

RESOLUTION
GRANTING PRELIMINARY AND FINAL SUBDIVISION APPROVAL
WITH ASSOCIATED VARIANCE RELIEF

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 22 LOTS 26, 30 and 31
Application # 17-01
MICHAEL AND CATHERINE CUMMINS - MYSTIC AT KEYPORT
44 BEERS STREET

WHEREAS, Michael and Catherine Cummins were granted bifurcated use variance approval for the purpose of constructing nine (9) new single family dwelling units by way of Resolution adopted by the Unified Planning Board of the Borough of Keyport on November 14, 2013; and

WHEREAS, the aforesaid Resolution required the applicants to return to the Unified Planning Board for the obtaining of subdivision approval and as such the applicants have now so returned;

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 on the application were conducted in the within matter during regularly scheduled meetings of the Unified Planning Board held on July 27, 2017 and November 9, 2017; 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 constitutes a request for Preliminary and Final Major Subdivision approval with associated variance relief for Michael and Catherine Cummins to construct nine (9) single family homes which will collectively be referred to as Mystic At Keyport, on property officially known as Block 22, Lots 30 and 31 on the official tax map of the Borough of Keyport. Initial use variance approval for this use was granted by the Board by way of a Resolution adopted on November 14, 2013. Block 22, Lot 26 is also included as part of this application, however that lot is intended to remain vacant.
2. During all portions of these proceedings, the applicant was represented by Paul N. Mirabelli, Esquire who has law offices located 3400 Highway 35, Suite 3, Hazlet, New Jersey.
3. In support of the application, the following exhibits were marked into evidence by the applicant:

Exhibit A-1 : Application Cover letter dated July 12, 2017 as prepared by Simonne Vaccaro, Senior Permit Coordinator of Maser Consulting.

- Exhibit A-2 :** Preliminary and Final Major Subdivision Plans dated January 13, 2017, last revised July 1, 2017, as prepared by Mark Zelina, P.E. of Maser Consulting.
- Exhibit A-3 :** Final Plat Major Subdivision plans dated January 31, 2017, last revised July 11, 2017, as prepared by Eric V. Wilde, P.L.S. of Maser Consulting.
- Exhibit A-4 :** Boundary and Topographic Survey dated May 5, 2014, last revised July 11, 2017, as prepared by Richard G. Ruchalski, P.L.S. of Chester, Ploussas, Lisowsky Partnership, LLC
- Exhibit A-5:** Floor Plans and Elevations dated July 10, 2017, as prepared by Robert S. Larsen, R.A. of Chester, Ploussas, Lisowsky Partnership, LLC
- Exhibit A-6:** CAFRA Individual Permit dated November 10, 2016
- Exhibit A-7:** Artistic Rendering of Proposed Homes (3 Sheets)
- Exhibit A-8:** Environmental Impact Statement dated June 2016 as prepared by Maser Consulting.
- Exhibit A-9:** Keyport Subdivision Landscape Plan dated July 27, 2017 as prepared by Mark Zelina, P.E. of Maser Consulting.
- Exhibit A-10:** Declaration of Conservation Easement/Restrictions entered into with the New Jersey Department of Environmental Protection recorded on March 3, 2005 in Deed Book 8441 at Page 9720.
- Exhibit A-11:** Building Elevations (2 Sets), undated, as prepared by Robert S. Larsen, R.A.
- Exhibit A-12:** Photograph of real-estate sign installed at property by VRI Homes
- Exhibit A-13:** Artistic rendering of what the applicant believed was going to be posted at the site rather than what was installed (**Exhibit A-12**)
- Exhibit A-14:** Colorized rendering of a proposed home for the property which would comply with all zoning ordinances and could be build as of right.
- Exhibit A-15:** Colorized rendering of a proposed home for the property consisting of 4 stories which would require variance relief

4. Beyond the exhibits marked into evidence by the applicant, the Board also marked its own exhibits into evidence as follows:

- Exhibit B-1:** "Second Completeness, Planning and Engineering Review" Letter dated July 25, 2017 as prepared by Francis W. Mullin, P.E., C.M.E. and Donna Miller, A.I.C.P., P.P. of T&M Engineering.
- Exhibit B-2:** Keyport Environmental Commission Review Report dated July 17, 2017.
- Exhibit B-3:** Resolution of the Keyport Unified Planning Board dated November 14, 2013 granting Bifurcated Use Variance approval to Michael and Catherine Cummins

5. Both the Board Engineer, Bonnie Heard, P.E. (sitting in place of Fran Mullin, 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 Engineering Review letter which was marked into evidence as **Exhibit B-1** and incorporated into this Resolution by reference.

6. In support of the application, the applicant presented sworn testimony from its professional engineer, Mark Zelina, P.E. of Maser Consulting.
7. Mr. Zelina relying upon **Exhibits A-2, A-3 and A-9** explained the general layout of what the applicant was proposing. It was noted that nine (9) single family homes would be constructed on newly subdivided lots which would be created out of what is currently designated Block 22, Lots 30 and 31.
8. Mr. Zelina noted that Block 22, Lot 26 had been added to the application as the Department of Environmental Protection had requested that the applicant provide a 5-foot wide stone dust walkway as public access along the Luppatatong Creek frontage from West Front Street to the mid-point of the project's Beers Street frontage. Nothing, other than the proposed walkway, was being proposed to be built upon this lot. As a condition of approval, in order to ensure public access along this walkway, a public access easement would be dedicated to the Borough of Keyport. Ownership of the lot, which would ultimately be designated as Lot 26.01, was expected to remain with the applicant. The easement language would be subject to the review of the Board's attorney and engineer, as well as the Borough's attorney, prior to its recording with the county clerk.
9. It was noted that the applicant would not be creating any form of association to maintain the newly created development, each property owner would be responsible for their own individual lot. However, as a condition of approval, the applicant did agree to include a covenant both within the filed subdivision map and also within the deed of each individual unit that in the event the owner of the vacant lot did not properly maintain same, the other nine (9) lot owners would be responsible for paying 1/9 of the cost for such maintenance. Such a covenant would ensure that both the residents of the Mystic at Keyport development and the Borough of Keyport would have a mechanism in place to keep the vacant lot well maintained. The covenant language would be subject to the review and approval of the Board's attorney and engineer prior to its recording with the county clerk.
10. It was noted that a gabion wall runs along the Luppatatong Creek at the rear of proposed new lots 31.05, 31.06, 31.07, 31.08, 31.09 and 26.01. A portion of this wall also runs behind the neighboring Keyport Leisure Bay Apartments property. As a condition of the original use variance approval, the applicant was required to provide the Board with a proposal as to how proper maintenance of this gabion wall would be ensured after the new development was built. The applicant has agreed, as a condition of approval, that it would include a covenant both within the filed subdivision map and also within the deeds of each individual lot that the owners of lots 31.05, 31.06, 31.07, 31.08, 31.09 and 26.01 would be required to cooperate with one another and be equally responsible for any costs associated with the

maintenance, repairing or replacement of the gabion wall. In the event that the owner of Lot 26.01, which was going to be left vacant as part of this application, was unable to be located in order to pay its share of the relevant costs necessary to maintain the gabion wall, that lot's portion of the expenses would be allocated equally amongst all nine (9) of the remaining lot owners. Such a covenant would ensure that both the residents of the Mystic at Keyport development and the Borough of Keyport would have a mechanism in place to keep the gabion wall secure and well maintained in the future. The covenant language would be subject to the review and approval of the Board's attorney and engineer prior to its recording with the county clerk.

11. With respect to the future of the gabion wall, the applicant presented testimony of environmental scientist, Raymond Walker, PHD, who testified that Department of Environmental Protection regulations would govern how the gabion wall could be maintained, repaired or replaced in the future.

12. The applicant agreed that it would comply with all of the comments contained within the Board Engineer and Planner's Review Letter dated July 25, 2017 which was marked into evidence as **Exhibit B-1** with the following exceptions:

Item 3.3 of the review letter recommends that the applicant tie the roof drainage collection system into the existing drainage on Beers Street or discharge to a stable area at the rear of the site. The applicant does not wish to do this and would be proposing an alternative plan for the Board Engineer's approval. As a condition of approval, the applicant must have a roof drainage collection system that meets with the approval of the Board Engineer.

Item 5.1 of the review letter recommends that along the northerly boundary of proposed Lot 31.01 and along the easterly boundary of proposed Lot 26.01, screening/landscaping be provided in addition to the proposed solid vinyl fence which is being proposed. The applicant felt that there was not enough room for screening and/or landscaping to be installed in this area and believed that the proposed fence, which would be 6 feet high, would be sufficient for screening purposes. This was deemed acceptable by the Board.

13. Concern was raised by the Board as to the slope of the driveway being proposed by the applicant due to flooding conditions known to exist on the property. It was agreed, as a condition of approval, that the applicant would revise its plan to raise the grade slope of the driveway to elevate the site one (1) foot higher. This revision would be subject to the review and approval of the Board's Engineer.
14. With respect to the Board's concerns over the known flooding on the property, it was agreed, as a condition of approval, that the deeds of the newly created lots would all contain language alerting the new property owners to the fact that the property is located within a

flood hazard area and is subject to flooding. The notice would be required to take note of the fact that all structures located below the first floor may be flooded during certain storm/tide events. The notice must also make clear that due to these conditions, no habitable areas are allowed to be constructed below elevation 17 ft. NAVD88. Additionally, the notice would have to advise that converting such areas into habitable space would subject the property owner to enforcement actions by the New Jersey Department of Environmental Protection and the Borough of Keyport. Finally, the notice would have to take note of the fact that the property owners would experience the inconvenience of their home being surrounded by flood waters of varying depths during certain storm/tide events. The actual language to be incorporated into the deeds would be subject to the review and approval of the Board's attorney and engineer.

15. As a further effort to help compensate for the flood issues associated with the property, the applicant agreed, as a condition of approval, that it would revise its plans to ensure that the garage floors would be built at a minimum of Elevation 8 NAVD88. Such plan revisions would be subject to the review and approval of the Board Engineer.
16. With respect to the actual homes being constructed, the applicants presented testimony from its professional architect Robert S. Larsen, R.A.
17. Mr. Larsen testified that he believed the proposed homes had been attractively designed and would act as a benefit for the entire community as a result. He offered two proposals to the Board as to how the homes could be built. One proposal suggested a design which would not require any variance relief whatsoever (**Exhibit A-14**) while the alternative suggestion would require the granting of a height variance by the Board since it would raise the height of the proposed homes to 38.6 feet with the addition of a fourth story/roof deck. (**Exhibit A-15**). Absent the fourth story/roof deck combination, the height would only be 35 feet high.
18. After discussion, the Board agreed that the proposal requiring the height variance (**Exhibit A-15**) would be the preferred option for the development as it was seen as being more aesthetically pleasing, with the roof deck allowing owners a better opportunity to take in and enjoy the environment around them. Such an approval was conditioned upon the fact that the structure ultimately built must be in substantial conformance with the rendering that was presented to the Board. Additionally, the applicant agreed that, if possible, exterior steps would be added to the plans so as to provide homeowners an alternate means of egress from the structures. Such plan revisions would require the review and approval of the Board's engineer and planner in order to ensure substantial conformity with the renderings submitted.
19. The applicant also agreed, as a condition of approval, to have a restriction included in the deeds to each of the new lots prohibiting the bonus room located on the fourth floor of the

- proposed houses from being utilized as bedrooms.
20. In addition to the testimony put forth by the applicant, the Board heard testimony from Dr. Kenneth DeGroat of 333 Main Street, Keyport and Michael Palmisano of 86 First Street who are the Chairman and Vice Chairman of the Keyport Environmental Commission respectively.
 21. Both Dr. DeGroat and Mr. Palmisano expressed concerns over development of the subject property due to the environmental issues associated with the site. These concerns were noted within the Environmental Commission Report that had been marked into evidence as **Exhibit B-2**.
 22. The following members of the public also spoke on the proposed application based upon their concerns as to whether the subject property was appropriate for development due to the flooding situation.
 - 1) Michael Lane - 51 First Street, Keyport
 - 2) Andrew Kelsey - 29 St. Peter's Place, Keyport
 23. Mr. Lane submitted the following exhibits into evidence:

Exhibit L-1:	A packet consisting of materials demonstrating that severe flooding occurs upon the subject property along with information from FEMA regarding the importance of limit of moderate wave action. (Consisting of 8 sheets)
Exhibit L-2:	A packet consisting of further materials and photographs demonstrating that severe flooding occurs upon the subject property with citations to the Borough's Master Plan. (Consisting of 14 sheets)
Exhibit L-3:	A photograph of a front yard driveway located at 175 West Front Street, Keyport so as to demonstrate the need to slope a driveway correctly due to flooding issues.
Exhibit L-4:	An alternative floor plan for the property
 24. Mr. Kelsey also submitted the following exhibits into evidence:

Exhibit K-1:	Information derived from FEMA's 2015 Preliminary Maps (Consisting of 4 sheets)
Exhibit K-2:	Series of photographs and captions demonstrating the impact of flooding on properties in Mantoloking, New Jersey. (Consisting of 5 sheets)
Exhibit K-3:	A point by point analysis of the proposed Mystic at Keyport development and environmental concerns, as prepared by Mr. Kelsey.
 25. The Board notes that it takes the concerns over flooding at the subject property raised by the Environmental Commission, Mr. Lane and Mr. Kelsey extremely seriously. However, the Board also notes that the applicant has presented a virtually variance free application and that there are no regulations, statutes or ordinances which prevent development at the site. Additionally, the Board cannot help but recognize the fact that CAFRA which has jurisdiction over the environmental attributes of the application has granted approval for the

- development to be constructed. **(Exhibit A-6)** Finally, the Board believes the concessions offered by the applicant during the course of the application do help ameliorate the situation to some extent. The applicant is very much aware of the environmental realities associated with the property and based upon the covenants which will be included in all deeds given to subsequent property owners, those purchasers will be made explicitly aware as well.
26. The Board also heard testimony from Elmer Grahmn, Jr. of 22 St. Peter's Place, Keyport, who testified that he believed the proposed development would be a benefit to Keyport and that it should be approved.
27. As a final note to this application, the Board must address the issue of the VRI Homes sign which was installed at the site. **(Exhibit A-12)** The principal of VRI Homes is Lawrence Vecchio, who is the uncle of Planning Board member Nicholas Vecchio. After the sign was posted at the site, in between the first and second hearing on the application, a concern arose as to whether VRI would be marketing the Mystic at Keyport homes once the project was approved, thereby creating a potential conflict of interest for Board Member Nicholas Vecchio to preside over the application.
28. The owner of the property, Michael Cummins, did appear at the second hearing and testified that VRI Homes was not going to market the development. Instead he indicated that the erection of the VRI Homes sign had been a misunderstanding. He explained that he had been away from town and had asked his friend Lawrence Vecchio to install a sign at the property. **Exhibit A-13** was submitted into evidence as a rendering of the sign he had expected to be installed. When he learned that the VRI sign had been installed by mistake, he immediately contacted Mr. Vecchio and had it removed. Mr. Cummins noted that he is a licenced realtor and has no need to utilize an outside agency to market the proposed development. Additionally, so as to make clear that there is absolutely no conflict with Board Member Nicholas Vecchio presiding over the application, Mr. Cummins offered as a condition of approval that neither VRI Homes nor Lawrence Vecchio would market the development. The Board found the above to be satisfactory and agreed that there was no conflict of interest present in this application.
29. After considering all of the testimony and evidence placed into evidence, and assuming all representations are adhered to, the Board finds that proposed site will function properly as proposed under the site and subdivision plans that have been submitted to the Board.
30. The Board also finds that the height variance requested by the applicant is appropriate for the property as it will allow for the alternate elevations, with the proposed roof deck, to be constructed **(Exhibit A-15)** rather than the "as of right" plan **(Exhibit A-14)** which is less desirable aesthetically and would keep property owners from fully enjoying their surroundings. The Board understands the environmental issues surrounding the proposed

site and wants to make sure that every advantage is given to the development so that it will be able to succeed. No one benefits by having the property lay dormant for years to come.

31. The Board cannot envision any negative impact which the granting of the proposed height variance would cause the surrounding neighborhood or the zone plan in general. In fact absent the granting of the variance relief, the applicant would be forced to build the “as of right” structure (**Exhibit A-14**) which the Board does not feel is the more advantageous of the two proposals for the community. It seems clear to the board that the benefits of granting the requested variance relief therefore allow for a better result than strict adherence to the zoning ordinance provisions would otherwise allow.
32. The Board wishes to make extremely clear that in giving this approval the homes to be constructed must be built in a manner which is substantially similar to what was shown to the board in the proposed elevations. (**Exhibit A-15**) If substantial similarity cannot be accomplished, the applicant would need to return to the Board for further proceedings.
33. Based upon all of the above, the Board finds that the applicant has met its burden in establishing that it is entitled to the requested preliminary and final subdivision approval, with associated variance relief, and therefore such should be granted.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Michael and Catherine Cummins seeking preliminary and final major subdivision approval, along with the associated variance relief, for premises officially designated as Block 22, Lots 26, 30 & 31 on the official Tax Map of the Borough of Keyport be granted subject to the following conditions:

1. Subject to the continued adherence to all conditions of approval contained within the Resolution of Approval dated November 14, 2013 (**Exhibit B-3**).
2. Except as required to be revised within this Resolution, subject to the applicant’s substantial adherence to the plans and reports submitted into evidence by the applicant as identified in paragraph 3 of this Resolution above. If the structures to be built are not in substantial compliance with the exhibits presented, especially, but not limited to the rendering submitted into evidence as **Exhibit A-15**, the applicant must return to the Board for further approvals.
3. Subject to the applicant’s compliance with the Engineering and Planning Review letter marked into evidence as **Exhibit B-1** with the exception of items 3.3 and 5.1 as noted in paragraph 12 of this Resolution above. As noted therein, the applicant must have a roof drainage collection system that meets with the approval of the Board Engineer.
4. Subject to the condition that in order to ensure public access to the walkway which will be constructed upon new Lot 26.01, a public access easement must be granted to the Borough of Keyport. The easement language must be reviewed and approved by the Board’s attorney and engineer, as well as the Borough’s attorney, prior to its recording with the county clerk.

5. Subject to the condition that a covenant be placed within the filed subdivision map and also within the deed of each individual unit that in the event the owner of proposed vacant lot 26.01 does not properly maintain same, the other nine (9) lot owners will be responsible for paying 1/9 of the cost for such maintenance. The covenant language must be reviewed and approved by the Board's attorney and engineer prior to its recording with the county clerk.
6. Subject to the condition that a covenant be placed within the filed subdivision map and also within the deeds of each individual lot that the owners of lots 31.05, 31.06, 31.07, 31.08, 31.09 and 26.01 would be required to cooperate with one another and be equally responsible for any costs associated with the maintenance, repairing or replacement of the gabion wall. The covenant must further state that in the event that the owner of vacant Lot 26.01 is unable to be located in order to pay its share of the relevant costs necessary to maintain the gabion wall, that lot's portion of the expenses will be allocated equally amongst all nine (9) of the remaining lot owners. The covenant language must be reviewed and approved by the Board's attorney and engineer prior to its recording with the county clerk.
7. Subject to the condition that the applicant revise its plans to raise the grade slope of the driveway to elevate the site one (1) foot higher. This revision is subject to the review and approval of the Board's Engineer.
8. Subject to the condition that the deeds of the newly created lots all contain language alerting the new property owners to the fact that the property is located within a flood hazard area and is subject to flooding. The notice would be required to take note of the fact that all structures located below the first floor may be flooded during certain storm/tide events. The notice must also make clear that due to these conditions, no habitable areas are allowed to be constructed below elevation 17 ft. NAVD88. Additionally, the notice would have to advise that converting such areas into habitable space would subject the property owner to enforcement actions by the New Jersey Department of Environmental Protection and the Borough of Keyport. Finally, the notice would have to take note of the fact that the property owners would experience the inconvenience of their home being surrounded by flood waters of varying depths during certain storm/tide events. The actual language to be incorporated into the deeds must be reviewed and approved by the Board's attorney and engineer prior to recording with the County Clerk's office.
9. Subject to the condition that the applicant revise its plans to ensure that the garage floors are built at a minimum of Elevation 8 NAVD88. Such plan revisions would be subject to the review and approval of the Board Engineer.
10. Subject to the condition that the deeds to the new lots contain a restriction prohibiting the bonus room located on the fourth floor of the proposed houses from being utilized as bedrooms. The language of the proposed restriction shall be subject to the review and

approval of the Board's attorney and engineer prior to being recorded with the county clerk.

11. Subject to the condition that neither VRI Homes nor Lawrence Vecchio will be retained to market the proposed development.
12. Subject to the applicant filing the appropriate subdivision map pursuant to the provisions of the map filing law.
13. 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 made before the Board shall be deemed a violation of this amended approval.
14. This application is granted only in conjunction with the conditions noted herein and but for the existence of the same, the within amended application would not be approved.
15. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.
16. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.
17. This approval shall be deemed void by abandonment if a permit is not applied for within one year of the date hereof.
18. 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.
19. 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.
20. 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.

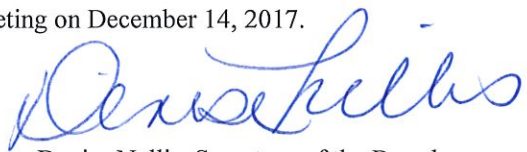
The foregoing was moved by J. Kovacs, seconded by and on Roll Call, the following vote was recorded:

Affirmative: N. Vecchio, M. Sessa, R. Benedict, L. Davidson, D. Fotopoulos, J. Kovacs,
J. Kovacs-Olsen

Negative:

Abstentions: Councilman Goode

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 December 14, 2017.



Denise Nellis, Secretary of the Board