

RESOLUTION OF APPROVAL
GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH BULK VARIANCES

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 110 LOTS 27.03
Application #12-03
BLDG MANAGEMENT CO., INC.
107-109 HIGHWAY 35

WHEREAS, BLDG Management Co., Inc. has applied to the Unified Planning Board of the Borough of Keyport for preliminary and final site plan approval, with variances, so as to allow for the renovation and subdividing into two separate leaseholds of an existing commercial building, commonly known as 107-109 State Highway 35 and officially designated as Block 110, Lot 27.03 on the official Tax Map of the Borough of Keyport; 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, a public hearing on the application was conducted in the within matter during a regularly scheduled meeting of the Unified Planning Board held on February 28, 2013 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, BLDG Management Co., Inc., to be permitted to renovate the former "Office" Restaurant building located as 107-109 State Highway 35, and which is officially designated as Block 110, Lot 27.03 as shown on the official tax map of the Borough of Keyport, and subdivide the building into two separate leaseholds. The first leasehold would be intended for office/retail use, while the second is currently intended to house a Dunkin' Donuts with a drive-through window.
2. At all times during the course of the application, the applicant was represented by John P. Wyciskala, Esquire of the law firm Inglesino, Pearlman, Wyciskala & Taylor, LLC, which has offices at 600 Parsippany Road, Parsippany, New Jersey 07054.
3. The subject property is located within the Borough's "HC" Highway Commercial Zone wherein the proposed uses are permitted.
4. The subject property is also located within the Borough's "Shopping Center Retail District" in the Routes 35 and 36 Highway Commercial Redevelopment Plan. The proposed uses are permitted within this redevelopment overlay district.

5. According to the Engineering/Planning Review Letter dated February 20, 2013, which was co-authored by the Board's Engineer Donald J. Norbut, P.E., C.M.E. and the Board's Planner Stan Slachetka, P.P., AICP, and which was marked into evidence as **Exhibit B-1**, that the only bulk variance necessitated by this application is one for "minimum front yard setback" as the borough's zoning ordinance requires a setback of 50 feet, while the applicant will only be providing 46 feet. It was noted however that this is a pre-existing non-conforming condition at the subject property and is not being altered by this application.
6. Beyond the one bulk variance, the applicant also necessitates a variance from § 25:1-17(c)(3)(b) of the Borough's Ordinances for four facade signs on the building which do not meet the minimum required clearance of 15 feet above grade. The proposed clearances are as follows:
 - West Elevation: Retail Sign - 9.3 feet high
 - South Elevation: Retail Sign - 9.3 feet high
 Dunkin' Donuts sign - 14.6 feet high
 - East Elevation: Dunkin' Donuts sign - 13.7 feet high
7. Both the Board Engineer, Donald J. Norbut, P.E., and the Board's Planner, Martin Truscott, P.P., were sworn and certified as to the information contained within the T&M review letter (**Exhibit B-1**) The letter is incorporated into this Resolution by reference.
8. In support of the application, the following exhibits were submitted into evidence:
 - A-1: Preliminary & Final Site Plan, dated October 31, 2012 as prepared by K.B. Cahill, P.E. of Bohler Engineering.
 - A-2: Proposed Floor Plan and Elevations, dated April 4, 2012, last revised November 5, 2012, as prepared by Rotwein & Blake, Associated Architects, P.A.
 - A-3: Colorized Rendering of Site Plan
 - A-4: Colorized architectural rendering of building labeled "Proposed Building Alterations"
9. In support of the application, testimony was elicited from BLDG Management's professional engineer, Derek Jordan, P.E.
10. Mr. Jordan explained that he was familiar with the proposed site plan. The purpose of the project was to renovate the former "Office" restaurant, located along Route 35, and subdivide the space into new leaseholds. The first will be used for office/retail space, while the second will be used as a Dunkin' Donuts with drive-through access.
11. Mr. Jordan noted that the applicant requires the variances cited in ¶'s 5 and 6 of this Resolution. He believed the variances could be granted pursuant to the provisions of N.J.S.A. 40:55D-70(c)(2), as the applicant would be taking a vacant property located along

Highway 35, which is a significant thoroughfare for the Borough, and renovating it back into an occupied and viable commercial building. He could not envision any detriments to the Borough with respect to granting the requested variance relief.

12. Mr. Jordan noted that the main entrance of the building will be ADA compliant and the entrance of the Dunkin' Donuts will have two handicapped spaces on the northern side.
13. Mr. Jordan indicated that the applicant will agree to all of the technical comments contained in the Engineering/Planning Review letter which was marked into evidence as **Exhibit B-1** and its site plan package (**Exhibit A-1**) would therefore be revised accordingly.
14. It was agreed that the applicant will submit a revised landscaping plan for review and approval by the Board's Engineer and Planner.
15. As to concerns over whether areas of the existing parking lot might be too dark, Mr. Jordan indicated the applicant would work with the Board Engineer to see if additional lighting was necessary. If the Board Engineer determines more lighting is necessary, it will be provided.
16. With respect to the proposed Dunkin' Donuts drive-through, Mr. Jordan testified 12 to 13 cars can be stacked in the lane. He does not anticipate over stacking to be a problem with the site plan design. Nevertheless, in order to ensure there would not be any unforeseen problems, the applicant agreed, as a condition of approval, to allow the Board to retain jurisdiction over the application for a period of 6 months, post the opening of the Dunkin' Donuts for business, in order that the queuing situation could be properly evaluated. If a problem is recognized by the Board's Engineer during the first 6 months, the applicant would be required to return to the Board and seek revised site plan approval so as to resolve the situation.
17. With regard to deliveries to the site, the applicant agreed, as a condition of approval, that all deliveries would be made during the early morning, at off-peak hours.
18. In response to concerns expressed by the Board Engineer as to the entrance radius to the property from the common driveway shared with the neighboring International House of Pancakes' lot, the applicant agreed, as a condition of approval, to redesign that entrance radius so that it would meet the approval of the Board Engineer.
19. The applicant agreed, as a condition of approval, to install a proper sidewalk crossing between the rear of the IHOP parking lot to the rear of the subject property, and then install a sidewalk to the entrance of the Dunkin' Donuts. Said sidewalk shall be subject to the review and approval of the Board's Engineer and Planner.
20. Charles Wickner, who resides at 1 Raritan Avenue, Keyport, was sworn and addressed the board as to concerns he has with vehicles speeding onto Raritan Avenue from the Stop and Shop Supermarket lot which is connected to the property at issue in this case, and is also

owned by the applicant. In response to these concerns the applicant agreed, as a condition of approval, to install proper signage and/or a stop bar on its property leading into Atlantic Avenue, so as to force vehicles to slow down. The signage would have to reflect that there were private driveways ahead. Additionally, the applicant agreed to work with the Borough of Keyport to have appropriate signage and/or stop bar, which the applicant would pay for, installed in the public right-of-way along Atlantic Avenue, so as to force vehicles entering into the plaza to slow down. All signage and/or stop bars, whether in the public right of way or on the applicant's property, would be subject to the approval of the Board's engineer and planner. It was noted for the record however that if the applicant is unable to enter into an reasonable agreement with the Borough to access the public-right-of-way, then the public-right-of-way portion of this condition would be automatically waived.

21. No one else from the public spoke with respect to this application.
22. In considering this application, the Planning Board finds that the proposed variance relief can indeed be granted pursuant to the provisions of N.J.S.A. 40:55D-70(c)(2). The Board Members, based upon their collective familiarity with the property and area in question, agree that the benefits associated with this project are great since it will eliminate what has been a vacant building for the past several years along Highway 35, a major commercial thoroughfare in the Borough. The entire Borough will benefit as a result of the proposed project being completed.
23. The Board notes that the granting of the pre-existing front yard setback variance is simply a re-affirmation by the Board as to what already exists at the property. As to the proposed signage variances, these also should be granted since, in the Board's opinion, they will allow the building to be more aesthetically pleasing than it would be if the applicant were forced to comply with the 15 foot requirement.
24. As to the proposed preliminary and final site plan, the Board Members believe that the property will function properly as proposed as long as the applicant adheres to all of the conditions referenced in this resolution. The Board specifically notes that it is protecting the public by leaving the property open to a six (6) month evaluation period designed to ensure there will not be any unforeseen problems related to the drive-through lane.
25. The Board finds that provided the applicant complies with all of the conditions agreed to during the course of this application, the proposed preliminary and final site plan, with its associated variances, may be granted without causing any detriment to the Keyport Zoning Ordinance and Master Plan. In actuality the proposed project will compliment and improve what already exists along the Highway 35 corridor.

26. Based upon all of the aforesaid reasons, the Board finds that the application 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 BLDG Management Co., Inc. seeking Preliminary and Final Site Plan Approval for premises commonly known as 107-109 New Jersey State Highway 35 and officially designated as Block 110, Lot 27.03 be granted subject to the following conditions:

1. Subject to the applicant, other than as modified by this resolution, adhering to the preliminary/final major site plan dated October 31, 2012, which was prepared by K.B. Cahill, P.E. of Bohler Engineering. **(Exhibit A-1)**
2. The applicant's site plan **(Exhibit A-1)** shall be revised to reflect any changes necessitated by this approval.
3. Subject to the applicant, other than as modified by this resolution, adhering to the Floor Plans and Elevations dated April 4, 2012, last revised November 5, 2012, as prepared by Rotwein & Blake as well as to the colorized rendering of the building. **(Exhibits A-2 and A-4)**
4. Subject to all requirements contained within the Board Engineer and Planner's review letter dated February 20, 2013. **(Exhibit B-1)**
5. Subject to the condition that deliveries to the applicant's property will only be made in the early mornings, during off-peak hours.
6. Subject to the submission of a revised Landscaping Plan which shall be subject to the approval of the Board's Engineer and its Planner.
7. Subject to the applicant working with the Board's Engineer to determine whether adequate lighting is present on the applicant's property. Should the Board Engineer determine additional lighting is necessary, the applicant shall install same.
8. Subject to the applicant working with the Board's Engineer to revise the entrance radius from the common driveway shared with the International House of Pancakes' lot. Said redesign to be subject to the approval of the Board Engineer.
9. Subject to the condition that the Board will retain jurisdiction over this application for a period of six (6) months after the Dunkin' Donuts officially opens for business (post Certificate of Occupancy issuance). During this six (6) month period the Board's Engineer will evaluate whether the approved site plan properly supports the queuing of vehicles on the site. If, in the Board Engineer's opinion, the approved site plan does not adequately support the queuing of vehicles on the property, then the applicant will be required to return to the Board to seek amended site plan approval so as to resolve the situation.
10. Subject to the applicant installing a proper sidewalk crossing between the rear of the IHOP

parking lot to the rear of the subject property, and then a sidewalk to the entrance of the Dunkin' Donuts. Said sidewalk shall be subject to the review and approval of the Board's Engineer and Planner.

11. Subject to the applicant installing proper signage and/or a stop bar on its property leading into Atlantic Avenue, so as to force vehicles to slow down when exiting the neighboring Stop & Shop parking lot. The signage would have to reflect that there were private driveways ahead. Additionally, the applicant will work with the Borough of Keyport to have appropriate signage and/or stop bar, which the applicant would pay for, installed in the public right-of-way along Atlantic Avenue so as to force vehicles entering into the plaza to slow down. All signage and/or stop bars, whether in the public right of way or on the applicant's property, would be subject to the approval of the Board's engineer and planner. However, it is expressly understood that if the applicant is unable to enter into an reasonable agreement with the Borough to access the public-right-of-way, then the public-right-of-way portion of this condition will be automatically waived.
12. All representations made under oath by the applicant or his 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.
13. 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.
14. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.
15. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.
16. 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.
17. 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.
18. 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 John Kovacs

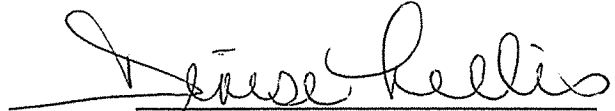
Seconded by Allen Hudson and on Roll Call, the following vote was recorded:

Affirmative: Joseph Sheridan, Mark Sessa, Allen Hudson,
Terry Nussan, Dennis Fotopoulos, John Kovacs

Negative:

Abstentions: Robert Burtew

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 April 25, 2013


Denise Nellis, Secretary of the Board