

R. C. SHEA & ASSOCIATES

COUNSELLORS AT LAW, P.C.

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Civil Trial Attorney

Certified By The National Board of Trial Advocacy
As A Civil Trial Advocate
Rule 1:40 Qualified Mediator

BERKELEY TOWNSHIP OFFICE

HOLIDAY CITY PLAZA III

600 MULE ROAD, SUITE 16

TOMS RIVER, NJ 08757

BRICK AREA
(732) 451-0800

MANCHESTER AREA
(732) 408-9455

September 19, 2024

Via Email and Hand Delivery

Paul Murphy, Zoning Officer

70 West Front Street

Keyport, New Jersey 07735

pmurphy@keyportonline.com

**RE: 3 Cass Street
Block 33 Lot 16
Our File No.: 15851**

Dear Mr. Murphy,

This office represents owner of the above referenced property. This letter is to inform you that an appeal pursuant to N.J.S.A. 40:55D-72 has been filed as it relates to your determinations regarding the use of this property as a "junk yard." Please see attached **Schedule A** which contains the grounds for the appeal and the issues for same. Said Schedule A was filed with the Zoning Board as part of our client's appeal and interpretation request to the Zoning Board pursuant to N.J.S.A. 40:55D-70(a) and (b).

As mandated by N.J.S.A. 40:55D-72, you are hereby notified of the appeal of your determinations and are advised of your obligation to immediately transmit all papers constituting the record of your determinations to the Zoning Board. Furthermore, N.J.S.A. 40:55D-75 states as follows: "An appeal to the board of adjustment shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made."

As such, please accept this correspondence as notice that pursuant to the above cited portion of the Municipal Land Use Law, any proceedings are statutorily stayed pending the Zoning Board's decision on this matter.

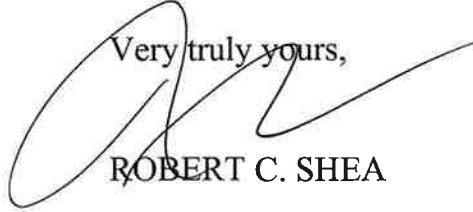
R. C. SHEA & ASSOCIATES

COUNSELLORS AT LAW, P.C.

Page 2 of 2

Naturally, should you have any questions or wish to discuss the above, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be 'RCS', written over the typed name 'ROBERT C. SHEA'.

ROBERT C. SHEA

RCS/kjn

Schedule A

Background and Facts

On November 22, 2022, the property located at 3 Cass Street, Keyport NJ, Block 33, Lot 16 (“Property”) received a Zoning Approval for a change of use (**Exhibit A**). The application was submitted in the name of Automoby LLC, the tenant of the Property and applicant for the change of use, as well as AP Cass Street, LLC, as the owner of the Property. The application described the new use as, “dealership company that buys, sells and does overseas transportation of salvaged cars and parts.” The Property is located in the Industrial Zone, and as such, the Change of Use was indicated as “permitted by ordinance”. The Zoning Application was signed by Zoning Officer David Olsen. The Property was inspected and received a Certificate of Occupancy on January 10, 2023. (**Exhibit B**)

Current Application

This application, regarding the property located, is being submitted pursuant to both N.J.S.A. 40:55D-70(a) and (b) which respectively grant a Zoning Board the power to:

- a. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance; (“appeal”)
- b. Hear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act; (“interpretation”)

Specifically, on September 11, 2024, Zoning Officer Paul Murphy sent an e-mail to Property owner Avrohom Schlaff (“Schlaff”) indicating that “unapproved and illegal conditions at the property” have not been abated and that “multiple summonses” will be issued. (**Exhibit C**) The e-mail referenced a prior letter from June 28, 2024. (**Exhibit D**)

The letter, from Township Engineer CME Associates, indicated that the Property was being used as in violation of § 25-1-12 *et seq* of the Keyport Code, which governs the Industrial Zone. Specifically, the letter indicated that the Property’s use is that of a salvage yard/junk yard.

This application for appeal for appeal and interpretation is hereby made by Property owner Avrohom Schlaff/AP Cass Street LLC (“Owner”). Owner is an interested party to determinations regarding the Property and as such, has the right to seek this appeal and interpretation pursuant to N.J.S.A. 40:55D-72. Specifically, Owner is seeking the following relief from the Zoning Board: 1) overturning the Zoning Officer’s determination that the current use of the Property violates § 25-1-12.1 of the Keyport Land Use Regulations and requires a use variance; 2) finding that the use

of the Property is not a salvager or junk yard; 3) interpreting § 25-1-12.1 to allow the use of the Property to continue.

Grounds

Under § 25-1-12.1 of the Keyport Code, the following uses are permitted in the Industrial Zone:

- a. All uses permitted in the Limited Industrial District.
- b. Manufacturing of light machinery.
- c. Fabrication of metal products.
- d. Fabrication of paper products.
- e. Fabrication of wood products.
- f. Processing and packaging of food and associated goods.
- g. Research laboratories.
- h. Other uses which are light industrial in nature. Such shall not include truck terminals, bulk fuel storage, raw material processing except for food and beverages, asphalt and concrete plants.

The uses permitted under subsection a₂ are as follows:

- a. Wholesale storage and warehouse facilities.
- b. Lumber, building materials, and other storage yards, but not salvage or junk yards.
- c. Processing or assembly of materials for products sold on the premises such as a baking plant, dry cleaning plant, etc.
- d. Laboratory or research facilities.
- e. Boat yards and boat building facilities.
- f. Light industrial use provided same shall not create toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapor, offensive noise or vibration, glare, flashes, or objectionable effluent, the effects of which would be noticeable outside the Limited Industrial District.

The definition of a “junkyard” pursuant to § 25-1-3 is:

The use of any lot for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition or abandonment of structures, automobiles or other vehicles, equipment and machinery or parts thereof, provided, that this definition shall not be deemed to include any of the foregoing uses which are accessory and incidental to any agricultural and industrial use permitted in any zone. The term "junkyard" as herein defined includes automobile wrecking yards.

“Salvage Yard” is not defined. It should be noted that neither the Zoning Officer, nor CME have specifically called out what activity is taking place that is at odds with the Zoning Permit or the applicable ordinance. Rather, both simply make the conclusory statement that the Property is operating as a junk yard. Notwithstanding the Zoning Officer’s failure to specify the exact conduct

that constitutes a violation, there can be not serious reading of the above ordinances that indicate that the Property is in violation of same.

Firstly, the Zoning Permit application clearly stated that the proposed business activity would include buying, selling, and oversees transportation of salvaged cars and parts. Naturally in order to effectuate the shipment of salvage parts, one must remove same from the automobile in question, and store same until it is shipped. In fact, the definition of “junkyard” specifically accommodates for this reality.

As noted above, “accessory and incidental” uses to permitted industrial uses that happen to overlap with the activities set forth in the definition of “junkyard,” do not make the use a junkyard. In other words, the ordinance contemplates a “junkyard” as a principal use/ In order to qualify as a junkyard, the property’s main purpose would need to be, “storage, keeping or abandonment of junk, including scrap metals or other scrap materials” or “the dismantling, demolition or abandonment of structures, automobiles or other vehicles.” This is not the case here.

In the instant case, the primary use of the property is the buying, selling, and shipping of salvaged cars and parts. Any dismantling and storage of same are purely incidental to the otherwise permitted use. As such, the Property cannot be considered a junkyard.

Furthermore, it should be noted that the Industrial Zone specifically contemplates some assemblage uses. Specifically, “boat yards and boat building facilities,” “lite industrial uses,” manufacturing of machinery,” and various fabrication uses are all contemplated within the Industrial Zone.

Conclusion

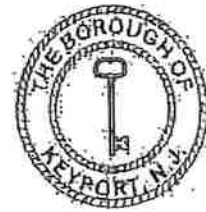
For the foregoing reasons, we ask that the Zoning Board overturn the Zoning Officer’s determination and interpret the ordinance as permitting the use taking place at the Property.

EXHIBIT A



ZONING APPLICATION

Borough of Keyport
70 West Front Street
Keyport, N.J. 07735
P - 732-739-5135 F - 732-739-3479
www.keyportonline.com



Estimated Cost of Work: \$ _____

Fee: \$ _____

Address of Proposed Work or Use: 3 Cass Street, Keyport NJ

Block: 33 Lot(s): 16 Zone: _____ CN: _____

Owner's Name: AP Cass Street LLC / Avrohom Schlaff Telephone: 908-330-3677

Address: 1764 51 Street Brooklyn NY 11204 E-Mail: _____

Contractor or Applicant (If different from above) Information:

Name: Automoby LLC - Davit Kverenchkhiladze Telephone: 631 703 7707

Address: 60 Asbury Road, Suite 404, Hackettstown, NJ 07840 E-Mail: automobyusa@gmail.com

License #: 06551 90000 78401

Type of Work and/or Use (Check all that apply):

- ☐ Addition ☐ Renovation ☐ Alteration ☐ Reconstruction ☐ Repair ☐ Flat Work
☐ New Construction ☐ Change of Use ☒ Commencement of Use
☐ Accessory Use/Structure: ☐ Shed ☐ Fence ☐ Other: _____

Size of Property: Lot Area _____ Sq Ft. Frontage: _____ Ft Depth: _____ Ft

Principal Building: Type: _____ Gross Floor Area: _____ Lot Coverage: _____

Lot Coverage _____ Percent Building Height: _____ Ft

Accessory Building: Total Area _____ Rear Yard Set Back _____ Ft Side Yard set back _____

Automoby LLC is the Dealership company, that buys, sells, does the overseas transportation of salvage cars and parts as well.

Owner's Signature: [Signature] Date: _____

Keyport Unified Planning Board prior approvals or applications: Has this property, to your knowledge, ever been subject of any prior applications to the Keyport Unified Planning Board? () No () Yes

If yes, provide date(s): _____

Notes:

- 1) All Zoning Permit Applications must be accompanied by a current Property Survey drawn to scale and including locations and distances to property lines of all structures, improvements, proposed work, etc..
- 2) Elevations shall be measured at five (5) separate points five (5) feet out along the entire front facade of the principal structure and around the entire perimeter of accessory structures to determine the average grade for purposes of confirming the structure's height.

EXHIBIT B



Change of Occupancy Certificate
Borough of Keyport, New Jersey
70 West Front Street, Keyport, NJ 07735
732-739-3900

☒ Rental/Apt.

☐ Business

☐ Transfer of Title

No.: 2023-003 Fee Paid: \$245 Date: Jan 5 2023

Seller/Owners Name: Avrhom Schlaff

Address: 1764 51st St, Brooklyn This Occupancy certificate is granted
for the building/dwelling located at: 3 Cass St, Keyport

Block: 33 Lot: 16 Qualifier: _____ Unit #: 11, 11B, 11c, 12, 13, 14A
14B, 14C, 15A
to the following Buyer(s)/Occupant(s): David Kverenchkhiladze (Salvage Auto Parts)

Number of Bedrooms: _____ Total Occupancy Permitted: 25

☒ The installation of all Smoke Dectectors, Carbon Monoxide Alarms, and Fire Extinguishers meet the New Jersey
Uniform Fire Code Requirements for Smoke Detectors, Carbon Monoxide Alarms and Fire Extinguisher installation compliance.

1/10/23
DATE

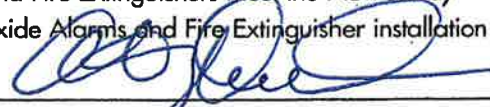

HOUSING INSPECTOR

EXHIBIT C

Vincent J. DelRiccio

From: Alley Property <avrohom@alleypropertymanagement.com>
Sent: Wednesday, September 11, 2024 12:39 AM
To: Paul Murphy
Cc: Chaim Lev; Robert C. Shea; Vincent J. DelRiccio
Subject: Re: 3 Cass St - Deadline passed

Paul,

We've retained our attorney Rob Shea cc'd here to represent us in this case.
He will be responding to you very soon regarding this matter.

On Tue, Sep 10, 2024, 11:33 PM Paul Murphy <pmurphy@keyportonline.com> wrote:

The cease and desist order that was issued on June 28 was given until September 1 to be satisfied, and in return for extending the deadline the lighting ordinance, property buffer zone and vehicles traffic regulations were to be followed. This was conveyed to your attorney via email.

Nothing has been abated.

Paul Murphy
Property Maintenance / Zoning Enforcement
Borough of Keyport

On Sep 10, 2024 23:27, Chaim Lev <chaim@alleypropertymanagement.com> wrote:
Which items it I may ask?

Sent from my iPhone

On Sep 11, 2024, at 6:14 AM, Paul Murphy <pmurphy@keyportonline.com> wrote:

Chaim, the September 1 deadline that was scheduled for the violations at the property to be abated, is now 10 days past due.

As such, I will be issuing multiple summons for the unapproved and illegal conditions at the property.

Each calendar day the conditions continue to exist, summonses will be issued.

I am sorry that an amicable reconciliation could not be reached with this matter.

Paul Murphy
Property Maintenance / Zoning Enforcement
Borough of Keyport

EXHIBIT D



JOHN H. ALLGAIR, PE, PP, LS (1983-2001)
DAVID J. SAMUEL, PE, PP, CME
JOHN J. STEFANI, PE, LS, PP, CME
JAY B. CORNELL, PE, PP, CME
MICHAEL J. McCLELLAND, PE, PP, CME
GREGORY R. VALES, PE, PP, CME

BRUCE M. KOCH, PE, PP, CME
LOUIS J. PLOSKONKA, PE, CME
TREVOR J. TAYLOR, PE, PP, CME
BEHRAM TURAN, PE, LSRP
LAURA J. NEUMANN, PE, PP
DOUGLAS ROHMEYER, PE, CFM, CME
ROBERT J. RUSSO, PE, PP, CME
JOHN J. HESS, PE, PP, CME
KEITH CHIARAVALLO, PE, CME

June 28, 2024

Sent via Email (automobyusa@gmail.com) and Regular Mail

Davit Kverenchkhiladze
Automoby LLC
60 Asbury Road, Suite 404
Hackettstown, NJ 07840

**Re: Zoning Application Review
3 Cass Street
Block 33, Lot 16
Zone I (Industrial)
Borough of Keyport, Monmouth County**

Dear Mr. Kverenchkhiladze:

I have reviewed the zoning application (#ZA-22-283) dated November 17, 2022 and Zoning Approval dated November 22, 2022 for the above referenced property. I have also reviewed the current operation of the site. Both have been reviewed in accordance with Chapter 25 'Land Use Regulations' of the Borough's 'Revised General Ordinances of the Borough of Keyport', herein referenced to as the "Code". Specific reference is made to the following sections of the Code:

§ 25-1-12 INDUSTRIAL DISTRICT (I) REGULATIONS.

Purpose. The purpose of the Industrial District is to provide suitable locations for the development of intense industrial uses, including clean manufacturing, warehousing and distribution operations, as well as adaptive reuse or redevelopment of older existing commercial and or industrial sites for newer technologies, research and development, computer software, electronics and other high tech industries.

§ 25-1-12.1 Permitted principal uses [of the Industrial District].

- a. All uses permitted in the Limited Industrial District [as follows]:
 - i. Wholesale storage and warehouse facilities.
 - ii. Lumber, building materials, and other storage yards, **but not salvage or junk yards.**
 - iii. Processing or assembly of materials for products sold on the premises such as a baking plant, dry cleaning plant, etc.
 - iv. Laboratory or research facilities.
 - v. Boat yards and boat building facilities.

S:\Keyport\Project Files\3 Cass Street\24-06-26 - Zoning Letter.docx



Automoby, LLC
Re: Zoning Application
Block 33, Lot 16 (3 Cass Street)

June 28, 2024
Page 2
HKP00003.24

- vi. *Light industrial use provided same shall not create toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapor, offensive noise or vibration, glare, flashes, or objectionable effluent, the effects of which would be noticeable outside the Limited Industrial District.*
- b. *Manufacturing of light machinery.*
- c. *Fabrication of metal products.*
- d. *Fabrication of paper products.*
- e. *Fabrication of wood products.*
- f. *Processing and packaging of food and associated goods.*
- g. *Research laboratories.*
- h. *Other uses which are light industrial in nature. Such shall not include truck terminals, bulk fuel storage, raw material processing except for food and beverages, asphalt and concrete plants.*
- i. *Adult entertainment uses.*

In review of the zoning application dated November 17, 2022, the Applicant submitted the zoning application with the following description of the proposed use: "Automoby LLC is the Dealership company, that buys, sells, does the overseas transportation of salvage cars and parts as well". The zoning application was approved on November 22, 2022 as a "change of use" permitted by ordinance.

In review of the Code, the Industrial District specifically prohibits salvage yards and junk yards from the permitted uses. Discernibly, the submitted application did not clearly identify the proposed use. Had the Applicant provided specific details on the actual use that was proposed on the property (the storage of salvaged and junk vehicles), the issuance of the zoning permit for a "Change of Use" could not have been approved as "permitted by ordinance".

With this being said, the current operation of a salvage and junk yard is not permitted by the Code, and in fact is specifically prohibited as a permitted use. The continuance of the use in its current operation requires use variance approval from the Borough Land Use Board.

§ 25-1-12.6 Other required conditions [of the Industrial District Regulations].

Any use which is not conducted wholly within a completely enclosed building shall not be less than 50 feet distant from a residential district and shall be screened as required in Subsection 25-1-14.6.



Automoby, LLC
Re: Zoning Application
Block 33, Lot 16 (3 Cass Street)

June 28, 2024
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HKP00003.24

It appears that the salvaged vehicles and trailers are within 50 feet of a residential district which is a violation of this section of the Land Use Ordinance.

§ 25-1-14.6 Landscaping, lighting and buffer regulations.

- c. *Lighting regulation. No exterior light source shall emit direct glare beyond the lot lines of the site on which located. Further, no pole lights shall exceed 12 feet in height when located within 25 feet of a residential zone boundary.*

Pole mounted light fixtures have been installed on the site without site plan approval. It appears that the lighting emits glare on to the neighboring residential properties which is a violation of this section of the Code. Further, site plan approval is required from the Borough Planning Board for the installation of lighting within the Industrial District.

§ 25-1-15.19 Wellhead protection.

- a. *The purpose of this section is to protect the public health, safety and welfare through the protection of the groundwater resources underlying the municipality to ensure a supply of safe and healthful drinking water for the present and future generations of local residents, employees and the general public in this municipality as well as users of these water supplies outside the Borough of Keyport. The area of land surrounding each public community well, known as a "Wellhead Protection Area (WHPA)," from which contaminants may move through the ground to be withdrawn in water taken from the well, have been delineated. Through regulation of land use, physical facilities and other activities within these areas, the potential for groundwater contamination can be reduced. The purpose of the regulations contained in this section is to prevent pollutants from potentially entering areas within a WHPA that may migrate into groundwater that is withdrawn from a public community well.*

The property is located within a Tier 1 Wellhead Protection Area, defined as follows:

TIER 1 WELLHEAD PROTECTION AREA

That area of land within a WHPA from which groundwater may enter the well within two years.

In accordance with the Code, junk yard/auto recycling facilities are considered a major potential pollutant source. This chapter of the Code states that any change in land use or activity that adds a major or minor potential pollutant source (PPS), shall be prohibited within a Tier 1 WHPA. With this being said, the junk yard facility is not permitted within the Tier 1 WHPA and the continuance of the use is in violation of this section of the Code.



Automoby, LLC
Re: Zoning Application
Block 33, Lot 16 (3 Cass Street)

June 28, 2024
Page 4
HKP00003.24

Based on the above, and in summary, the current use is in violation of the following sections of the Borough's Code:

§ 25-1-12.1 Permitted principal uses.

§ 25-1-12.6 Other required conditions.

§ 25-1-14.6 Landscaping, lighting and buffer regulations.

§ 25-1-15.19 Wellhead protection.

Considering the use is a major potential pollutant source and is located with a Tier 1 WHPA, the use is prohibited and shall not continue. Operation of the salvage/junkyard facility on the property shall cease and all junked and salvaged vehicles shall be removed from the premise within 30 days. Penalties may be assessed by the Borough in accordance with section 1-5.2 of the Borough's 'Revised General Ordinances of the Borough of Keyport'.

Should you have any questions or require additional information, please do not hesitate to contact our office.

Very Truly Yours,

CME Associates

Trevor J. Taylor, PE, PP, CME
*Borough Engineer's Office
Interim Zoning Officer*

cc: Kim Humphrey, Borough Administrator
Victoria Flynn, Esq., Borough Attorney
AP Cass Street, LLC (Avrohom Schlaff), Property Owner
1764 51 Street
Brooklyn, NY 11204



ZONING APPLICATION

NOV 17 2022

BY: *[Signature]*

Borough of Keyport
70 West Front Street
Keyport, N.J. 07735
P - 732-739-5135 F - 732-739-3479
www.keyportonline.com



Estimated Cost of Work: \$ _____

Fees: \$ 25

Address of Proposed Work or Use: 3 Cass Street, Keyport NJ

Block: 33 Lat(s): 16 Zone: _____ CN: _____

Owner's Name: AP Cass Street LLC / Avrohom Schlaff Telephone: 908-330-3677

Address: 1764 51 Street Brooklyn NY 11204 E-Mail: _____

Contractor or Applicant (If different from above) Information:

Name: Automoby LLC - Davit Kverenchkhiladze Telephone: 631 703 7707

Address: 60 Asbury Road, Suite 404, Hackettstown, NJ 07840 E-Mail: automobyusa@gmail.com

License #: 06551 90000 78401

Type of Work and/or Use (Check all that apply):

- ☐ Addition ☐ Renovation ☐ Alteration ☐ Reconstruction ☐ Repair ☐ Flat Work
☐ New Construction ☐ Change of Use ☒ Commencement of Use
☐ Accessory Use/Structure: ☐ Shed ☐ Fence ☐ Other: _____

Size of Property: Lot Area _____ Sq Ft. Frontage: _____ Ft Depth: _____ Ft
 Principal Building: Type: _____ Gross Floor Area: _____ Lot Coverage: _____
 Lot Coverage _____ Percent Building Height: _____ Ft
 Accessory Building: Total Area _____ Rear Yard Set Back _____ Ft Side Yard set back _____

Automoby LLC is the Dealership company, that buys, sells, does the overseas transportation of salvage cars and parts as well.

Owner's Signature: *[Signature]* Date: _____

Keyport Unified Planning Board prior approvals or applications: Has this property, to your knowledge, ever been subject of any prior applications to the Keyport Unified Planning Board? () No () Yes

If yes, provide date(s): _____

Notes:

- 1) All Zoning Permit Applications must be accompanied by a current Property Survey drawn to scale and including locations and distances to property lines of all structures, improvements, proposed work, etc..
- 2) Elevations shall be measured at five (5) separate points five (5) feet out along the entire front facade of the principal structure and around the entire perimeter of accessory structures to determine the average grade for purposes of confirming the structure's height.

2A-22-283



Borough of Keyport
70 WEST FRONT ST
P.O. BOX 60
KEYPORT, NJ 07735
(732) 739-5134

Date Issued: 11/22/2022
Application Number: ZA-22-283
Application Date: 11/17/2022
Project Number:
Permit Number: ZP-22-0214
Fee: \$25.00

CHANGE OF USE

Worksite: PERRY & CASS
Location: Borough of Keyport, NJ

Block: 33
Lot: 16
Qualifier:

Zone:

Owner: AP CASS STREET, LLC & CHAB REALT

Applicant: AUTOMOBY LLC% DAVIT
KVERENCHKHILADZE

Address: 152 SKILLMAN STREET
BROOKLYN, NY 11211

Address: 60 ASBURY RD
SUITE 404
HACKETTSTOWN, NJ 07840

Application Approved Date: 11/22/2022

This Certifies that an application for the issuance of a CHANGE OF USE has been examined.

Use is: (None)

Nonconforming Use is:

Work Description:

**SITE INTERPRETATION/ CHANGE OF USE - AUTOMOBY LLC IS THE DEALERSHIP COMPANY THAT
BUYS, SELLS & DOES THE OVERSEAS TRANSPORTATION OF SALVAGE CARS & PARTS**

Upon review it was determined that the CHANGE OF USE:

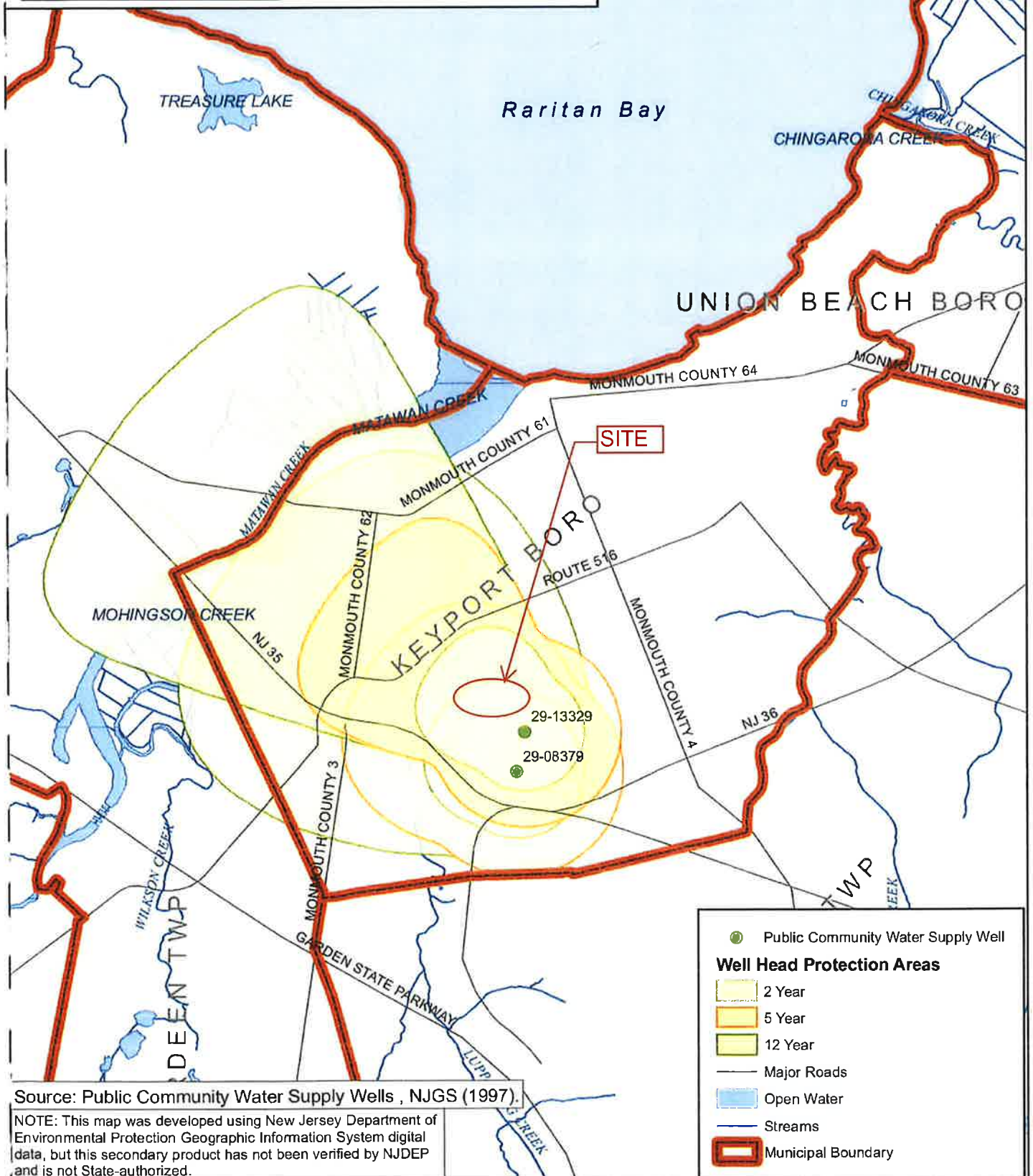
- ☒ Permitted by Ordinance
- ☐ Permitted by Variance approved on: _____
- ☐ Valid Nonconforming Use is established by
 - ☐ Zoning Board of Adjustment
 - ☐ Zoning Officer


DAVID OLSEN, ZONING OFFICER

11/22/2022
Date

Figure 12: Wellhead Protection Areas
Borough of Keyport
Monmouth County, New Jersey

0 750 1,500 3,000 Feet



Source: Public Community Water Supply Wells, NJGS (1997).

NOTE: This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been verified by NJDEP and is not State-authorized.