, the Board introduced the following exhibits of its own:
 - Exhibit B-1:** First Engineering and Planning Review letter dated October 7, 2022
as prepared by T&M Associates.
 - Exhibit B-2:** Package from Keyport Building Department as to history of
applicant’s property and other approvals for properties in Keyport.
9. No one else testified on behalf of the applicant with respect to the use variance request.
10. The following individuals spoke out in opposition to the application, believing the property should remain as a single family home as permitted by the zoning ordinance:
 - (A) Michael Lane of 51 First Street, Keyport
 - (B) John Merla of 34 Broad Street, Keyport
 - (C) Joe Wedick of 17 Teresa Street, Keyport
 - (D) Pat Murray of 132 Broadway, Keyport
11. Mr. Lane also offered a photograph of the property into evidence which was marked into evidence as **Exhibit L-1**.

12. No one else spoke with respect to the application.

CONCLUSIONS

13. In considering the merits of this application, the Board focuses upon the necessary criteria for approving a (d)(1) 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).
14. The Board recognizes that one of the most basic tenants of zoning law is that absent special circumstances, zoning changes should be made by ordinance rather than by variance.
15. The applicant has failed to meet the required criteria justifying the granting of (d)(1) use variance relief. Any successful request must consist of (1) establishing an “enhanced quality of proof” that the request is not offensive to the municipality’s zoning ordinance and master plan, (2) a presentation of “special reasons” as to why the variance should be granted while (3) also establishing the benefits for granting the requested relief outweigh the negatives which would result from such a decision.
16. The primary basis for this particular variance request is that the subject property is particularly suited as a two-family home because it is currently divided into two separate units (**Exhibit A-3**). Yet, by the applicant’s own admission those two units are connected inside and has been operating as a mother-daughter structure. Additionally, the applicant could offer no proof whatsoever that the home had ever been recognized by the Borough as being a two-family home. All records on file with the municipality (**Exhibit B-2**) demonstrate that the home has always been considered a single family home as far as the Borough is concerned.
17. The Board also recognizes that a request to have properties within the RA Zoning District transformed into two-family units would be in direct contrast to the conclusions made by the Borough as recently as 2017 when it adopted a new Master Plan and conforming zoning ordinances which made clear that the RA Zoning District should be limited to single family homes. If the Planning Board and Borough had felt this property was better suited for a multi-family development, it would not have zoned the property as it has. It is therefore very difficult for the Board to conceive how allowing a two-family home at the site could ever be harmonized with the Borough’s Master Plan and Zoning Ordinance. To the contrary, the proposal is completely inconsistent with the intent and purpose of those governing documents.
18. It appears from the evidence submitted that there are no legitimate special reasons present why the Board should grant a (d)(1) use variance so as to allow a divergence at the applicant’s property from the Borough’s prohibition against multi-family dwellings in the RA Zoning District. There is nothing stopping the applicant from

utilizing the property as a single family home, exactly as she has been doing since the purchase of the site back in 2007.

19. The Board also concludes that granting the requested use variance relief would negatively impact the Borough's master plan and zoning ordinance, both of which specifically speak against two-family homes being operated in the zone.
20. In conclusion, based upon all of the testimony and evidence presented, 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".
21. For all of these reasons, the Board finds that it has no choice but to deny this application since the applicant has failed to provide a proper legal basis as to why it should be granted and the Board has determined that variance relief could not be granted without impairing the public good, Zone Plan and Zoning Ordinance.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application brought by Katherin Chanduvi, is hereby denied; and

BE IT FURTHER RESOLVED that the Board's Secretary is hereby directed to publish adequate notice of this Resolution in the official newspaper of the Borough of Keyport within ten (10) days of the adoption of this Resolution. The original proof of such publication shall be kept in the Board's File with an additional copy being provided to the applicant upon receipt of same.

The foregoing was Moved by N. Vecchio, second by J. Kovacs-Olsen and on Roll Call, the following vote was recorded:

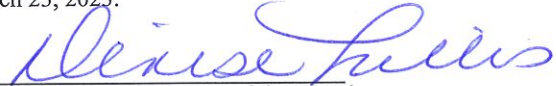
Affirmative: Chairman Sessa, H. Aumack, J. Oviedo, J. Royster, N. Vecchio,

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 March 23, 2023.


Denise Nellis, Secretary of the Board