

RESOLUTION OF APPROVAL
FOR BIFURCATED USE VARIANCE APPROVAL
FOR THE PURPOSE OF ALLOWING A MULTI-FAMILY RESIDENTIAL BUILDING
WHERE SUCH A USE IS NOT PERMITTED

UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT

BLOCK 39 LOTS 12, 13 and 14
Application # 03-12
ALARIC PROPERTIES, LLC
45 BEERS STREET

WHEREAS, Alaric Properties, LLC has applied to the Unified Planning Board of the Borough of Keyport for bifurcated use variance approval, with bulk variance relief, so as to allow for the demolishing of two (2) existing apartment buildings, containing a total of fifteen (15) dwelling units, and constructing a new multi-family residential building consisting of twenty-four (24) dwelling units, with associated parking located on site. The proposed multi-family residential building is located at property commonly known as 45 Beers Street, and officially designated as Block 39, Lots 12, 13 and 14 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, public hearings on the application were conducted in the within matter during regularly scheduled meetings of the Unified Planning Board held on June 27, 2013 and July 25, 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, 45 Beers Street, LLC, as the first part of a bifurcated land use application, to be permitted to demolish two (2) existing apartment buildings, containing a total of fifteen (15) dwelling units, and subsequently constructing a new multi-family residential building, consisting of twenty-four (24) dwelling units, with associated parking on the site
2. The property in question is located at 45 Beers Street, which is officially designated as Block 39, Lots 12, 13 and 14 as shown on the official tax map of the Borough of Keyport.
3. The property is in the Borough's Residential District C (RC) Zone which does not permit multi-family residential uses containing more than two dwelling units.

4. At all times during the course of the public hearings, the applicant was represented by Gary S. Rosensweig, Esquire, of the law firm Archer & Greiner, P.C., whose office is located at 700 Alexander Park, Suite 102, Princeton, New Jersey 08540.
5. According to the Engineering/Planning Review Letter dated May 20, 2013, 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 marked into evidence as **Exhibit B-1**, this application requires use variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1), so as to allow the construction of a new multi-family residential building where none is permitted. Additionally, the application also necessitates a "density use variance", pursuant to the provisions of N.J.S.A. 40:55D-70(d)(5), since the application seeks to provide twenty-four (24) dwelling units although the zoning ordinance does not permit more than two at any single location.
6. In addition to "use variance" relief, the Board's professionals, in **Exhibit B-1**, also identified certain "bulk variances" being requested during this phase of the bifurcated application:

Variance	Required/Allowed	Proposed
Maximum Principal Building Coverage	30 %	40 %
Maximum Impervious Coverage	60%	70.9 %

7. Both the Board Engineer, Donald J. Norbut, P.E., and the Board's Planner, Martin Truscott, P.P., (sitting in place of Stan Slachetka, 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 applicant submitted the following exhibits into evidence:
- A-1:** Survey of Property, dated February 20, 2013, as prepared by Charles Surmonte, P.E.
- A-2:** "Use Variance Plans", dated April 9, 2013, last revised June 10, 2013, consisting of two sheets, as prepared by Brian M. Leff, P.P. of Maser Consulting, P.A.
- A-3:** Architectural Plans, dated March 12, 2013, as prepared by Lawrence P. Quirk, AIA.
- A-4:** Correspondence dated June 12, 2013, authored by Brian M. Leff, P.P. of Maser Consulting, P.A. noting revisions made to "Use Variance Plans" (**Exhibit A-2**).
- A-5:** Colorized version of "Site Plan" (**Sheet 2 of Exhibit A-2**) dated June 27, 2013, as prepared by Brian M. Leff, P.P. of Maser Consulting, P.A.
- A-6:** "Site Plan" (**Sheet 2 of Exhibit A-2**) superimposed upon an aerial of the area where the applicant's property is located. Said exhibit is dated June 27, 2013 and was prepared by Brian M. Leff, P.P. of Maser Consulting, P.A.

9. In support of the application, testimony was elicited from the principal member of the applicant, Guy Talarico.
10. Mr. Talarico explained that the applicant has owned the existing apartment complex at 45 Beers Road for the past 5 to 6 years. He believed the current structure had been in operation for several decades. It was noted by the Borough's Zoning Officer, Robert Burlew, a member of the Unified Planning Board, that the first Certificate of Occupancy for the building was actually granted in 1963, meaning the current multi-dwelling complex has existed at the site for half a century.
11. Mr. Talarico indicated that the existing building was severely damaged on October 29, 2012 as a consequence of the events of Super Storm Sandy. Rather than simply rebuild what was at the site prior to the storm, which in his opinion amounted to an out of date apartment building, Mr. Talarico stated the applicant wanted to make a significant investment in the property and build a completely new structure. However, if the application were denied, the applicant would have no choice but to try and rehabilitate the existing structures.
12. Mr. Talarico explained that the existing structure consisted of fifteen (15) dwelling units. The proposed new structure would consist of twenty-four (24) dwelling units.
13. After much conversation with the Board, Mr. Talarico ultimately agreed, as a condition of approval, that the twenty-four (24) proposed units would consist of twenty (20) two bedroom units and four (4) one bedroom units. There are currently forty-three (43) bedrooms at the site, so under this new proposal, only one (1) additional bedroom would be created.
14. So as to make sure the proposed site would remain well maintained, Mr. Talarico indicated the applicant would, as a condition of approval, agree that at least one of the apartments in the new building would be rented to a superintendent for the property. This way there would always be someone present at the location to ensure proper upkeep was taking place.
15. Mr. Talarico also agreed, as a condition of approval, that a management proposal for the new building would be submitted for the Board's approval as part of the site plan phase of the bifurcated application.
16. It was also agreed by Mr. Talarico, as a condition of approval, that the applicant would enter into a Developer's Agreement with the municipality that would govern the maintenance of the site, including consenting to cooperating with the Keyport Police Department to ensure the safety of the complex's residents and their neighboring property owners.
17. In further support of the application, sworn testimony was given by Brian M. Leff, P.P. of Maser Consulting, P.A. who has offices at 331 Newman Springs Road, Suite 203, Red Bank, New Jersey.

18. Mr. Leff testified this site was appropriate for the proposed use for a variety of reasons. He noted that the property has supported a multi-dwelling use for half a century. Accordingly, the use being proposed was nothing new for the site. It was clearly particularly suited for such a multi-dwelling use.
19. It was also noted that what was being proposed would be much more aesthetically pleasing for the Borough than the current outdated buildings located at the site. Mr. Leff argued that the Borough was much better off having a new building constructed than to see the applicant try and renovate the existing structures. He referenced the architectural plans, marked into evidence as **Exhibit A-3**, in support of this contention.
20. Mr. Leff further indicated the proposed project also met the goals set within the New Jersey State Map which encouraged the use of multi-dwelling structures so as to provide adequate and diversified housing in rural areas.
21. Mr. Leff testified that a benefit of the new proposal was that all parking for the complex would now be brought on site. 51 to 52 parking spaces were being proposed as part of the new plan. This would alleviate a parking problem which exists at the current site wherein only 28 parking spaces had been provided.
22. It was also recognized by Mr. Leff that the new building would be elevated so as to help avoid the type of damage to the structure which had just been experienced as a consequence of flooding from Super Storm Sandy. It would be elevated two feet above what is currently required.
23. Mr. Leff noted, from a safety perspective, having one building at the site, rather than the two which currently exist, emergency vehicles would be given better access to the property.
24. It was Mr. Leff's contention that all of these factors led to the conclusion the applicant had more than met the necessary enhanced proofs for being entitled to the sought after use variance relief.
25. As to detriments associated with the project, Mr. Leff testified he did not envision any negatives associated with the development. Whatever negatives might occur were surely outweighed by the benefits which would be derived by way of the new development, such as the modernization of the complex and creation of a new management plan to deal with complaints that existed relating to the past operation of the complex.
26. The final witness offered on the applicant's behalf was its professional architect, Lawrence Quirk, A.I.A., who has offices at 15 Union Avenue, Rutherford, New Jersey.

27. Mr. Quirk testified as to the aesthetic improvements that would be made to the site as result of the application. In his opinion the current buildings are an eyesore for Keyport. Referring to the architectural plans he had designed (**Exhibit A-3**), Mr. Quirk expressed his belief that the new building would have a much more modern look. He noted that when observing the proposed structure from Beers Street, it would actually have townhouse characteristics, since there would only be six doors facing the street. This would keep the area from being left with the typical apartment facade to which it had become accustomed.
28. The following members of the public also were sworn and spoke with respect to the application:
- A) **Doreen Minutella - 34 Kearney Street, Keyport** - Ms. Minutella indicated her property borders on the applicant's property. She expressed concern over the current parking patten on site, and the fact that vehicles often knocked down the fence which separates the properties. She also expressed concerns over adequate garbage pickup at the premises. It was noted by the applicant's professionals that the newly proposed parking layout would not be the same as the existing building, and a superintendent would live on site who would ensure proper garbage pickup occurs.
 - B) **Rita Smith - 36 Kearney Street, Keyport** - Ms. Smith complained about noise from the site during her 26 years of residency next door. The applicant indicated rules would be established for the complex to try and control this issue in the future.
 - C) **Robert Laughlin - 382 Broadway, Keyport** - Mr. Laughlin indicated he manages the property at 50 Beers Street which is directly across from the applicant's lot. He indicated he has had to pick up a great deal of garbage at his property over the years which originated from the applicant's complex. Mr. Laughlin indicated he did not object to the application since it had been indicated a superintendent would be residing at the premises, and he would have someone to speak with if new problems were to occur. This would be a positive improvement from what currently exists.
 - D) **Joe Minutella - 34 Kearney Street, Keyport** - Mr. Minutella spoke about crime which has occurred at the site over the years. He also reiterated the comments of his wife, Doreen, about the lack of adequate garbage cleanup. The applicant responded that there would be new maintenance and management codes implemented as part of this application process.
 - E) **Jack Jeandron - 80 Main Street, Keyport** - Mr. Jeandron expressed concerns over how the new building would be elevated. It was noted that the building would be built pursuant to all appropriate construction and environmental codes.

- F) **Ed Burlew - 59 West Front Street, Keyport** - Mr. Burlew expressed concerns over whether it was appropriate to build at the location due to the history of flooding at the site. He also expressed concerns over the renters who historically lived at the property and who did not seem to care about the community. The applicant indicated one of the goals of its plan was to try and attract the type of clientele who would take pride in their residences and maintain the premises.
- G) **Angelo Masia - 23 Beers Street, Keyport** - Mr. Masia expressed similar concerns as Mr. Burlew as to the traditional clientele at the community. However he felt that if the applicant kept its promises by bringing in better tenants, it would be an improvement for the entire community. He also noted that the current building is an eyesore. He feels the project should be given a chance.
- H) **Michael Cummins - 44 Beers Street, Keyport** - Mr. Cummins indicated he has lived directly across the street from the applicant's property for fourteen years. He believes the proposed building would be a major improvement from what currently exists.
- I) **John Murphy - 54 Kearney Street, Keyport** - Mr. Murphy testified he felt the applicant was proposing too many units for the property.
- J) **John Hila - 30 Kearney Street, Keyport** - Mr. Hila complained about the history of crime at the property. He noted he has had to call the police on many occasions.
- K) **Ed McNamara - 76 Maple Place, Keyport** - Mr. McNamara expressed concerns about flooding at the property and does not believe the site is appropriate for building.

29. In addition to the above listed members of the public, the Board also heard from Borough Resident Michael Lane, of 51 First Street, Keyport, who announced his opposition to the application. Mr. Lane presented the following exhibits in support of his stance:

Exhibit O-1 : Photographs of buildings (not the applicant's property) located in Keyport

Exhibit O-2: Photograph of flooding on Beers Street during a 1992 Storm

Exhibit O-3: "Best Available Flood Hazard Data" stating necessary elevation levels for the applicant's property as obtained from FEMA's website.

Exhibit O-4: Photograph of Michael Lane's property, sometime in the 1960's, taken from the Keyport Yacht Club history book.

30. Relying on the materials he had submitted into evidence, Mr. Lane argued that the applicant's property is prone to flooding and is therefore not appropriate for the project being proposed. The applicant's counsel objected to the majority of this argument based upon the fact that the photographs do not depict the applicant's property. Additionally, the applicant

had indicated that it would comply with all necessary construction codes and environmental regulations associated with building at the site. All of these issues would be dealt with during the site plan phase of the application.

31. Mr. Lane argued that the 1989 Master Plan eliminated multi-family development as a permitted or conditional use in all zone and districts in the Borough. Accordingly, Mr. Lane felt the application should be denied. It was noted however, by the Board's attorney, Marc A. Leckstein, Esquire, that the fact multi-family dwellings are not permitted in the zone is exactly why the applicant is seeking use variance relief from the Board. Assuming the Board found the applicant had met the necessary criteria for a grant of use variance relief, the application could be granted.
32. Mr. Lane argued the application should be denied as it would bring new low income housing to the Borough. The Board attorney, Mr. Leckstein, cautioned the Board about considering this as a factor for denying an application. Mr. Leckstein further noted that current state law considered low income housing to be beneficial as it encourages diverse community development.
33. Mr. Lane acknowledged he is not a licenced planner or engineer and has no professional experience in either area.
34. Mr. Lane complained that he had not been permitted to submit evidence of old Planning Board applications into evidence. It was noted by the Board's attorney, Mr. Leckstein, that it was improper for the Board to consider evidence taken from old applications since an application has to be considered as a whole, and cannot be reviewed based upon piecemeal selections from a file. It was the obligation of the Board to consider the present application based upon evidence and testimony which could be reviewed and cross-examined by all of the concerned parties. It was impossible to do that with the type of materials Mr. Lane had wanted to offer, therefore such evidence was inappropriate for these proceedings.
35. Mr. Lane urged the Board to deny the application as he did not believe it was appropriate for the Borough of Keyport.
36. No one else from the public spoke with respect to this application.
37. 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-3**), if adhered to, will act as a great benefit for the surrounding neighborhood and the Borough as a whole.

38. The Board also takes very seriously the complaints of several of the property's neighbors as to the existing complex having been the origin of crime and littering around the surrounding community. The Board finds that the applicant's representations of having a superintendent residing on the site, and a new management plan with rules and regulations being put in place, will help deter the criminal and littering activities which have previously occurred. These preventive efforts will not occur if the requested variance relief is denied.
39. The Board also finds that the applicant's property is particularly suited for the proposed use. While the Board acknowledges the site is not zoned for such a multi-family use, it has served in that capacity for half a century, the first Certificate of Occupancy for the premises having been issued in 1963. The Board also notes that regardless of whether the application is actually granted, the site will continue to operate as a multi-family dwelling since the applicant has indicated it will be forced to rehabilitate the existing building if the application were denied.
40. The Board also recognizes that parking has previously been a concern at the site. Under the proposed plan, more than adequate parking will be provided at the premises. This will also serve as a benefit for the surrounding community, since vehicles will remain onsite rather than be parked on the adjacent streets.
41. 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.
42. As to the density use variance, the Board notes that the application is seeking only one bedroom more than presently exists at the complex. Forty-Three (43) bedrooms are currently located at the premises; the new structure will only have forty-four (44). This fact acts to limit the impact of the increase in density that is being contemplated.
43. The Board finds that the applicant's property can clearly support the densities being proposed at the site, as the location has served multi-family dwellings for half a century. There is nothing about this new proposal that threatens to alter the existing dynamic in such a manner that could lead anyone to believe the site is no longer appropriate for such populations.
44. With regard to the requested bulk variances, the Board finds that absent the grant of same 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 structures would remain. This would deprive the Borough of the benefits of a more modern building being constructed with its improved maintenance, security, and emergency access plans.

45. As noted in this Resolution above, the Board is aware of all the concerns expressed by neighboring property owners as to the prior management of the applicant's property. The Board finds that any detriments which might be created by allowing this new development to occur are far outweighed by the benefits which will be created by the construction of a more modern complex at the site, such as the implementation of new management policies.
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. With regard to the concerns over flooding at the applicant's property which were expressed by various neighbors throughout the application, the Board finds that construction of the new building will have to be in compliance with all relevant construction and environmental codes. Additionally, the Board does not believe the applicant would spend the monies necessary to construct this new building without ensuring it is adequately protected from such environmental threats. The Board therefore believes flood prevention will be more than adequately addressed during the construction phase of the project.
48. When taking all of the above in consideration, the Board finds that provided the applicant complies with all of the conditions agreed to during the course of this application, and submits a proper preliminary and final major site plan application during the second phase of these bifurcated proceedings, then the requested use and 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.
49. Based upon all of the aforesaid reasons, the Board finds that the application for 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 Alaric Properties, LLC seeking use and bulk variance relief for premises commonly known as 45 Beers Street and officially designated as Block 39, Lots 12, 13 and 14 be granted subject to the following conditions:

1. Subject to the submission of a complete site plan application and the granting of approval of same by the Board of Adjustment.
2. During the site plan phase of these proceedings, the applicant shall adhere as closely as possible to the site plan (**Sheet 2 of Exhibit A-2**) and architectural plans (**Exhibit A-3**) which were submitted into evidence. This approval would not have been granted absent the favorable reaction by the Board to these exhibits.

3. Subject to all requirements contained within the Board Engineer and Planner's review letter dated May 20, 2013. **(Exhibit B-1)**
4. Subject to the condition that the approved use will be limited to twenty-four (24) units, no more than twenty (20) of which may be two (2) bedroom units. At least four (4) of the approved units must be one (1) bedroom units.
5. Subject to the condition that at least one of the units at the complex must be rented to a superintendent for the complex, who shall live on the premises.
6. Subject to the condition that the applicant submit, as part of the site plan phase of this application, a management proposal for the premises that shall be reviewed and approved by the Board of Adjustment.
7. Subject to the condition that if the Board grants preliminary and final site plan approval, the applicant will be required to enter into a developer's agreement with the municipality that adequately addresses maintenance of the site and also consents to cooperating with the Keyport Police Department to ensure the safety of the complex's residents and its neighboring property owners.
8. 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.
9. 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.
10. This approval shall be deemed void by abandonment if the applicant does not seek site plan approval within one year of the date hereof.
11. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.
12. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.
13. 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.
14. 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.

15. 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 T. Musson

Seconded by D. Fotopoulos and on Roll Call, the following vote was recorded:

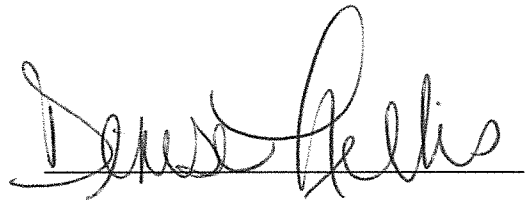
Affirmative: M. Sessa, T. Musson, D. Fotopoulos, J. Kovacs, J. Kovacs-Olsen

Negative:

Abstentions: R. Burlew, A. Hudson, J. Oviedo

Absent: R. Benedict

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 August 22, 2013.

A handwritten signature in dark ink, appearing to read "Denise Nellis", written over a horizontal line.

Denise Nellis, Secretary of the Board