

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

APPLICANT: ANNA MARKERT
(PRIOR APPLICANT, LIAM DOODY/
TRI VALLEY LANDSCAPING, INC.

PREMISES: 26 MAGNOLIA AVENUE
BLOCK 1223; LOT 18

WHEREAS, the within Application was initially brought before the Board by Liam Doody/Tri Valley Landscaping, Inc. and which was subsequently designated as Anna Markert, ("Markert) for the development of the above Property (the "Property") as a 2 family home; and

WHEREAS, the Property is owned by Anna Markert and is located in the RA Zone. The Property is located on the northerly side of Magnolia Avenue, at the intersection with Brook Street; and

WHEREAS, plans in the within matter were dated July 31, 2018. During the course of public hearing there were numerous plan revisions. Public hearings were commenced on June 2, 2019, and included a hearing dates on September 24, 2019. A final public hearing was held on October 29, 2019 wherein a final set of plans, dated October 14, 2019 was presented to the Board. Said plans were reviewed by Dennis Harrington, PE, of Boswell Engineering who codified his opinion in correspondence dated October 24, 2019. Despite prior public hearings, the hearing of October 29, 2019 consisted of a full presentation by the Applicant that superseded prior hearing dates; and

WHEREAS, Market seeks the redevelopment of the Property as a 2 family home. Said development requires the following variances:

- a. Use – Section 455-7 A. (2) (b) permits pre-existing two-family dwellings. The existing use is a single family dwelling.
 - b. Lot area – Section 455-35 Limiting schedule requires 15,000 s.f. for a two-family dwelling. The existing lot is 10,000 s.f.
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- c. Lot width – Section 455-35 Limiting schedule requires 120 ft. The existing lot is 100 l.f.
- d. Lot frontage – Section 455-35 Limiting schedule requires 150 ft. The existing lot is 100 l.f.

WHEREAS, it should be noted that the Applicant has withdrawn all requests for an FAR variance and no such variance was considered by the Applicant at the final hearing; and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** Site Plan, prepared by Michael Hubschman, PE, dated July 31, 2018, and revised through October 14, 2019;
- Exhibit A-2** Architectural Plans, prepared by Noah Harris Adler Architect, LLC, dated October 11, 2019 (in addition to numerous prior revisions);
- Exhibit A-3** Area Photo Presentation;
- Exhibit A-4** Colorized Tax Map depicting area uses

WHEREAS, Planning Board Engineers, Boswell McClave Engineering, Dennis Harrington, PE, submitted Letter Reports, dated April 18, and October 24, 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) Michael Hubschman, PE ("Hubschman"); 2) Noah Adler, AIA ("Adler"); 3) David Spatz, PP, ("Spatz"). Additional testimony was provided by Dennis Harrington, PE of Boswell Engineering ("Harrington"); 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. Capizzi set forth the background of uses on the Property; the zoning requirements and the nature of the numerous plan revisions.
 2. Hubschman, testified as to all elements of the updated Site Plan. He also testified that the Property was 10,000 square feet and located in the RA zone. The Zone does not
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permit 2 family homes. As a result, the applicant requires a "d" variance for a non-permitted use.

3. Hubschman testified that all other bulk variances were due to the dimension of the Property and not due to the Applicant's proposal. Significantly, there was no request for an FAR or setback variances and the only variances were lot area; lot width and lot frontage - all of which presently exist. This was characterized by the Applicant as not requiring any "structural" variances. Notwithstanding this, during testimony, Harrington noted that a variance was required for the rear yard setback since 25' is required and the rear steps protrude approximately 3' into this setback.
 4. Hubschman testified as to all other matters of site plan and engineering concerns. He testified that the Property - though not the structure - is located in a DEP 100 Year Flood Plain. Despite this, he testified that the seepage pit and drainage system are adequate. Hubschman testified that the structure is not oversized as evidenced by the conforming FAR; Lot Coverage; Impervious Coverage and Front Yard Coverage.
 5. Hubschman also noted that the Property included two Front Yards which dictated the location of the structure and the applicable setbacks. He testified that the two family home would have two separate driveways (both accessing Brook Street) but that two garage doors would be located facing Brook Street and that two garage doors would face the northern side yard setback. This reduced the number of garages that were visible from the street and no garages would be visible from Magnolia Avenue. The parking complies with Borough and RSIS standards.
 6. During testimony, Hubschman testified that the Applicant would add an addition seepage pit to the Property in coordination with the Board Engineer.
 7. Adler testified as to the architectural plans and the design of the structure. Same is fully depicted on the Architectural plans. He testified that there are no variances as to feet or stories and that the footprint of the structure is 2,473 sf. Each unit is approximately 1,236 sf. Each unit is a three bedroom unit and the units are, roughly, mirror images of each other.
 8. Adler testified that there would be no separate door to the basement or outside access to the basement. He also testified there would be no locking door to the basement from any interior stair landing which might serve to permit the basement to be rented as an independent unit.
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9. Spatz testified as a Planner. He testified that there are several two family homes in the area and that the lot area is 50% oversize for a single family. The Property is also larger than many of those containing existing two family homes.
10. Spatz testified that the lack of bulk or coverage variances is an indication that the home is not oversized for the Property and that virtually the only variances sought by the Applicant are related to the size or dimensions of the Lot. Despite these variances, the structure largely conforms.
11. Spatz testified that the Property is particularly well suited for the proposed two family use based upon the nature of the Property and surrounding uses.
12. Spatz testified that the Applicant satisfied the proof requirements for the variances as to Lot dimensions.
13. Spatz also testified that there is no substantial detriment to the granting of the (d) or dimensional variances.

CONCLUSIONS AND DETERMINATIONS

The Applicant requires the following approvals, variances or waivers:

Use – Section 455-7 A. (2) (b) permits pre-existing two-family dwellings. The existing use is a single family dwelling.

Lot area – Section 455-35 Limiting schedule requires 15,000 s.f. for a two-family dwelling. The existing lot is 10,000 s.f.

Lot width – Section 455-35 Limiting schedule requires 120 ft. The existing lot is 100 l.f.

Lot frontage – Section 455-35 Limiting schedule requires 150 ft. The existing lot is 100 l.f.

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.

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. 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.

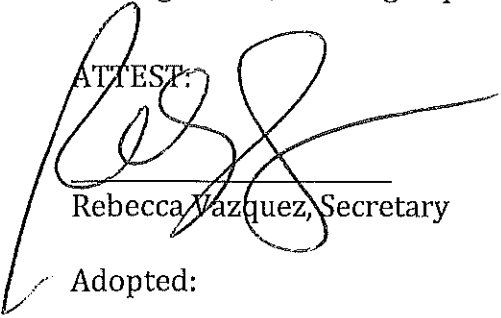
Upon hearing all of the evidence, the Board voted to approve the Application. The aforesaid approval is subject to the following:

- 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. There shall be no exterior access to the basement of either unit and no locking door from any interior landing which would serve to permit the basement to be used as a separate unit.
- G. The north side driveway shall be a conforming distance from the northern property line.
- H. 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 26th day of November, 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.

ATTEST:


Rebecca Vazquez, Secretary

Adopted:

SO APPROVED:


William Bochicchio, Chairman

