

**RESOLUTION  
PLANNING BOARD  
CITY OF BAYONNE**

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**APPLICANT:** BAYONNE ENERGY CENTER, LLC (BEC)

**APPLICATION NO:** P-13-003

**PREMISES:** 401 New Hook Road  
Block 482, Lot 9

**WHEREAS, BAYONNE ENERGY CENTER LLC, hereafter BEC** (Applicant), has applied to the Planning Board of the City of Bayonne for preliminary and final major site plan approval amending the original Board approval in connection with an electric power generating and transmission facility and the construction of a noise wall on property located at 401 New Hook Road in City Block 482, Lot 9; and

**WHEREAS, the applicant, through its attorney Donna M. Jennings, Esq. of Wilentz, Goldman & Spitzer PA., appeared before the Planning Board at a regular meeting held on June 11, 2013; and**

**WHEREAS, Michael Theriault, of Michael Theriault Acoustics, Inc., provided testimony on behalf of the application; and**

**WHEREAS, the applicant submitted evidence that it has made the application in conformance with the City of Bayonne Ordinance and has complied with all the procedural requirements of the City of Bayonne Ordinance including the payment of fees; and**

**WHEREAS, after carefully considering the evidence proofs and testimony of the applicant and the arguments of counsel presented at the hearing in this matter, the Board has made the following findings of fact and conclusions of law:**

1. The Planning Board has the jurisdiction to act upon this application with a majority vote required for approval of all matters; and

2. The BEC site was previously approved for the proposed use of electric power and production and transmission facility by Resolution of Approval dated April 23, 2009 and has commenced operation; and
3. The applicant is seeking amended preliminary and final site plan approval for the property located at 401 Hook Road. Since the approval BEC has requested and received administrative approvals to make minor modifications to the approved site plans. During construction it was necessary for additional minor modifications for which the applicant is seeking amended site plan approval; and
4. The BEC originally proposed the construction of a noise wall varying in height from 15' to 30' because the noise generated from the site boundaries would exceed the State Noise Code limit of 65 decibels for industrial receptors. In July of 2012 the New Jersey Department of Environmental Protection, hereafter NJDEP, adopted revisions to the State Noise Code which eliminates noise limits at industrial "receptors". The applicant is seeking to have the condition for the noise wall eliminated as set forth in the resolution of approval; and
5. Michael Theriault, P.E., testified on behalf of the applicant regarding acoustics. Mr. Theriault had initially testified at the time of the original approval. In his testimony from 2009, Mr. Theriault advised the Planning Board that "the then current design of the facility, which included property line noise wall for the sole purpose of achieving industrial to industrial noise limits, BEC noise emissions were expected to fully comply with performance standards established by the NJDEP for residential, commercial and industrial receptors." The re-adopted NJDEP regulation no longer imposes noise limits at "receptor" industrial facilities and therefore the original proposed property boundary acoustic walls are no longer required; and
6. Mr. Theriault further testified that, at the request of the City of Bayonne, a sound level performance test was conducted in May, 2013 with the BEC operating at base load capacity to assess compliance with the BEC/COB noise limits. The results of this sound level test showed that the BEC noise emissions complied with the NJDEP and City of Bayonne broadband and octave band noise limits in residential areas. It was his conclusion that the noise wall was not necessary; and
7. The Board makes the following findings and conclusions with respect to this application:
  - a. The matter is a request for preliminary and final major site plan approval amending the original Board approval for the construction of a noise wall. The Board has considered the testimony presented on behalf of the applicant. In addition, the Board has reviewed the City of Bayonne Zoning Ordinance, Master

Plan and all material marked into evidence which is incorporated herein by reference.

- b. The rule of res judicata does not bar the making of a new application for development or for modification or enlargement of one already granted or for lifting conditions previously imposed in connection with such a grant upon a proper showing of changed circumstances or other good cause warranting a reconsideration by the granting Board. *Toll v. Bd. Of Chosen Freeholders*, 194 N.J. 223, 246-247 (2008); *Soussa v. Denville Tp. Planning Bd.*, 238 N.J. Super. 66, 68-69 (App. Div. 1990); *Allied Realty v. Upper Saddle River*, 221 N.J. Super. 407, 413-415 (App. Div. 1987), certif. den. 110 N.J. 304 (1988); *Springsteel et al. v. Town of West Orange, et al.*, 149 N.J. Super. 107, 112-113 (App.Div.), certif. den. 75 N.J. 10 (1977); *Cohen v. Fair Lawn*, 85 N.J. Super. 234, 237 (App. Div.1964).
- c. The Board hereby determines that the applicant has met its burden to the satisfaction of the Planning Board for preliminary and final major site plan approval. The 2012 re-adopted NJDEP regulation deleting noise limits at receptor industrial facilities makes the imposition of the boundary acoustic walls not necessary. Since the applicant has demonstrated that the noise walls would not be required to achieve compliance with noise limits for nearby receivers it can be determined that under sound and prudent planning principals that the benefits of eliminating this condition for noise walls will advance the purposes of the City Zoning Ordinance, Master Plan and Municipal Land Use Law. The site plan conforms with ordinance requirements subject to the report prepared by T & M Associates dated May 6, 2013.

**NOW THEREFORE BE IT RESOLVED**, that the Planning Board of the City of Bayonne hereby **GRANTS BAYONNE ENERGY CENTER, LLC (BEC)**, applicant, preliminary and final major site plan approval amending the original Board approval in connection with an electric power generating and transmission facility and the construction of a noise wall on property located at 401 Hook Road in City Block 482, Lot 9, subject to the approval of all pertinent federal, state, county and municipal rules and regulations, statutes, codes and ordinances; and

**BE IT FURTHER RESOLVED**, that the Chairman of the Planning Board has hereby authorized his signature to this Resolution and the Land Use Administrator is authorized to advertise the action taken by way of Resolution in a local newspaper; and

**BE IT FURTHER RESOLVED**, that the Land Use Administrator is authorized to send copies of this resolution to the following City Officials: City Clerk, Construction Official, Zoning Officer, Fire Sub-Code Official, City Planner and City Engineer.

**RECORDED VOTE:**

Commissioners	Aye	Nay	Abstain	Not Voting	Not Present
Theodore Garelick	[X]	[ ]	[ ]	[ ]	[ ]
Gary Chmielewski	[ ]	[ ]	[ ]	[ ]	[X]
Alice Lotosky	[X]	[ ]	[ ]	[ ]	[ ]
Debra Czerwienski	[X]	[ ]	[ ]	[ ]	[ ]
Eneas Mulcahy	[X]	[ ]	[ ]	[ ]	[ ]
Frank Rodriguez,	[X]	[ ]	[ ]	[ ]	[ ]
Mahmous Fares	[ ]	[ ]	[ ]	[ ]	[X]
Karen Fiermonte	[X]	[ ]	[ ]	[ ]	[ ]
Mayor Mark Smith	[ ]	[ ]	[ ]	[ ]	[X]
John Franconeri (Mayoral Designee)	[X]	[ ]	[ ]	[ ]	[ ]

WHEREAS, the application having received Seven (7) **AYE** votes, is hereby

**APPROVED.**

The above Resolution was adopted  
by the Planning Board of the City of  
Bayonne at a meeting held on July  
16, 2013

  
THEODORE GARELICK  
Chairman

RNC/lg