

**BOROUGH OF DUMONT
JOINT LAND USE BOARD
BERGEN COUNTY, NJ
RESOLUTION**

PLEASE TAKE NOTICE at the Joint Land Use Board meeting held on March 31, 2015 at the Dumont Senior Center, 39 Dumont Ave, the Board adopted a memorialization of the following resolution.

RESOLUTION: 14-04: 2A Sunset Terrace: Mary Ellen Romano
Block - 821, Lot – 1, 2 & 3
Minor Subdivision & Use Variance
Approved

A copy of this determination has been filed in the office of the Joint Land Use Board and is available for inspection during the regular hours prescribed by said Board for inspections of its public records.

Kelly Lo Russo
Clerk
Joint Land Use Board

JOINT LAND USE BOARD OF THE BOROUGH OF DUMONT

AMENDED RESOLUTION

MINOR SUBDIVISION APPROVAL AND VARIANCE RELIEF

In the Matter of the Application of:

Mary Ellen Romano and Radu Tiprigan

As to B. 821; Lots 1, 2, 3 a/k/a

2A Sunset Terrace and 24 Sunset Terrace

WHEREAS, Mary Ellen Romano (hereinafter, "Romano") is the Owner of 2A Sunset Terrace and Radu Tiprigan (hereinafter, "Radu") is the Owner of 24 Sunset Terrace (hereinafter, collectively, the "Applicants" and the "Property"). The Property is located in the B-2 Zone of the municipality; and

WHEREAS, 2A Sunset Terrace is located in Block 821 and is made up of portions of Lots 1 and 3 on the Tax Assessment Map and is utilized in the operation of a construction company (including an office and trailers, and for a cell tower). 24 Sunset Terrace is made up of Lot 2 on the Tax Assessment Map and is utilized in the operation of an Auto Body shop. The Auto Body shop located on Lot 2 also leases and utilizes portions of Lots 1 and 3 in the operation of its business. All of the aforesaid uses are non-permitted in the B-2 Business Zone; and

WHEREAS, the Applicants seek to resubdivide Lots 1 and 3 so that the lot lines better reflect the actual delineation of uses on the Property. As a result of the resubdivision, proposed Lot

1.02 will be dedicated to the cell tower and the construction company, and proposed Lot 1.01, in conjunction with existing Lot 2 will be dedicated to the Body Shop use; and

WHEREAS, the Applicant has made application to the Board for Minor Subdivision Approval, pursuant to the Development Ordinances of the Borough of Dumont, in order to divide the Property as set forth herein, together with application for variance relief pursuant to N.J.S.A. 40:55D-70(d)(2) for the de facto intensification of the non-conforming uses in the B-2 Zone in which the Property is located. Additionally, the Applicant has sought the waiver of various application submission requirements; and

WHEREAS, public hearings were held by the Board on September 30, 2014 and October 27, 2014 at which time the Applicant, represented by counsel, Richard Venino, Esq., of the firm of Venino and Venino, LLC,

- (a) Presented proof of notice and publication as required by law;
- (b) Submitted the following documents:
 - i) The Minor Subdivision Plat, prepared by GB Engineering, LLC, dated May 28, 2013, as revised consisting of one (1) sheet;
 - ii) An 11 page photographic survey of the Property and the uses thereon;

- iii) Certification of Mary Ellen Romano;
- iv) Certification of Radu Tiprigan;
- v) Report of Atlantic Environmental Solutions, Inc., dated May 30, 2014; and

(c) Presented the testimony of

- (i) Mary Ellen Romano;
- (ii) Radu Tiprigan;
- (iii) Keith Mayer, Foreman of Tenant, Mike C. Walter Construction;
- (iv) Thomas Stearns, III, PE, LS,;
- (v) Jeff Anderson, Vice President and Principal of Atlantic Environmental Solutions, Inc.

(d) Testified in support of the application; and

WHEREAS, the Board has reviewed the Application and other evidence submitted, having considered the reports of Boswell McClave Engineering, dated July 28, 2014 and September 30, 2014, and heard and considered the testimony presented by the Applicants and all members of the public that offered testimony, as well as the testimony of James Fordham of Boswell McClave Engineer:

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment of the Borough of Dumont makes the following findings of fact with respect to the within Application:

1. The Property is located on the northwesterly corner of the intersection of Sunset Terrace and New Milford Avenue, and is presently improved with a cell tower, parking lots, various trailers (utilized as storage and offices), and a one story masonry building utilized in connection with a body shop business. The site has a total area of 26,187.76 s.f. and is situated in the B-2 Business Zone. The Property is bounded on the west by the CSX Railroad R.O.W. To the north, there is Borough Property before the commencement of a residential area. To the south, there is a commercial area. Across the street to the east, there is a residential area on the opposite side of Sunset Terrace.

2. The Applicant proposes to subdivide existing Lots 1 and 3 to create 2 new lots - Proposed Lot 1.01, containing 7,375 square feet; and Proposed Lot 1.02, containing 16,491.72 square feet. Lot 2, while part of the entire Property, is not part of the subdivision and will remain "as is".

3. Subsequent to the subdivision, Proposed Lot 1.02 will continue in the ownership of Romano and will encompass only the area presently occupied by the construction company and will be for the use of the construction company. The cell tower, contained within the leasehold area of the construction company will also continue.

4. Subsequent to the subdivision, Proposed Lot 1.01 will continue in the ownership of Romano and will encompass only the area presently occupied by the auto body business that principally operates out of existing Lot 2. Romano testified that upon subdivision, Proposed Lot 1.01 would be sold to Radu Tiprigan for use in connection with the auto body business.

5. Access to each of the uses on the site will be through Sunset Terrace.

6. Post-subdivision, the construction company and the auto body shop will continue to operate without change. There will be no expansion or amendment of either of the uses on the Property. There will be no alteration in business operations or the property usage.

7. The application does not seek variances pursuant to N.J.S.A. 40:55D-70(c). The Applicant does not seek site plan approval as there are no amendments to the structures, the uses or the Property.

8. As a result of the subdivision, each of the Proposed Lots will be smaller in relation to the business operations currently thereon than presently exists. While there is no change of business operations, the conduct of the same business operations, on a smaller lot, requires relief pursuant to N.J.S.A. 40:55D-70(d)(2).

9. Inasmuch as there are no changes to the development on the Property, and the Applicant simply seeks to draw lot lines which are consistent with the existing operations on the Property, the Applicant has requested the waiver of various submission requirements. These include a waiver from the requirement that a contour map be submitted; a waiver of the requirement to show existing wells and septic systems and/or the location of public utility connections; a waiver of the submission of a soil erosion and sediment control plan; a waiver of requirements for a signage plan; a waiver from the requirement to submit floor plans and elevations; a waiver of the requirement to submit a design and signage plan. In each of these cases, the Applicant argues that there are no changes to structures, buildings, uses, construction or any other aspect of site development and the Board can fully review the Application without the need for these items.

10. At the hearing held on October 28, 2014, Radu Tiprigan and Mary Ellen Romano testified as to the existing operations, the historical development of the Property and the proposed subdivision. Keith Mayer, Foreman of Mike C. Walter Construction, testified as to their operation on the Property and confirmed that they would continue to conduct these operations on Proposed Lot 1.02 and that this is the current portion of the Property devoted to their operations. Radu

Tiprigan testified as to his business operations on Lot 2 and his proposed purchase of Lot 1.01 and this is the current portion of the Property devoted to their operations. All three individuals testified to recent efforts to clean up and improve the Property.

11. The Applicant provided the testimony of Thomas Sterns, PE, LS, who testified as to all matters concerning the Subdivision Plat. He testified that the subdivision was classified as a minor subdivision and that he personally visited the site and was asked to place the subdivision lines at the location of the actual use delineations. He testified that the comments contained in the Board Engineer's review letter could be accommodated by the Applicant and that Subdivision Plat prepared by his offices conveyed all information necessary to obtain a subdivision and the items which are not submitted are not necessary to examine the Application.

12. At the hearing, Jeff Anderson testified about the existing body shop operations. He testified as to the findings in his report and that he is a Vice President and Principal of Atlantic Environmental Solutions, Inc. In summary, he testified that the body shop was properly operated and used a minimum of environmentally sensitive materials and that they were properly handled on site, and properly removed from the site. He

testified with particularity about the spray booth on the Property and that it is properly operated.

13. The Applicant testified that there was no alteration of the operations on the Property and that the (d) variance for an "expansion" of the non-conforming uses was highly technical and did not reflect the reality of the subdivision and the uses on the Property. Inasmuch as there was no actual intensification of the non-conforming uses on the site, there was testimony as to the "negative criteria" which indicated that there was no detrimental impact of the "expansion" of the non-conforming uses on the Property.

14. The Application was opened to the public for comment.

CONCLUSIONS AND DETERMINATIONS

15. All findings of fact set forth above are made a part hereof as if set forth herein at length.

16. The proceedings in this matter were voice recorded. The foregoing facts in this Resolution are not intended to be all inclusive but merely a summary and highlight of the complete record made before the Board.

17. N.J.S.A. 40:55D-70(d)(2) provides that a variance is required if there is an expansion of the non-conforming use on a Property. The Board finds that there is a "theoretical" expansion of the non-conforming use in the most technical sense of the statute, but that there is no actual expansion of the

non-conforming uses as a result of the subdivision. The Board finds that this variance can be granted and that there is no detriment to the intent and purpose of the zoning ordinance or zone plan.

18. The Board finds that the variance can be granted without detriment to the public good or any neighboring properties, as the non-conforming conditions are de minimus in nature. The Board further finds that this approval will not substantially impair the intent and purpose of the Dumont Zone Plan and Zoning Ordinance and is in the furtherance of the purposes set forth in N.J.S.A. 40:55D-2.

19. The Board of Adjustment has the power, pursuant to 40:55D-70(d), to grant a variance to allow departure from regulations to permit (1) a use of principal structure in a district restricted against such use or principal structure; (2) an expansion of a non-conforming use; (3) a deviation from a specification or standard pertaining solely to a conditional use; (4) an increase in floor area ratio; (5) an increase in permitted density; or (6) a height of a principal structure which exceeds by 10 feet or 10 percent the maximum height permitted in the district for a principal structure.

20. A variance pursuant to 40:55D-70(d) may be granted only upon a showing that such variance or other relief can be granted "without substantial detriment to the public good and

will not substantially impair the intent and purpose of the zoning plan and zoning ordinance." 40:55D-70(d).

21. Approval of the application for variance relief is within the Board's statutory authority granted pursuant to N.J.S.A. 40:55D-70, et seq.

22. The Board finds that the waivers from submission requirements may be granted.

NOW, THEREFORE, BE IT RESOLVED that the application for variance relief is approved by this Board, subject to the conditions set forth below.

CONDITIONS

A. The Applicants shall comply with all of the ordinances of the Borough of Dumont and all applicable county, state, and federal ordinances, rules, statutes and regulations including the payment of real estate taxes. Without limiting the foregoing, the Applicants shall comply with any and all applicable requirements of the Federal Americans with Disabilities Act.

B. The approval of the within Application does not constitute a determination by this Board as to whether the proposed development complies with the Federal Americans with Disabilities Act or the applicable regulations thereunder.

C. The Applicants shall comply with all of the stipulations made during the hearing on this Application.

D. All activities are to take place fully on the Property. There shall be no activities, trailers or any work on the CSX ROW or off of the site.

E. The Property shall be maintained in proper condition subsequent to the subdivision. The Applicant shall immediately comply with all conditions contained in any and all prior Resolutions regarding the Property or any use thereon. Specifically, the Applicant shall comply with all conditions of the Resolution which granted approval for the cell tower.

F. Broken cement and broken macadam appurtenant to the Lot 2 shall be replaced.

G. The Applicant shall verify that taxes are paid to date on the Property.

H. The Applicant shall comply with all comments of the reports submitted by the Board Engineer.

This Application was approved by roll call vote of all members eligible to vote at its regular meeting on March 31, 2015.


IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Dumont upon a roll call vote at its regular meeting held on March 31, 2015.

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

ATTEST:

SO APPROVED:

Keely Lo Russo
K. Lo Russo, Secretary


William Bocchio, Chairman

Adopted: 3/15/15