

RESOLUTION OF APPROVAL
FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH
USE VARIANCE AND OTHER VARIANCES
TO PERMIT A BUSINESS TO OPERATE WITH A RESIDENTIAL COMPONENT
WHERE RESIDENCES ARE NOT OTHERWISE PERMITTED

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 35.01, LOTS 1
Application # 14-01
PENNY BAGS, LLC
1 MONROE STREET

WHEREAS, Penny Bags, LLC has applied to the Unified Planning Board of the Borough of Keyport for preliminary and final site plan approval with associated use variance and bulk variance relief, so as to allow for the renovation of an existing vacant building into an office with garage space for an irrigation business on the first floor and a residential apartment on the second floor, at property commonly known as 1 Monroe Street, and officially designated as Block 35.01, Lot 1 on the official Tax Map of the Borough of Keyport; and

WHEREAS, a public hearing on the application was conducted during a regularly scheduled meeting of the Unified Planning Board held on June 26, 2014; 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 by the applicant, Penny Bags, LLC, for preliminary and final site plan approval, with associated use and bulk variances, to be permitted to renovate an existing vacant building so as to allow for a first story office and garage for an irrigation business and a second story apartment.
2. The property in question is located at 1 Monroe Street, which is officially designated as Block 35.01, Lot 1, as shown on the official tax map of the Borough of Keyport.
3. The property is in the Borough's Highway Commercial (HC) Zone which does not permit residential uses. Accordingly, use variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1), is necessary before such a residential use can be permitted at the site.
4. At all times during the course of the public hearing, the applicant was represented by Lawrence Kantor, of the law firm Kantor and Linderoth, whose office is located at 58 West Front, Keyport, New Jersey.

5. In support of the application, the applicant submitted the following exhibits into evidence:
- A-1: Application package dated May 8, 2014.
 - A-2: "NJDOT Letter of Interest", dated March 5, 2014, from the Department of Transportation.
 - A-3: Letter from Monmouth County Planning Board, dated May 8, 2014, indicating application is exempt from County Planning Board review.
 - A-4: Letter from Freehold Soil Conservation District, dated February 21, 2014, indicating that project does not require certification of a Soil Erosion and Sediment Control plan as long as land disturbance does not exceed 5,000 square feet.
 - A-5: "Survey of Property", dated November 26, 2013 as prepared by Leo A. Kalieta & Co.
 - A-6: "Proposed Renovation" plans, dated April 14, 2014, consisting of three (3) sheets, as prepared by Caesar Bustamante, AIA.
 - A-7: "Site Plan", dated February 25, 2014, consisting of two (2) sheets, as prepared by Leo A. Kalieta & Co.
 - A-8: "Completeness Review and Fee Determination" letter, dated February 13, 2014, as authored by the Board's Engineer, Francis W. Mullan, P.E., C.M.E. of T&M Associates.
 - A-9: "2nd Completeness, Planning and Engineering Review" letter, dated June 19, 2014, as authored by the Board's Engineer, Francis W. Mullan, P.E., C.M.E. of T&M Associates.
 - A-10: Series of photographs of the subject property and surrounding areas.
 - A-11: An aerial photograph, on a poster, of the subject property and surrounding areas.
6. The Board Engineer, Francis W. Mullan, P.E. was placed under oath, provided testimony during the application, and reiterated the accuracy of all information contained within his review letters. (Exhibits A-8 and A-9)
7. The Board Planner, Stan Slachetka, P.P., AICP, was also placed under oath and provided testimony during the application.
8. As indicated in the Engineering/Planning Review Letter (Exhibit A-9), and as shown in the applicant's survey, renovation plans and site plan (Exhibits A-5, A-6 and A-7), the property in question is a triangular lot located between New Jersey State Highway 35/36 and Monroe Street. The property is developed with a vacant one story building and associated parking area. No alterations to the existing building footprint are proposed, and the only on-site improvement proposed is a concrete apron to provide access to the proposed garage. Access to the property is provided from Monroe Street.

9. As per the Engineering/Planning Review Letter dated June 19, 2014 (**Exhibit A-9**), in addition to aforementioned “d(1)” use variance this site plan application also requires certain additional “bulk variances” as follows:

Variance	Required	Proposed
Minimum Lot Area (sq. ft.)	10,000	5,500
Minimum Lot Width (ft.)	100	25 +/-
Minimum Front Yard Setback (ft.)	50	2' to Monroe Street 9' to Route 35/36
Minimum Rear Yard Setback (ft.)	20	9' to Route 35/36

It was noted by the Board Engineer in his review that each of these variances are pre-existing conditions associated with the applicant's property and none were being exasperated by the application.

10. In support of the application, sworn testimony was given by a principal of the applicant, Warren Cohen, who currently resides at 16 Johnson Avenue, in Matawan, New Jersey.
11. Mr. Cohen testified that he is the owner of an irrigation business known as “Wetscape”. It is his desire to move both his business and residence to this location. The irrigation business would operate on the first floor, while he would reside in the proposed residence on the second floor.
12. Mr. Cohen testified that he would not have a showroom on the property. Clients would not come to the location. He did not foresee any reason why there would ever be more than three (3) individuals in the business area during any period of time. The absence of on-site clients and a showroom would be a condition of approval. Mr. Cohen agreed to these conditions.
13. Mr. Cohen further testified that once the renovations were completed (**Exhibit A-6**) the property would have a total of six (6) parking spaces, four (4) outside and two (2) garage parking spaces. He did not believe there would ever be more than three (3) vehicles on site at any one period of time. Additionally, there would be a 14 x 7 foot wide trailer associated with the business which would be parked at the site over night. As a condition of approval, it was agreed at least two of the available parking spaces would be reserved for the residential component of the property, while at least two of the other spaces would be reserved for the commercial use.
14. In the Engineering/Planning Review letter (**Exhibit A-9**), it had been stated that the applicant required variance relief due a lack of sufficient parking. However, during the course of the hearing and based upon the testimony concerning the fact that a total of 6 parking spaces were actually being provided, it was agreed by all parties that no such variance was required.

15. The applicant agreed, as a condition of approval, that the submitted plans would be revised so as to make the exterior parking spaces a size of 9 x 20 rather than the 9 x 18 which are currently depicted. Said plans would need to be submitted to the Board Engineer and Planner for their review and approval.
16. Mr. Cohen also indicated and accepted as a condition of approval, that other than the aforementioned vehicles, no equipment associated with the business would be stored on the property. Any equipment which had to be on site would be kept inside the building. This would be a condition of approval.
17. Mr. Cohen testified that the hours of operation for the business for 9 am to 3 pm.
18. With regard to garbage collection, Mr. Cohen testified that trash will be limited to whatever the residence might produce. It was not anticipated that any special trash hauling would be necessary and the Borough garbage pick-up would be more than sufficient for the site. There would not be any cleaning agents utilized at the site. It was agreed that these items would become conditions of the approval.
19. As to the type of business deliveries which might be made to the site, Mr. Cohen indicated that he did envision anything more than sprinkler heads and fittings. He would pick up whatever other materials might be necessary off-site.
20. In further support of the application, sworn testimony was offered by the applicant's professional site engineer and planner, Jeffrey J. Carr, P.E., P.P. of Lindstrom, Diessner & Carr, P.C. which has offices located at 136 Drum Point Road , Wall, New Jersey.
21. With regard to the proposed residential component of the building, Mr. Carr indicated that it would consist of a two (2) bedroom unit with one bathroom, a living room and kitchen. All of this was depicted on the Renovation Plan which was submitted into evidence as **Exhibit A-6**. He believed that such a layout was not conducive to children and would therefore create less of an impact to the site than if a full residential unit was being proposed.
22. Mr. Carr also noted that since the proposed residence would not be intensive, he did not envision any need to change the existing utilities at the site nor did he believe there would be any negative impact on the sewer system. In fact, the applicant intended to keep the entire property all on a single meter.
23. Turning to the business, Mr. Carr testified with respect to the Board Engineer's concerns as to the proposal for signage on the property. He indicated the applicant would be complying with the ordinance requirements. Additionally, he agreed, as a condition of approval, that the detail of a freestanding sign which already exists at the property would be added to the plans. The intention of the applicant was to keep this sign and simply swap out the current lettering with new lettering reflecting the applicant's irrigation company.

24. Mr. Carr testified the applicant would agree, as a condition of approval, to replace any existing curb, sidewalk or pavement that is currently in poor condition at the site or might be damaged during the course of renovation.
25. Mr. Carr requested a waiver from Borough Ordinance § 25-1-18.a.6 which requires that parking lots be located no closer than 5 feet from a residentially zoned lot or a street right of way line. Based upon the location of the property and the fact that there was no real intensification of the site being proposed, the Board's Professionals had no objections to this waiver being granted.
26. With regard to planning issues, Mr. Carr pointed out that absent the desire to add a residence to the premises, board review would not have been necessary since the site was already zoned for the type of business the applicant was proposing.
27. Mr. Carr testified as to his believe that the proposed residential use was particularly suitable for the proposed location. He noted that based upon the testimony offered by Mr. Cohen as to the nature of the business and residence, he did not foresee how anything associated with this application would negatively impact the traffic patterns in the neighborhood nor the quality of life in the neighborhood in general. If anything, the addition of a residence to the site was actually going to be less intensive for the neighborhood than if the applicant were to attempt to utilize the entire existing building for his business as would be its right under the current zoning scheme.
28. Mr. Carr further noted that what the applicant was proposing was the direct opposite of bringing a commercial use into a residential neighborhood which could lead to negative consequences for the area. Here, a residence would be established on the second floor of an existing commercial building. He did not see why anyone would object to such a proposal.
29. Referring to the photographs marked into evidence as **Exhibit A-10** as compared to the Renovation Plans marked into evidence as **Exhibit A-6**, Mr. Carr noted that as a result of the application, significant renovations were being proposed for the existing vacant building which in his expert opinion constituted a significant upgrade for the site. Once renovations were completed, a known eyesore will have been eliminated from the site.
30. To further improve the aesthetics of the site, the applicant would agree to install a four (4) foot fence along the pavement area bordering the Route 35 & 36 side of the property. While not infringing upon the Department of Transportation's right of way, the fence would run from the property line of neighboring Lot 3 along the length of the property so as to shield the pavement area of the site from the view of Route 35. Landscaping would be installed along the Route 35 & 36 side of the fence.

31. It was also agreed, as a condition of approval, that landscaping would be installed along Monroe Street and around the existing sign on the property.
32. It was further recognized that the proposed landscaping would not be permitted to interfere with the line of sight for the property. In fact, the applicant agreed, as a condition of approval, that it would provide a sight triangle easement at the intersection of Monroe Street and Route 35/36. The proposed easement would be submitted to the Board's Engineer and its Attorney for review and approval prior to its recording with the County's Clerk's Office.
33. In order to ensure all of the proposed landscaping for the site was appropriate, the applicant would be required, as a condition of approval, to submit a landscaping plan to the Board's Engineer and Planner for their review and approval.
34. Referring to the submitted site plan (**Exhibit A-7**) and the aerial photograph (**Exhibit A-11**), Mr. Carr noted that the property sits along Route 35/36 and also Monroe Street. He noted that the neighborhood is also mixed use in nature, having both residences and commercial uses in the area. As a result, he did not believe the addition of the proposed residence to the applicant's property would be out of character with surrounding properties. In fact, he believed the residence would bring the property into greater conformity with its neighbors.
35. With regard to lighting on the sight, Mr. Carr testified that lights would be activated by a motion detector. Based upon the nature of the business as testified by Mr. Cohen, he did not believe regular business lighting should be necessary. The Board's Engineer and Planner indicated that they had no objection to this waiver request.
36. The applicant did not offer any additional witnesses with respect to its application.
37. The following members of the public also were sworn and spoke with respect to the application:
 - A) **Sal Genovse - 320 Beers Street, Keyport** - He has no objection to the proposal.
 - B) **Kenneth McPeck, 224 Division Street, Keyport** - Mr. McPeck spoke highly of the applicant and its business. He encouraged the Board to support the application.
38. No one else from the public spoke with respect to this application.
39. In considering this application, the Planning Board finds that the proposed use variance relief can indeed be granted pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1). The Board Members, based upon their collective familiarity with the property and area in question, agree with the testimony presented on behalf of the applicant that the existing structures on the applicant's property are an eyesore and in much need of improvement. The Board finds that the proposed architectural plans (**Exhibit A-6**) along with the landscaping improvements that have been proposed, if adhered to, will act as a great benefit for the surrounding neighborhood and the Borough as a whole.

40. The Board also agrees with the testimony of the applicant's Planner, Mr. Carr, that the site is already located within a mixed use neighborhood where both commercial and residential properties are located. The Board also agrees that the applicant is not proposing any real intensification of the site being that the only thing being proposed is the renovation of an existing vacant building. As such, the Board finds that the site is already particularly suitable for the residential component being proposed for the site.
41. When considering all of the testimony and evidence presented, the Board is hard pressed how anyone would be negatively impacted by the proposed introduction of a residence into what is now an existing vacant building. Indeed, the Board agrees with the testimony of the applicant's planner that the mixed use being proposed is actually less intensive for the site than if the applicant attempted to utilize the entire structure for its business which it would be permitted to do under the current zoning ordinance.
42. Based upon all of the above, the Board finds that the requisite enhanced proofs have been presented establishing why the requested use variance relief is appropriate for this particular location.
43. With regard to the bulk variances associated with this application, the Board agrees with the conclusions made by its own Engineer, Francis W. Mullan, P.E, C.M.E., as to the fact that each of the variances are pre-existing in nature. The Board finds that none of these variances are being exasperated by the proposed application. Accordingly, the Board fails to see any potential negative impact which the granting of this application would create.
44. The Board finds that absent a grant of the requested bulk variance relief, the applicant will not be able to complete the improvements that are being proposed. The unfortunate consequence of such a result would be that the existing vacant structure, which the Board agrees is currently an eyesore, would remain. This would deprive the Borough of the benefits of a renovated building with associated new landscaping being created which will serve as a much needed aesthetic improvement for the area.
45. The Planning Board finds that the requested bulk variance relief can indeed be granted pursuant to the provisions of N.J.S.A. 40:55D-70(c)(2). The Board finds that the proposed plans, if adhered to, will act as a benefit for the surrounding neighborhood, and the Borough as a whole, as it will greatly improve the aesthetics of the community. None of these improvements will take place if the requested bulk variance relief is denied.
46. The Board finds all of the bulk variances may be granted, pursuant to the provisions of N.J.S.A. 40:55D-70(c)(2), because the benefits of granting the requested relief will lead to a far better result for the immediate neighborhood, and the Borough in general, than strict adherence to the zoning ordinance would otherwise allow.

47. When taking all of the above into consideration, the Board finds that provided the applicant complies with all of the agreed upon conditions, the requested bulk variance relief may be granted without causing any detriment to the Keyport Zoning Ordinance and Master Plan. In actuality, the proposed project will serve as a much needed improvement from what currently exists at the applicant's property.
48. With regard to the request for preliminary and final site plan approval, the Board finds no reason to believe that the site will not function properly as designed. All evidence in the record establishes that the site plan may be approved as requested.
49. Based upon all of the aforesaid reasons, the Board finds that the application for preliminary and final site plan approval, with use and bulk variance relief, should and can be granted as proposed.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of Penny Bags, LLC, seeking preliminary and final site plan approval, with use and bulk variance relief, for premises commonly known as 1 Monroe Street and officially designated as Block 35.01, Lots 1, be granted subject to the following conditions:

1. Subject to the adherence of all conditions contained within the Engineering/Planning Review Letter dated June 19, 2014 and marked into evidence as **Exhibit A-9** unless otherwise modified by this resolution.
2. Subject to the applicant adhering, as closely as possible, to the site plan (**Exhibit A-7**) and renovation plans (**Exhibit A-6**) which were submitted into evidence, except as otherwise modified by this Resolution.
3. Subject to the site plan (**Exhibit A-7**) being revised so as reflect 9 x 20 feet parking spaces.
4. Subject to the site plan (**Exhibit A-7**) being revised so as to show a detail of the existing sign located on the property.
5. Subject to the applicant implementing a landscaping plan which must first be submitted and approved by the Board's Engineer and Planner. Said plan must include new landscaping along Monroe Street and the existing sign location. Additionally the plan must include installation of a four (4) foot fence along the pavement area bordering the Route 35 & 36 side of the property. While not infringing upon the Department of Transportation's right of way, the fence should run from the property line of neighboring Lot 3 along the length of the property so as to shield the pavement area of the site from the view of Route 35. Landscaping is to be installed along the Route 35 & 36 side of the fence.
6. Subject to the granting of a sight triangle easement. The easement shall be submitted to the Board Engineer and Board Attorney for their review and approval prior to its being recorded with the Monmouth County Clerk's Office.

7. Subject to the condition that the first floor business not contain a showroom nor be a location where clients would visit. Changing the character of the first floor business would necessitate further approval from this Board.
8. Subject to the condition that at least two parking spaces on the site will be reserved for the residential use. Two additional parking spaces will be reserved for the business.
9. Subject to the condition that the applicant will not store any equipment outside of the existing building. All storage will be interior to the site.
10. Subject to the condition that the business use will not produce any garbage requiring off-site hauling. All garbage produced at the site will be such that it can be left at the curb of the yard for normal residential garbage pick-up.
11. Subject to the condition that there will not be any industrial cleaning agents utilized at the property.
12. Subject to the condition that the applicant will replace any existing curb, sidewalk or pavement that is currently in poor condition at the site or might be damaged during the course of the renovation work.
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 approval.
14. 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.
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. 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.
18. 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.
19. 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-Olsen, Seconded by R. Burlew and on Roll Call, the following vote was recorded:

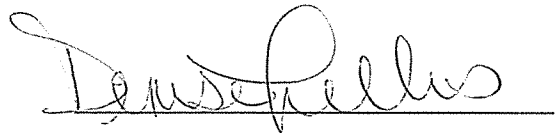
Affirmative: R. Burlew, M. Sessa, R. Benedict, G. Sappah, J. Kovacs-Olsen

Negative:

Abstentions: T. Musson, D. Fotopoulos, J. Kovacs

Absent: Mayor Aumack, Councilwoman Lamberson

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 July 24, 2014.

A handwritten signature in cursive script, reading "Denise Nellis", written over a horizontal line.

Denise Nellis, Secretary of the Board