

JOINT LAND USE BOARD OF THE
BOROUGH OF DUMONT

RESOLUTION

APPEAL PURSUANT TO N.J.S.A. 40:55d-70(a)

In the Matter of the Application of:

JASON SUSS

WHEREAS, JASON SUSS, (the "Applicant" or "Owner") is the Applicant upon property located at 316 Knickerbocker Road and designated as Lot 17 in Block 322 on the Tax Map of the Borough of Dumont (the "Property"); and

WHEREAS, the Property is located in the RA One and Two Family Zoning District of the Borough and is presently developed with a large structure that is presently unoccupied; and

WHEREAS, the Property is an interior lot of approximately 150' x 80' fronting on Knickerbocker Road; and

WHEREAS, in February, 2017, the Borough issued a Certificate of Continued Occupancy, wherein occupancy was approved as an "Office Bldg - must bring up to code before occupied by new business" which CCO was relied upon by the Applicant in closing title upon the Property; and

WHEREAS, in February, 2017, the Borough issued a Certificate of Smoke & Carbon Monoxide Detector which also indicated that the property was an "Office Bldg - must bring up to code before occupied by new business" which Smoke and CO2 Certificate was relied upon by the Applicant in closing title upon the Property; and

WHEREAS, subsequently, a new zoning officer was hired by the Borough and the Applicant was informed that they could not proceed with occupancy of the Property because they did not meet the criteria for a "home occupancy"; and

WHEREAS, the Applicant did not seek consent to use the Property as a Home Occupancy and the CO was not issued based thereon. Rather, the CO was issued based upon the grandfathered, non-conforming, medical office uses in the structure; and

WHEREAS, the Applicant has made application to the Joint Land Use Board of the Borough of Dumont for an Appeal pursuant to NJSA 40:55D-70(a) seeking to overturn the determination of the Administrative Officer that approvals pursuant to the Home Occupancy Ordinance are required and finding that the previously issued CO, based upon a grandfathered, non-conforming, use controls and was validly issued, and that the Property is a non-conforming medical office building; and

WHEREAS, the Applicant also sought a variance pursuant to NJSA 40:55D-70(d), in the event that the Board did not affirmatively consider the "(a) appeal"; and

WHEREAS, a public hearing was held by the Board on October 24, 2017 at which time the Applicant, represented by counsel, Dean Stamos, Esq., presented the following:

A-1	CCO, Smoke and CO Detector Compliance Certificate, dated February 8, 2017.
A-2	Correspondence of Paul Renaud, Zoning Officer, dated September 5, 2017; and
A-3	Survey, dated 1/27/17, prepared by All County Surveying

WHEREAS, at the aforesaid public hearings, the Applicant presented the matter through counsel, Dean Stamos, Esq., and the testimony of:

- (a) Jason Suss ("Suss");

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

1. The Property is located on the West Side of Knickerbocker Road. The Property is 7,167 square feet and is located in the RA Residential Zone.
2. The Property presently contains what appears to be a large vacant home.
3. Suss provided testimony that he is a Dentist with a dental practice in Bergenfield and he testified as to the nature of his dental practice and the background of his efforts to purchase the structure. He also testified as to all of the relevant Exhibits and his reliance on the issued CCO in the purchase of the Property.
4. He testified that he would not have purchased the Property if it were not permitted as an Office Building. He purchased the Property based on the Property being "grandfathered" as an office building. He has no intention of utilizing the Property as a home office use and never applied as such. He testified that due to delays he might not utilize this as a dental office, but he does want to confirm the Property is a grandfathered medical office use in the event he transfers the Property.
5. Dr. Suss testified that he was aware that the Property had numerous physicians on the Property over the years and that several physicians utilized the Property at a time. He testified that there were 20-25 medical examining rooms on the Property and that there was no "residence" which would indicate a "home occupancy". During the course of this testimony, several Board members indicated that the Property was a grandfathered medical office and that there was no residence in the structure. The Board Secretary

indicated that it is her recollection that the structure was an office building when she started using a physician in the Building in 1956. The Board Chairman indicated that his recollections are the same and date back to 1973. Board Member Affrante – the Borough’s former, (now retired) Police Chief and a police officer for many years, as well as a lifelong resident and a patient of physicians on the Property recalls that the Property has been an office building – and not a home occupancy or residence of any sort “for as long as he remembers”. At least one Board member recalls that there may have been a time where the dental use was expanded to include a dental laboratory of some sort.

CONCLUSIONS AND DETERMINATIONS

1. All findings of fact set forth above are made a part hereof as if set forth herein at length.
2. 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.
3. N.J.S.A. 40:55D-70(a) provides for the appeal of a determination of an Administrative Officer. In the within matter, the Zoning Officer determined that he could not permit the use of the Property as a dental office unless it was a home office use. This position is contrary to previously issued Certificates of Occupancy and that were relied by the Applicant at the time of closing.
4. The Board finds that the Property is a pre-existing, non-conforming, “grandfathered” medical office building in the RA Zone. Its use as such is not dependent on a “home occupancy” of any kind.

5. As such, the Board finds that the determination of the Administrative Officer that CO cannot issue without a home occupancy is overturned and the medical office use be, and hereby is, permitted as a non-conforming, grandfathered use in the RA zone.

Motion was made by:

Motion was seconded by:

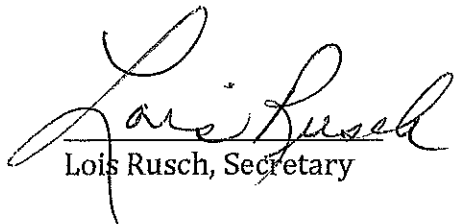
Roll Call to Approve:

	Yes	No	Absent	Abstain	Recuse
Ron Burkert	✓				
Michael Affrunti	✓				
Jared Geist				✓	
Michael Worner				✓	
Timothy Hickey	✓				
Elmer Pacia	✓				
Michael Cremin	✓				
Barbara Chen				✓	
Ken Armellino Alt #1	✓				
Alfred Moriarty Alt #2	✓				
Janet Masio Alt #3	✓				
Nicole Talmo Alt #4			✓		
Chairman William Bochicchio	✓				

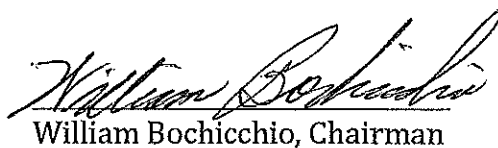
This Application was approved by the Dumont Joint Land Use Board upon a roll call vote of all members eligible to vote at its regular meeting on October 24, 2017.

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

ATTEST:


Lois Rusch, Secretary

SO APPROVED:


William Bochicchio, Chairman

Adopted: