

JOINT LAND USE BOARD OF THE BOROUGH OF DUMONT

RESOLUTION

DENIAL OF MINOR SUBDIVISION AND VARIANCE RELIEF

In the Matter of the Application of
Astir Nehme

WHEREAS, Astir Nehme (the "Applicant") is the owner of the property located at 138 Barbara Road, designated as Lot 1 in Block 403 on the Tax Map of the Borough of Dumont (the "Property"); and

WHEREAS, the Applicant has made application to the Joint Land Use Board of the Borough of Dumont (the "Board") for Minor Subdivision Approval pursuant to the Development Ordinance of the Borough of Dumont, together with application for variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) for variances from the bulk requirements of the Borough and for other relief; and

WHEREAS, public hearings were held by the Board on December 29, 2015 at which time the Applicant, represented by counsel, Jacobs and Bell, PA (R. Jacobs, Esq., appearing) who presented proof of notice and publication as required by law and submitted to the Board: (i) Conceptual Architectural Plans, prepared by Harson and Johns, Architects; (ii) the Minor Subdivision Plan, the Soil Erosion and Sediment Control Plan, and the Existing Conditions Plan, prepared by Hubschman Engineer, PA, dated June 10, 2015; (ii) an Aerial Photograph of the Property and the Area; and (iii) various photographs of the Property and the area; and further presented the testimony of (i) Michael Hubschman, PE, PP, a principal of the firm of Hubschman Engineering; (ii) Applicant, Astir Nehme; and

WHEREAS, the Board has reviewed the Application and other evidence submitted, having considered the reports of: (i) Boswell McClave Engineering, dated October 26, 2015.

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

1. The Property is 11,761 square feet and is located at the intersection of Barbara Road and Prospect Avenue. The Property is in the RA Zoning District and currently contains a 2.5 story, single family home.

2. The Applicant proposes to divide the Property into two Lots, to be designated as Lots 1.01 and 1.02. The Applicant would maintain the existing home on Proposed Lot 1.02 (containing 6,621 square feet) and construct a new home on Lot 1.01 (containing 5,364 square feet). The Zone requires a Lot area of 7,500 square feet. The proposed Lots, and any home constructed thereon, would require the following additional variances:

	Required	Lot 1.02-Existing	Lot 1.01- New
Lot Frontage	75'	NA	60.20'
Lot Depth	100'	70'	89'
Front Yard	25'	NA	20'

3. The application requests variance relief from the deviations set forth above pursuant to N.J.S.A. 40:55D-70(c)(2).

4. At public hearing, the Applicant presented the testimony of the Project Engineer and Planner, Michael Hubschman, PE, PP. Mr. Hubschman testified as to all matters of engineering concern. He testified as to the present and proposed conditions on the Property as well as all relevant existing property dimensions. He testified that the Applicant sought no

variances but for those specified herein and that the new Lot could accommodate a 2,200 square foot home.

5. Hubschman testified as to site drainage and that the proposed Lot would contain a new seepage pit to assure that there would be no runoff. He testified that 4 trees would be removed from the Property.

6. Hubschman testified that the size and style of the home fits into the area and that the purposes of zoning were advanced by the application – specifically the creation of appropriate population densities; the provision of adequate light, air and open space; and the positive aesthetic improvement would benefit the area. He testified that the benefits to these purposes of zoning outweighed any detriments and that, in fact, there were no detriments. He further testified that the proposal does not impair the purpose and intent of zoning.

7. Hubschman testified that there were 22 Lots within 200' of the Property and of these, only 4 were not conforming. He further testified in this area having a vast majority of conforming lots, the few non-conforming lots, were located on the West side of Prospect Avenue and are part of an entirely different development. He could point to no undersize lots on the East side of Prospect Avenue.

8. Hubschman testified that the Application was subject to County Approval and that the proposed development removed an existing driveway from Prospect Avenue which offered a safety and benefit to traffic flow.

9. The public was invited to speak after testimony was given, and questions and comments were offered by the public. The public noted that there have been few subdivisions in the area of the Property and there are few undersize lots. Many testified that any undersize lots in the area were because the lots on the other side of Prospect Avenue and adjoining areas were

the result of being part of different developments many years ago that had lesser lot requirements. They testified that the area east of Prospect was homogenously made up of conforming lots. Numerous members of the public commented on the traffic along Prospect and the difficulty which would be caused by more vehicles and the lack of traffic safety in the area.

10. The Applicant testified to several matters of personal hardship and the desire to subdivide and build a new home to meet the unique needs of her family. Applicant admits that such hardship is personal in nature and indicates that the Application is being presented as a c(2) application only.

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(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 Board finds that the benefits of the proposed improvements do not outweigh any possible detriment. The Board further finds that the purposes of the MLUL are not advanced by this Application in that it does not promote a more desirable visual environment, providing homes in the residential zone that are in conformance with the homes in the area and creating lots that are consistent with the neighborhood.

4. The Board finds that the variances cannot be granted without detriment to the public good or any neighboring properties. The Board finds that the Applicant seeks to divide an oversize lot into two undersize lots in an area where there is little precedent for same and where there are no similarly sized lots. The Board further finds that this approval will substantially impair the intent and purpose of the Dumont Zone Plan and Zoning Ordinance and is not in the furtherance of the purposes set forth in N.J.S.A. 40:55D-2. The Board takes note of the testimony of residents and Board members as to the significant traffic burden of an area school; the existing potentially unsafe conditions that would be exacerbated by the addition of a home and the lack of valid zoning reasons to create an undersized lot. The addition of an undersized lot in the middle of the block between Barbara Road and Bussell Court would obviously be inappropriate. The Board has examined testimony to the contrary and does not accept same as factually correct.

5. As such, the granting of the variances is inappropriate as the purposes of the MLUL are not advanced. The benefits of granting the variances to construct a home on an undersized lot do not outweigh the detriments. The Board rejects testimony that there are appropriate population densities by the creation of these undersized lot. The Board does not agree that the application in any way advances light, air and open space and finds that, in fact, light, air and open space are compromised by the within application.

NOW, THEREFORE, BE IT RESOLVED that the application for Minor Subdivision and variance relief is denied by this Board.

This Application was denied by the Dumont Zoning Board of Adjustment upon a roll call vote of all members eligible to vote at its regular meeting on December 30, 2015.

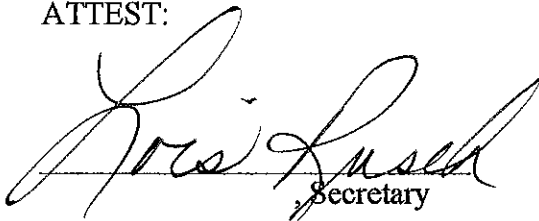
IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Joint Land Use Board of the Borough of Dumont upon a roll call vote at its regular meeting held in January, 2016.

Motion By:

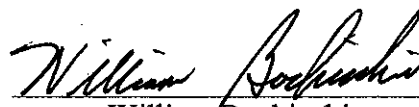
Seconded By:

ROLL CALL: _____ AYES _____ NAYS _____ ABSTAIN _____

ATTEST:


Secretary

SO APPROVED:


William Bochicchio