

BOROUGH OF DUMONT  
COUNTY OF BERGEN  
JOINT LAND USE BOARD

RESOLUTION GRANTING USE VARIANCE RELIEF WITH RESPECT TO THE  
PROPERTY KNOWN AS  
366 KNICKERBOCKER ROAD, BLOCK 325, LOT 4, BOROUGH OF DUMONT,  
COUNTY OF BERGEN, STATE OF NEW JERSEY

WHEREAS, an Application for use variance relief for an expansion of the pre-existing non-conforming use of a restaurant in the multi-family residential RB zone has been made to the Dumont Joint Land Use Board (the "Board") pursuant to N.J.S.A. 40:55D-70d(1) by TRI VALLEY RESTAURANT, LLC (the "Applicant") in connection with proposed improvements upon the property commonly known as 366 Knickerbocker Road, more particularly described as Block 325, Lot 4 on the tax map of the Borough of Dumont, County of Bergen, State of New Jersey (the "Property"); and

WHEREAS, Applicant has applied to this Board for variance relief pursuant to N.J.S.A. 40:55D-70(d) from the restrictions of the following sections of the Zoning Ordinance of the Borough of Dumont:

Ordinance Section 455-8

Multifamily Residential RB District – Principal Permitted Uses; Conditional Uses - variance for restaurant use in zone

WHEREAS, the subject Application seeks approval of a "d(2)" expansion of a nonconforming restaurant use in residential zone, and as a consequence, must meet the statutory standard for such relief set forth in N.J.S.A. 40:55D-70(d); and

WHEREAS, the Application was duly considered by the Joint Land Use Board at a public hearing (via virtually and telephonically via Webex) on April 20, 2021, and offered telephonic public access in accordance with the New Jersey Department of Community Affairs Covid 19 guidelines; and

WHEREAS, the Applicant gave proper notice in accordance with law;

WHEREAS, at said public hearing the Board received the following documents in evidence:

- 1) Use Variance Application Form dated February 2, 2021 prepared by Marc Madaio, Esq.;
- 2) (i) Title Sheet, List of Drawings, Code Data and General Notes, (ii) Existing and Proposed Site Plans and Details Drawing; and (iii) Existing / Demolition / and Proposed Construction Plan, which drawings are dated March 31, 2021 and were prepared by Steven B. Lazarus, A.I.A. of Axis Architectural Group, 16 Highwood Avenue, Englewood, New Jersey 07631; and

WHEREAS, the subject Application involves the following zoning data:

**366 KNICKERBOCKER ROAD – BLOCK: 325/LOT: 4**  
**DUMONT – ZONING INFORMATION**  
**RB MULTI-FAMILY RESIDENTIAL ZONE**

<u>CATEGORY</u>	<u>REQUIRED</u>	<u>EXISTING</u>	<u>PROPOSED</u>	<u>VARIANCE<sup>1</sup></u>
NOTE: Property is a corner lot				
<b>MIN. LOT REQUIREMENTS</b>				
LOT AREA	87,120 SQ. FT.	58.94 SQ. FT.	11,022 SQ. FT.	EC
LOT WIDTH Front Yard 1	100.00 FEET	58.94 FEET	NO CHANGE	EC
LOT WIDTH Front Yard 2	100.00 FEET	187.00 FEET	NO CHANGE	EC
LOT DEPTH SIDE YARD 1	200.00 FEET	187.00 FEET	NO CHANGE	EC
LOT DEPTH SIDE YARD 2	200.00 FEET	58.94	NO CHANGE	EC
<b>SETBACK REQUIREMENTS</b>				
FRONT YARD 1	30 FEET	22.84 FEET	NO CHANGE	EC
FRONT YARD 2	30 FEET	12.28 FEET	NO CHANGE	Y <sup>2</sup>
SIDE YARD 1	25 FEET	-0.03 FEET	NO CHANGE	EC
SIDE YARD 2	25 FEET	80.91 FEET	71.38	N
<b>BULK REQUIREMENTS</b>	<b>MAX/MIN</b>	<b>EXISTING</b>	<b>PROPOSED</b>	<b>VARIANCE</b>
HEIGHT OF MAIN BUILDING (stories)	2	1	NO CHANGE	EC

HEIGHT OF MAIN BUILDING (max. feet)	28 FEET	±13.5 Feet	NO CHANGE	EC
MINIMUM GREEN AREA	25%	±3.6%	NO CHANGE	EC

- (1) "EC" means existing condition; "N" means no; "Y" means yes  
(2) Variance Required due to cooler boxes sitting within front yard setback

WHEREAS, the public had an opportunity to be heard on the Application at said hearings; and

WHEREAS, the Board heard the sworn testimony of the Applicant's Architect, Steven B. Lazarus, A.I.A., of the firm Axis Architectural Group, 16 Highwood Avenue, Englewood, New Jersey 07631, who testified in support of the Application; and

WHEREAS, the Board received an Engineering report on the project dated April 7, 2021 by Board Engineer Carl P. O'Brien, P.E., C.M.E., C.P.W.M., of Colliers Engineering and Design, 400 Valley Road, Suite 304, Mt. Arlington, New Jersey 07856; and

WHEREAS, following the public hearings on April 20, 2021, the Board approved the Application subject to certain conditions; and

WHEREAS, the Board now wishes to set forth its findings, conclusions, and conditions with respect to the Application;

NOW, THEREFORE, BE IT RESOLVED by the Board that the following facts are hereby made and determined:

1. The proceedings in this matter were stenographically transcribed and voice recorded. The 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.
2. The Board found the Application complete.
3. The Applicant is the owner of the property commonly known as 366 Knickerbocker Road, Dumont, New Jersey, and more particularly described as Block 325, Lot 4 on the Tax Map of the Borough of Dumont. Said property is located within the "RB" Multi-Family Residential Zone District pursuant to the Zoning Ordinance of the Borough

of Dumont.

4. In support of the Application, the Applicant, Tri-Valley Restaurant, LLC, through its Attorney, Matthew Capizzi, Esq. on behalf of the Law Office of Mark Madaio, presented the testimony of Steven B. Lazarus, A.I.A. Mr. Lazarus was sworn in as the Applicant's Architect and qualified by the Board as an expert in architecture. Mr. Lazarus provided the Board with testimony in support of the variance relief sought. Mr. Lazarus described the existing conditions and the proposed project at this restaurant existing since approximately 1975. The restaurant use in this residential neighborhood is an ongoing nonconforming use. The project will include remodeling the kitchen, remodeling the bathrooms to become compliant with the Americans with Disabilities Act, adding a handicap ramp, converting an existing parking space in the rear of the restaurant to a handicap parking space, and installing a walk-in cooler box and freezer on the exterior of the restaurant within the front yard setback on the west side of the building adjacent to the rear door. The exterior cooler box and freezer are replacing refrigeration equipment presently located in the kitchen that are being displaced by interior modifications to accommodate the ADA accessible bathrooms. Placement of the walk-in cooler box and freezer on the exterior of the restaurant will be an expansion of the pre-existing nonconforming use.

5. Members of the Board also questioned Mr. Lazarus about the location of the mechanical systems serving the cooler box and freezer and asked about the sound levels produced by the mechanical systems. Mr. Lazarus testified that the current mechanical systems are located inside the restaurant, that such systems are not generally loud, and that the compressors could be located on the restaurant's roof.

6. Members of the Board also questioned Mr. Lazarus about the number of handicap spaces to be located in the rear parking lot. Mr. Lazarus testified that one handicap space is required, but that more cannot be added without reducing the total number of parking spaces presently existing.

7. At the conclusion of Mr. Lazarus's testimony, the Board opened the

meeting to the public. One member of the public, a resident next-door neighbor, Mr. John O'Donnell, 277 Delong Avenue, Dumont, New Jersey, asked whether any noise studies had been performed. Mr. Lazarus responded in the negative but stated that the manufacturer specifications include information regarding sound, and the specifications will be provided to the building department. Mr. Capizzi stated that the municipality does have sound ordinances with which Applicant will comply.

8. Mr. O'Donnell informed the Board that restaurant employees park their vehicles on the street in front of 227 Delong Avenue, thereby interfering with visibility of the road, which causes a safety hazard, making it difficult to get out of his driveway. Mr. Capizzi pointed out that parking on site will not be changing, except for conversion of one parking spot to a handicap parking spot but did state that the restaurant employees will be advised not to park in front of 227 Delong Avenue.

9. At the conclusion of Mr. O'Donnell's questions and comments, there were no other members of the public having questions, at which time of Mr. Lazarus's testimony was closed to the public and the Board felt all concerns were adequately addressed.

#### CONCLUSIONS OF LAW:

WHEREAS, the Board, after careful deliberation, found that this Application has met the requirements for the use variance approval and the Board has determined that the relief sought can be granted without a substantial negative impact, provided all conditions of approval are satisfied or met; and

WHEREAS, the Board finds that adequate and competent proofs were likewise placed on the record in support of the use variance approval sought by the Applicant. The Board finds that the Applicant has adequately described to the Board the existing and proposed conditions of the Property, the location of all existing buildings and proposed additions, parking spaces and other information concerning the site which adequately addressed any concerns and inquiries of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Joint Land Use Board of the

Borough of Dumont, in the County of Bergen and State of New Jersey on the 20<sup>th</sup> day of April, upon motion made by Mr. Armellino, and seconded by Mr. Zilocchi that the Application of Tri-Valley Restaurant, LLC for variance relief sought should be granted subject to the following terms and conditions:

**CONDITIONS SPECIFIC TO THE APPLICATION**

1. Applicant shall provide cooler box and freezer specifications to Borough of Dumont Building Department.
2. Applicant shall provide sound attenuation for equipment and shall comply with Borough noise ordinances.

**GENERAL CONDITIONS**

1. The Applicant shall comply with all of the stipulations made during the hearing on this Application.
2. The Applicant must comply with the necessary requirements of the zoning ordinances of the Borough of Dumont and the Municipal Land Use Act of the State of New Jersey, N.J.S.A. 40:55D-2 et seq.
3. The Applicant shall develop, prepare and improve the subject premises so as to conform with all of the details shown on the aforementioned plans and submissions, as presented to the Board and in accordance with the zoning ordinances, building codes and all other standards and ordinances unless expressly stated to the contrary within the approvals granted.
4. Unless otherwise addressed herein or at the hearings held on April 20, 2021, the Applicant shall comply with the recommendations of the Board's professionals and any other post-approval reports. The Applicant's professionals shall amend the architectural plans and engineering plans to reflect these recommendations in the form of drawing detail and/or written construction note detail format as necessary. In addition, the Applicant's professionals shall amend any engineering reports, engineering calculations that were presented as a part of the testimony before the Board as necessary and/or required by the Board Engineer and the Board Planner. All such amendments

shall be submitted to the Board Engineer and Board Planner for review within thirty (30) days of the adoption of this Resolution.

5. Within thirty (30) days of the approval of this Resolution by the Board, the Applicant shall, if necessary, post any additional escrow funding that may be required to reimburse the Borough's professionals for the review of this Application. Failure to provide such escrow fees may result in this Resolution being declared null and void.

6. The completed revised plans and submissions must be approved and signed by the Board Chairman and Board Secretary, prior to submission to the Zoning Officer of the Borough of Dumont, and prior to the issuance of any building permits.

7. The Applicant is responsible for publishing notice of this decision as required by the M.L.U.L.

This Application was approved by the Borough of Dumont Joint Land Use Board at its regular meeting on April 20, 2021 upon motion of Mr. Armellino and seconded by Mr. Zilocchi upon the roll call as follows:

Ayes: 5

Nays: 0

Absent: 2

Abstain: 0

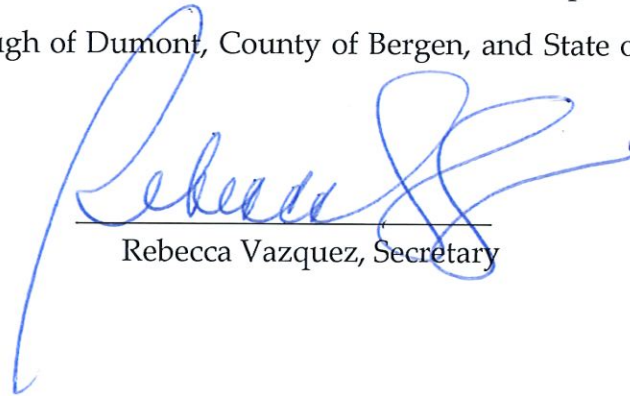
This Resolution was adopted on the 18<sup>th</sup> day of May, 2021 upon the motion of Ken Armellino and seconded by Gino Zilocchi by a vote of 5 ( ) ayes and 0 ( ) nays.



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Graeme Dutkowsky, Chairman

**BE IT FURTHER RESOLVED** that a copy of this Resolution be forwarded to the Applicant, Borough Clerk, Construction Code Official and Zoning Officer of the Borough of Dumont.

I do certify that this is a true and correct copy of the resolution as adopted by the Joint Land Use Board of the Borough of Dumont, County of Bergen, and State of New Jersey in the within Application.



Rebecca Vazquez, Secretary