

**JOINT LAND USE BOARD OF THE BOROUGH OF DUMONT**

**RESOLUTION OF APPROVAL FOR A CONDITIONAL USE PERMIT FOR AN  
ACCESSORY DWELLING UNIT PURSUANT TO 455-21**

**APPLICANT: ABBAS & SALLY TAYEB**

**PREMISES: 116 WALSH DRIVE  
BLOCK 1006; LOT 11**

**WHEREAS**, the within Application is brought before the Board by Abbas and Sally Tayeb who are the Owners and Applicants upon Property located in the RA Residential Zone and more specifically designated as 116 Walsh Drive (Block 1006; Lot 11) ("the Property"), and

**WHEREAS**, Borough Ordinance Section 455 provides for Accessory Apartments as permitted conditional uses, in any detached one-family dwelling, subject to the provisions of the aforesaid Ordinance ("the Ordinance"); and

**WHEREAS**, the Applicant has applied to the Planning Board for a Conditional Use Approval for a 2 Bedroom Accessory Apartment upon the Property and public hearing was held on January 29, 2019 (the "Hearing"); and

**WHEREAS**, in connection with the aforesaid development, the Applicant requires the following approvals, variances, and/or design waivers:

- Conditional Use Approval pursuant to Accessory Apartment Ordinance;

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

<b>Exhibit A-1</b>	1 Page Property Survey prepared by Azzolina & Feury Engineering, Inc., dated October 28, 2018;
<b>Exhibit A-2</b>	Architectural Plans, prepared by James DeBarbieri, dated November 8, 2018;
<b>Exhibit A-3</b>	Supplemental Information Package
<b>Exhibit A-4</b>	Deed representing purchase by the Applicant, dated September 7, 2000;
<b>Exhibit A-5</b>	Passports of both Abbas and Sally Tayeb

**WHEREAS,** Planning Board Engineers, Boswell McClave Engineering, Dennis Harrington, PE, submitted a Letter Report, dated December 3, 2018, which report was accepted into evidence and made part of the submission; and

**WHEREAS,** at Public Hearings, the following relevant testimony was adduced through Applicant's counsel, Stuart Reiser, Esq., ("Reiser"), of the law firm of Shapiro, Croland, Reiser, Apfel & DiIorio, LLP utilizing the following witnesses: 1) Sally Tayeb ("Tayeb" or "Applicant"); 2) James DeBarbieri, AIA (hereinafter, "DeBarbieri"); and

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. Reiser provided an overview of the relief requested and Ordinance Section 455-21. He provided background of the Application Process. He advised the Board that an Accessory Apartment is a permitted Conditional Use for a structure used for residential purposes provided that the Applicant could comply with the conditions set forth in the Ordinance. Reiser, during the course of the presentation, also reminded the Board that a Conditional Use – where all of the conditions are met – is a fully Permitted Use. Accordingly, if the Applicant herein meets all of the Conditional use requirements, the Accessory Apartment is fully permitted.
2. DeBarbieri testified that the existing home is a single family residence. He testified as to the interior layout of the structure and to the fact that there are no proposed exterior changes to the Property as the result of the within Application. He testified as to the Plans submitted and to the proposal to add a 2 bedroom Accessory Apartment, pursuant to Borough Ordinance 455-21. He testified as to all matters of architectural concern, including but not limited to, the layout of the Accessory Apartment; the location and context of the Accessory Apartment within the home; access to the Accessory Apartment; internal stairways; the location of stairways and all other matters related to the Accessory Apartment.
3. Tayeb testified at length about the matter and demonstrated compliance with each and every of the Conditional Use requirement of the Accessory Apartment Ordinance. These are as follows:

<b>Ordinance Requirement pursuant to Section 455-21</b>	<b>Evidence Offered/Satisfaction of Requirement</b>
455-21(B)(1) - Lot Size must be greater than 5,000 square feet in Lot Area.	A-1 and A-2 demonstrate a Lot Area of 6,966 square feet.
455-21(B)(2) – Applicants must have resided on Property for greater than 10 years prior to Application.	A-4, the Applicant’s Deed, demonstrates Applicant purchased the Property on, or about, September 7, 2000 and Tayeb’s Testimony indicates personal occupancy since that date
455-21(B)(3) – Applicants must be domiciled within either unit created.	Tayeb’s Testimony indicates that personal occupancy shall continue in one of the units created.
455-21(B)(4) – Applicants of Primary Unit or Accessory Apartment must be over 62.	A-5, the Applicant’s Passports, indicates that Abbas Tayeb exceeds 62 years of age.
455-21(B)(5) – Accessory Apartment may be occupied by no greater than 3 persons.	Tayeb’s Testimony indicates that they will comply with this Ordinance in the rental process.
455-21(B)(6) – Accessory Apartment must be greater than 400s.f. and smaller than 50% of the structure.	A-1 and A-2, as well as testimony of DeBarbieri, demonstrates unit size is compliant.
455-21(B)(7) – No changes to exterior.	A-1 and A-2, as well as testimony of DeBarbieri, demonstrates there are no changes to the exterior.
455-21(B)(8) – There shall be 1 additional parking space for Accessory Apartment	A-1, A-2 and A-3 demonstrate that this one additional parking space is available.
455-21(B)(9) – Accessory Apartments cannot be in the garage or cellar.	A-1, A-2 and A-3 demonstrate that the Accessory Apartment is not in the garage or cellar.
455-21(B)(10) – Sanitary sewer shall accommodate the Accessory apartment	It was testified that the sanitary sewer system can accommodate the Accessory Apartment.
455-21(B)(11) – Accessory Apartment shall comply with all other Ordinances.	Testimony and B-1 do not provide any basis to conclude that there is a lack of compliance with any Borough Ordinance.

455-21(B)(12) – The granting of the Conditional Use Application shall not impair the visual aspect of the neighborhood	A-1, A-2, A-3 and Testimony indicate that there is no change whatsoever to the exterior of the structure.
--	---

4. Numerous residents of the area testified against the Application. Residents expressed concern about parking, overcrowding, property values and similar issues. Residents were informed that the requested relief was fully permitted and in compliance with the Ordinance and that the Board could not deny a fully permitted use.
5. Residents expressing concerns about the Ordinance permitting the Accessory Apartment were informed that state statute, NJSA 40:55D-68.4, provided that Accessory Apartments – similar to that sought in this matter – were permitted by State Law in any residential zone.

#### **CONCLUSIONS AND DETERMINATIONS**

6. The Applicant requires the following approvals, variances or waivers:
  - Conditional Use Approval pursuant to Borough Ordinance 455-21, for which all conditions are complied with by the Applicant.
7. Conditional uses – for which all the conditions are met – are to be treated as permitted uses. The Accessory Apartment Ordinance makes clear that if Applicants comply with the conditions thereof, they are entitled to implement an Accessory Apartment. Even if the Ordinance did not exist, New Jersey Statute also makes such Accessory Apartments permitted uses.
8. The Applicants have met all of the conditions of the Accessory Apartment Ordinance. Accordingly, the Board is compelled to grant the subject approval.

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

- A. Compliance with the recommendations of the Fire Official.
- B. The Applicant shall comply with the requirements of the Board Engineer.
- C. Applicant shall assure that, prior to the issuance of a Certificate of Occupancy, that the Applicant can provide a single, unobstructed, full size, parking space to serve the Accessory apartment. In order to assure this requirement can be met, the applicant shall assure that no greater than 2 vehicles are principally garaged as

the Premises at the time of CO. Compliance shall be demonstrated by vehicle registration, insurance information and factual observation of the parking at the Property.

- D. The Planning Board Engineer's reports previously set forth shall be complied with by the Applicant in accordance with the terms and conditions of this Resolution and the plan aforesaid.
- E. The Applicant shall comply with all other applicable Federal, State, County and Municipal rules and regulations.

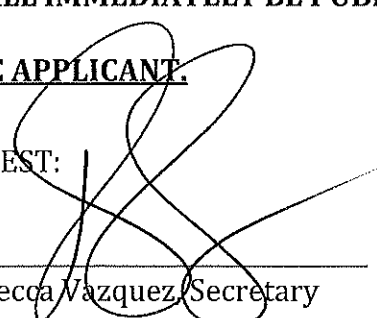
This Application was approved by the Dumont Joint Land Use Board upon a roll call vote of all members eligible to vote at its regular meeting on January 29, 2019.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Joint Land Use Board of the Borough of Dumont upon a roll call vote at its regular meeting held on February 26, 2019.


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

**A NOTICE OF THE ADOPTION OF THIS RESOLUTION AND THIS DETERMINATION SHALL IMMEDIATELY BE PUBLISHED IN THE BOROUGH'S NEWSPAPER OF RECORD BY THE APPLICANT.**

ATTEST:

  
\_\_\_\_\_  
Rebecca Vazquez, Secretary

SO APPROVED:

  
\_\_\_\_\_  
William Bochicchio, Chairman

Adopted: