

**RESOLUTION OF APPROVAL FOR A VARIANCE PURSUANT TO  
NJSA 40:55d-70(D) TO PERMIT A TWO FAMILY HOME WHERE ONE IS NOT  
PERMITTED ALONG WITH BULK VARIANCES, AND/OR WAIVERS**

**APPLICANT:** 117-119 BOSTWICK AVENUE REALTY, LLC

**PREMISES:** 28 PARK AVENUE; BLOCK 1212; LOT 5

**WHEREAS**, the within Application was initially brought before the Board by 117-119 Bostwick Avenue Realty, LLC, ("Bostwick" or "the Applicant") for the development of the above Property (the "Property") as a two-family home; and

**WHEREAS**, the Property is owned by the Applicant and is located in the B – Business Zone. The Property is located on the west side of Park Avenue south of Madison Avenue; and

**WHEREAS**, plans in the within matter were dated June 20, 2019. During the course of public hearing there were numerous plan revisions, including a final plan dated January 15, 2020. Public hearings were commenced on September 24, 2019, and included hearing dates of October 29, 2019 and January 28, 2020.

**WHEREAS**, Bostwick seeks the redevelopment of the Property as a two-family home. Said development requires the following variances:

- a. Use – The Ordinance permits Business uses in the Zone and residential on the second floor. The Applicant seeks to convert the existing home to a two-family structure.
- b. Bulk Variances – The Property is 28' x 50' (1,400sf) and contains an existing structure. The Lot is undersized and dimensionally deficient as to every zoning criteria. The Existing structure – proposed to be maintained by the Applicant – requires a variance for every Bulk criteria except for height. The Applicant does not seek to modify the structure but does seek a non-permitted use on the Property.

**WHEREAS**, it should be noted that the Applicant has withdrawn all requests for a FAR variance and no such variance was considered by the Applicant at the final hearing; and

**WHEREAS**, the Applicant and the Board introduced the following Exhibits into evidence:

**Exhibit A-1** Architectural Plan, prepared by Bonanomi & Bennett Architects, dated June 20, 2019 and revised through January 15, 2020;

---

## **Exhibit A-2**

### **Photo Display of Area**

**WHEREAS**, Planning Board Engineers, Boswell McClave Engineering, Dennis Harrington, PE, submitted Letter Reports, dated September 16, 2019 and October 22, 2019, which reports were accepted into evidence and designated **Exhibit B-1** and **Exhibit B-2**, respectively; and

**WHEREAS**, at Public Hearings, the following relevant testimony was adduced through Applicant's counsel, Matthew Capizzi, Esq., ("Capizzi"), utilizing the following witnesses: 1) Richard Bennett, AIA ("Bennett"); David Spatz, PP ("Spatz"). Additional testimony was provided by Dennis Harrington, PE of Boswell Engineering ("Harrington"); and Elliot Sach, PE ("Sach").

The proceedings in this matter were voice recorded. The Testimony, Statements of Fact and Findings of this Resolution are not intended to be all inclusive but merely a summary and highlight of the complete record made before the Board.

1. Capizzi set forth the background of uses on the Property; the zoning requirements and an overview of the plan revisions.
  2. Bennett testified as to all elements of the Architectural Plans. He also testified that the Property is undersized and located in the B-Zone which permits residential on the second floor but requires commercial on the first floor. Accordingly, the zone does not permit two-family homes. As a result, the applicant requires a "d" variance for a non-permitted use.
  3. Bennett testified that all other bulk variances were due to the dimension of the Property and not due to the Applicant's proposal. Additional variances were required due to the location of the structure on the Property. The Applicant does not seek to alter the footprint in any way.
  4. The Applicant seeks to construct a residential unit on the first and second floors. Each is to contain one bedroom. The interior layout of the structure will be modified to permit the construction of two units and access to both units. The room and window layout will be modified. All existing variances as to the lot or structure are unchanged. The apartments would each be approximately 700 sf.
-

5. The Applicant is required to provide three parking spaces to satisfy RSIS. While they are not conforming, the front yard is 28' wide and 15.5' deep resulting in sufficient area to park three vehicles.
6. The Property presently does not have any means of handling drainage or stormwater. The Applicant proposes a seepage pit under the driveway for the roof leaders and a trench drain to collect stormwater.
7. Spatz testified as to all matter of planning concern and the neighborhood. He testified that all variances as to the lot and structure were existing. Parking is sufficient and the "real issue" is the use of a business or one bedroom apartment on the first floor. He testified that the area has many 2 family uses and the area is a transition between the Business Zone on Madison Avenue and the nearby residential uses.
8. Spatz testified that the Applicant needed a (d)(1) variance for the use of the first floor as a residence – rather than commercial. Spatz testified that a retail use on the first floor would be more intense and utilize more vehicles than the proposed residential use. He testified that there were many uses permitted in the Zone which would be inappropriate on the Property and far more intense.
9. Spatz testified that the Property was particularly well suited for the proposed two-family use based upon the nature of the Property and surrounding uses.
10. Spatz also testified that there was no substantial detriment to the granting of the (d) or dimensional variances.

#### **CONCLUSIONS AND DETERMINATIONS**

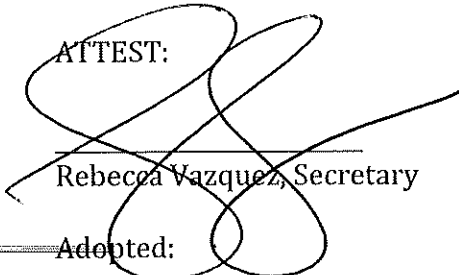
1. N.J.S.A. 40:55D-70(c) (2) provides that a variance may be granted where the Board finds that the purposes of the Municipal Land Use Law ("MLUL") would be advanced by a deviation from the zoning requirements and that the benefits of the deviation would substantially outweigh any detriment. The standard is no different for waivers.
  2. N.J.S.A. 40:55D-70 (c) (1) provides that a variance may be granted where the Board finds that property is burdened by a unique hardship or condition.
  3. The Board must also find that there is no substantial detriment to the zone plan or zoning ordinance to the granting of the requested variances, waivers or deviations.
  4. The Board finds that the continuation of the Lot and the Structure require no new or additional variances.
-

5. The Board finds that the applicant has demonstrated satisfaction of the requirements for a (d)(1) variance for the placement of a residential use on the first floor.
6. Upon hearing all of the evidence, the Board voted to approve the Application. The aforesaid approval is subject to the following:
  - A. All Affordable Housing Requirements as may apply.
  - B. Compliance with the requirements contained in Borough review letters or as directed by Borough Professionals.
  - C. Subject to all other necessary approvals, including County Approval.
  - D. The Applicant shall immediately publish notice of the within approval.
  - E. All Tree Removal and evaluation is subject to the Shade Tree Commission.
  - F. Applicant shall add a separate seepage pit designed in a manner approved by the Board Engineer.

**This is to certify that the above and foregoing Resolution was duly adopted by the Joint Land Use Board of the Borough of Dumont on the 28<sup>th</sup> day of January, 2020**


A copy of this Resolution shall be given to the Tax Assessor, Applicants (through counsel), Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:

  
Rebecca Vazquez, Secretary

Adopted:

SO APPROVED:

  
Graeme Dutkowsky, Chairman