

Resolution prepared by:
Marc A. Leckstein, Esquire
Leckstein & Leckstein, LLC
463 Prospect Avenue
Little Silver, NJ 07739

**RESOLUTION DENYING USE VARIANCE APPROVAL
TO ALLOW FOR A TWO FAMILY DWELLING**

**UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT**

BLOCK 103, LOTS 69, 70 & 71

**Application # 23-04
DEMETRIOS AND CYNTHIA KOLONARIS
6 HALL PLACE**

WHEREAS, Demetrios and Cynthia Kolonaris have applied to the Unified Planning Board of the Borough of Keyport for use variance approval to allow for the conversion of an existing single family home located at 6 Hall Place, which is officially designated as Block 103, Lots 69, 70 & 71 on the Tax Map of the Borough of Keyport into 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 May 25, 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 applicants, Demetrios and Cynthia Kolonaris, seek use variance approval to convert an existing two-story, single family home located at 6 Hall Place and officially designated as Block 103, Lots 69, 70 and 71 on the official Tax Map of the Borough into a two family home.
2. The subject property is located at the intersection of Hall Place and Brook Avenue.
3. The site in question is located within the Borough's Residential (RA) Zoning District which only permits single family homes. The appropriateness of such a limitation within the RA District was most recently recognized by the Planning Board by way of its new Master Plan which was adopted by a Resolution dated April 27, 2017. In fact, the Master Plan actually states within its Housing Plan Element that the conversion of single-family homes in the RA District to multi-family dwellings is discouraged.

4. The Zoning Ordinances of the Borough of Keyport honor the intent of the 2017 Master Plan by permitting the following uses within the RB Zoning District:
 - Single family detached dwellings
 - Public parks and playground
5. It was stipulated by the applicant that the existing single family home was built prior to the 2017 Master Plan and adoption of the corresponding zoning ordinances.
6. As the applicant is proposing to convert their existing single family home into a two family home, their request is not permitted by the Zoning Ordinances of the Borough of Keyport nor consistent with the provisions of the 2017 Master Plan. As this is not a permitted use, variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1), is necessitated by this application.
7. In addition to the (d)(1) use variance relief, the application also requires bulk variance relief pursuant to the provisions of N.J.S.A. 40:55D-70(c) due to a failure of the existing lot to meet the minimum front yard setback along Brook Avenue. Whereas the ordinance requires a setback of 20 feet, the existing lot only provides 7.1 feet. The Board recognizes this is an existing condition and would not be changed by the applicant's proposal.
8. Throughout the course of this application, the applicant was represented by their legal counsel, Lawrence D. Kantor, Esquire who has law offices located at 2814 Route 35, Second Floor, Hazlet, New Jersey 07730.
9. In support of the application, the following exhibits were placed into evidence:
 - Exhibit A-1 :** Unified Planning Board application
 - Exhibit A-2:** Letter of Zoning Officer Denying Application dated May 24, 2022
 - Exhibit A-3:** Site Plan prepared by Richard Karl Heuser, P.E., PLS dated November 30, 2022, last revised March 13, 2022.
 - Exhibit A-4:** Survey prepared by Richard Karl Heuser, P.E., PLS dated November 1, 2022.
 - Exhibit A-5:** Architectural Floor Plans and Building Elevations prepared by Ron Grammer, AIA, NCARB, LEED-AP dated July 17, 2022, last revised March 20, 2023.
 - Exhibit A-6:** Applicant's Planner's Exhibit listing Block and Lots and Number of Units In Surrounding Neighborhood.
 - Exhibit A-7:** Colorized Aerial of Surrounding Neighborhood Showing Multi-Family Homes
 - Exhibit A-8:** Letter dated May 24, 2023 from Applicant's Architect, Ron Grammer, AIA/NCARB, LEED, AP as design of home
 - Exhibit A-9:** Revised Architectural Plans and Building Elevations prepared by Ron Grammer, AIA dated March 20, 2023.

10. In addition to those exhibits introduced by the applicant, the Board introduced the following exhibits of its own:
 - Exhibit B-1:** Second Engineering and Planning Review letter dated April 12, 2023 as prepared by T&M Associates.
 - Exhibit B-2:** Fire Marshall letter dated February 7, 2023
 - Exhibit B-3:** Special Flood Hazard Area Development Permit Review Letter dated March 3, 2023 as prepared by Colliers Engineering & Design
11. In support of the application, three witnesses were presented:
 - (A) Demetrios Kolonaris, the applicant
 - (B) Barbara Ehlen, P.P., AICP, the applicant's planner
 - (C) Richard Karl Heuser, P.E., PLS, the applicant's engineer and land surveyor
12. Mr. Kolonaris would testify that he purchased the property two years ago and wished to convert it into a two single family home.
13. Mr. Heuser walked the board through the engineering aspects of the application. He confirmed that the applicant would be adding a 5.4 foot addition to the driveway on the north side of the property. He further indicated that all water run off would be directed toward the street rather than neighboring lots. Proper landscaping would be exist along the property.
14. The majority of the testimony provided was from the applicant's planner, Barbara Ehlen, P.P., AICP, who testified as to her believe that the lot was particularly suited to be converted from a single family home into a two family home because the property was extremely large. If the existing home were to be demolished, the applicant would likely be able to subdivide the property and build two single family homes on the site. She also reflected upon the fact that the property borders upon a cemetery to the rear of the site, and there are other multi-family homes in the surrounding neighborhood. (**Exhibits A-6 & A-7**) These facts, in her opinion, demonstrated that allowing the existing home to be converted into a two family home would not negatively impact anyone. She further opined that the proposed conversion would satisfy purposes of zoning under the Municipal Land Use Law, thereby making it an improvement for the community.
15. Board Planner Caroline Z. Reiter, P.P., AICP, of T&M Associates, who was placed under oath, expressed her concern as to how the proposal could be reconciled with the provisions of the Master Plan and Zoning Ordinance, both of which are relatively new enactments (2017) since both make clear that only single family homes should be permitted within the zoning district.

16. Board Members, who are all residents of the Borough and therefore very familiar with the neighborhood in general, noted that while there may be some multi-family homes in the surrounding neighborhood, there are far more conforming single family homes in existence. This fact is evidenced by the applicant's own **Exhibits A-6 and A-7** show conforming single family homes in the area.
17. A member of the general public, Michael Lane of 51 First Street, Keyport, spoke out in opposition to the application noting that it was not in conformance with either the zoning ordinances or recently adopted Master Plan of the Borough. He believed it would cause it a negative impact for the community. He further introduced the following exhibits into evidence:
Exhibit L-1: Excerpts from the 2017 Master Plan
Exhibit L-2: Excerpts from the 2017 Master Plan, Internet Information as to Housing Occupancy in Surrounding Neighborhoods and Mark-Ups of the Applicant's Site Plan To Show Rentals In Area
18. No one else spoke with respect to the application.

CONCLUSIONS

19. 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).
20. 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.
21. 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.
22. The primary basis for this particular variance request is that the subject property is particularly suited for the proposed conversion from a conforming single family home into a non-conforming two family home due to its size and the fact that if the structure were demolished two conforming single family homes could be built on the site following a subdivision.
23. The Board does not question whether two conforming single family homes could be built on the site as no such subdivision plan has been submitted to the Board.

24. The Board does reject the idea that just because a property could support two conforming uses, use variance relief should be granted so as to allow for a non-conforming use. Such a position would run directly contrary to the conclusions made by the Borough as recently as 2017 when it adopted a new Master Plan and conforming zoning ordinances which make clear that conversions of single family homes within the RA Zoning District into multi-family homes is to be discouraged. 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 since the structure upon it pre-existed both the Master Plan and Zoning Ordinance adoptions. It is therefore very difficult for the Board to conceive how allowing a two family dwelling 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.
25. The Board also cannot help but take note of the fact there is already an existing single family home located on the property, which is exactly the use envisioned by the zoning ordinance and master plan for the subject site. Since the property is already being utilized for a permitted use, it is difficult to perceive how the applicants have any hardship whatsoever in conforming with what the ordinance already permits. The site is therefore already particularly suited for the conforming use which already exists on the premises.
26. 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 absolutely no reason why the property cannot continue to function with a conforming use upon it.
27. It is not the Board's role to second guess the Borough Council in zoning the subject property as it has. Should the applicant believe the site has been zoned incorrectly, or a change in the applicable zoning ordinance would be appropriate, it is free to apply to the Governing Body for a change in the zoning classification.
28. The Board also concludes that allowing the proposed dwelling to be converted into a two-family home would result in a negative impact for the surrounding community. As previously noted, this property is already developed with a conforming single family home and there are a majority of other single family homes in the neighborhood. (Exhibits A-6 & A-7) Allowing a conversion to a two family home would therefore bring the site out of conformity with the neighborhood scheme which currently exists as well as the adopted zone plan. There is simply no basis in which allowing the requested divergence would make sense.

29. The Board also cannot help but note that this neighborhood was reviewed by the municipality back in 2017 during its efforts to adopt a new master plan and the decision at the time was to include this parcel within the Borough's RA Zoning District rather than a district which would allow multi-family housing. If the property had been thought to be appropriate for multi-family standards rather than those of the RA District, the site would have been placed within the former district rather than latter. The Board cannot ignore this reality. The proposed use is just not appropriate for the subject location.
30. Finally, the Board notes that during the application, Michael Lane, a member of the public, spoke in opposition to the application and attempted to raise issues related to the benefits of owner occupied premises as opposed to renter occupied premises. The Board wishes to make clear that such issues paid no part whatsoever in its conclusions surrounding the application as such are not zoning related concerns.
31. 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".
32. Permitting the applicant to construct a two family dwelling within the RA Zoning District would negatively impact the surrounding neighborhood and run afoul of the zoning ordinance as established by the Governing Body.
33. 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 Demetrios & Cynthia Kolonaris 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. Royster
and on Roll Call, the following vote was recorded:
Affirmative: Chairman Sessa, H. Aumack, W. McDermott, J. Oviedo, J. Royster,
N. Vecchio
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 June 22, 2023.


Denise Nellis, Secretary of the Board