

**BOROUGH OF DUMONT  
COUNTY OF BERGEN  
ZONING BOARD OF ADJUSTMENT  
RESOLUTION GRANTING MINOR SITE PLAN APPROVAL AND  
VARIANCE RELIEF WITH RESPECT TO  
387 NEW MILFORD AVENUE, BLOCK 717, LOT 19,  
BOROUGH OF DUMONT, COUNTY OF BERGEN, STATE OF NEW JERSEY**

WHEREAS, an application for Minor Site Plan approval and “c”, or bulk variances, and “d”, or use variance relief has been made to the Borough of Dumont Joint Land Use Board pursuant to N.J.S.A. 40:55D-70(c); and N.J.S.A. 40:55D-70d(1) by PD 387 LLC (the "Applicant") in connection with proposed improvements upon the property commonly known as 387 New Milford Avenue, more particularly described as Block 717, Lot 19 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)(1) and N.J.S.A. 40:55D-70(c) from the restrictions of the following sections of the Zoning Ordinance of the Borough of Dumont:

Category	Allowed	Proposed	Variance
Permitted Use	One Family Residential	3 family residential	Yes
Front Yard Setback	34.52' minimum (Lafayette Avenue) *	21.2	Yes
Rear Yard Setback	25'	13.0'	Yes
Building Height	28'	29.42'	Yes

\*per Borough of Dumont Code Section 455-7(D)

**Design Waivers:** None

WHEREAS, the subject Application seeks Minor Site Plan approval pursuant to Dumont Code Section 455-14, General Site Plan Review Requirement as well as approval of a “d(1)” use variance, together with “c”, or bulk variances, and as a consequence, must meet the statutory

standard for such relief set forth in N.J.S.A. 40:55D-70(c) and (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 May 18, 2021; and

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

**WHEREAS**, at said public hearing the Joint Land Use Board received the following documents in evidence:

- 1) Borough of Dumont Application prepared by James Azzolina, P.E.;
- 2) Two (2) plan sheets entitled “Site Plan and Soil Erosion & Sediment Control Plan” prepared for PD387 LLC, 387 New Milford Avenue, Block 717; Lot 19, Borough of Dumont Bergen County, New Jersey; prepared by Azzolina & Feury Engineering Inc., signed and sealed by Perry E. Frenzel, P.E. and John A. Loch, P.L.S., dated February 16, 2021; and
- 3) Architectural plans consisting of three (3) sheets entitled “PD 387 LLC, 387 New Milford Avenue, Dumont, New Jersey” drawing prepared, signed, and sealed by Thomas R. Canzani, A.I.A., of Canzani Architects, dated February 8, 2021.

**WHEREAS**, the subject Application involves the following zoning data:

**387 New Milford Avenue – Block 717, Lot 19**

**Borough of Dumont –Zoning Information – RA ZONE**

<b><u>CATEGORY</u></b>	<b><u>REQUIRED</u></b>	<b><u>PROPOSED</u></b>	<b><u>VARIANCE</u></b>
PERMITTED USE	Single-family; (conditional uses: places of worship and preexisting 2-family dwelling)	Three one-family apartments with two garage bays	<b>YES</b>
Min. Lot Area	7,500 sq ft	7,066 sq ft	No - Existing Nonconformity
Min Lot Width	60'	80.4'	No

Min Lot Depth	100'	88.3'	No - Existing Nonconformity
Min Lot Frontage	75'	80'	No
Min Front Yard Setback New Milford Ave. Lafayette Ave	30.33'* 34.52'*	31.9' 21.2'	No <b>YES</b>
Min. Side Yard Setback	4.84'*	3.3'	No - Existing Nonconformity
Min Rear Yard Setback	25'	13'	<b>YES</b>
Max. Lot Coverage	30%	27.4%	No
Min Green Area	50%	30.2%	No (reduced non-conformity)
Max Height	28'	29.42'	<b>YES</b>
Max Impervious Coverage Total	45%	69.8%	No (reduced non-conformity)
Max Impervious Coverage Front Yard	50%	65.6%	No (reduced non-conformity)
Max Impervious Coverage Rear Yard	40%	55.1%	No (reduced non-conformity)
Max Floor Area Ratio	45%	40.4%	No
Min Living Floor Area	1,360 sq ft	2,856 sq ft	
Min Parking Spaces	6 spaces	7 spaces	

\*per Borough of Dumont Code Section 455-7(D)

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

**WHEREAS**, the Board heard the sworn testimony of the Applicant's Engineer, Perry E. Frenzel, P.E. of the firm Azzolina & Feury Engineering Inc., 30 Madison Avenue, Paramus, New Jersey 07652; the Applicant's Architect, Kevin P. Spink of the firm Canzani Architects, 80 East Ridgewood Avenue, Paramus, New Jersey 07652, and Applicant's Planner, David Spatz of the firm Community Housing and Planning Associates, having an address at 60 Friend Terrace, Harrington Park, New Jersey 07640; and

WHEREAS, the Board received a report on the project dated May 5, 2021 from Board Engineer Carl P. O'Brien, P.E., P.P., C.M.E., C.P.W.M. of Colliers Engineering and Design; and

WHEREAS, following the public hearing on May 18, 2021, the Board of Adjustment 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 Borough of Dumont Joint Land Use 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 and developer of the property commonly known as 387 New Milford Avenue, New Milford, New Jersey, and more particularly described as Block 717, Lot 19 on the Tax Map of the Borough of Dumont. Said property is located within the "RA" Single-Family Residential Zone District pursuant to the Zoning Ordinance of the Borough of Dumont.

4. In support of the Application, the Applicant, PD 387 LLC, through its Attorney, Matthew G. Capizzi, Esq., presented the testimony of Perry Frenzel, P.E. Mr. Frenzel was sworn in as the Applicant's Engineer and qualified by the Board. Mr. Frenzel introduced the Site Plan/Details dated February 16, 2021, prepared by his office.

5. Mr. Frenzel provided the Board with testimony in support of the variance relief sought. He described the site as a former auto service station in a one-story masonry building

located on a property that is approximately 7,066 square feet and that is presently nearly 100% impervious coverage. He testified that the project includes construction of a 24' by 40' addition on the ground floor plus a two-story addition over the existing building. Two garage bays will be constructed and are intended to be used for tool and equipment storage by a business owned by Applicant. Additionally, a one-bedroom apartment will be constructed on the first floor and on the second floor, another one-bedroom apartment and a two-bedroom apartment will be constructed. Following the redevelopment, the impervious coverage of the site will be reduced by approximately 26%.

6. Mr. Frenzel testified that petroleum storage tanks that were in the ground have been removed and that the New Jersey Department of Environmental Protection is taking ground water contamination samples. In addition to the foregoing, Mr. Frenzel testified that a concrete pad on the New Milford Avenue side of the property is to be removed and that three parking spaces will be added in its place.

7. Mr. Frenzel testified that a 44.0' long drop curb is to be constructed along the Lafayette Avenue side of the property, which is a significant reduction to the drop curb presently running along the entire approximately 88' foot length of the west side of the property, thereby reducing a preexisting, nonconforming condition, and a 24.0' long drop curb will be constructed along New Milford Avenue at the northeast side of the property to replace the existing 24' drop curb on that side of the property.

8. Mr. Frenzel testified that the Borough of Dumont measures building height using the average elevations of the centerline of both intersecting streets. Using this calculation, the building height is 29.42', which exceeds the maximum 28' building height bulk requirement, but he testified further that the building height would not exceed the bulk requirement if the ordinary

method to calculate building height was used.

9. Mr. Frenzel testified further that underground drainage tanks are to be installed and will capture 100% of the drainage from the roof of the structure on the property. Presently, all rain runs off the property.

10. The Engineer further testified that a 6' high PVC fence will be installed along the easterly side of the property and that a 3' wide trash can storage area will be created behind the building along the fence.

11. Mr. Frenzel testified that there are three existing light poles to provide sufficient illumination for the property: (1) light pole on the southwest corner of the property that will provide sufficient lighting for three parking spaces and a 12' by 36' grass area on the southwest corner of the property as shown on the Site Plan and Soil Erosion & Sediment Control Plan ("Site Plan"); (2) light pole on the northwest corner of the property that lights the intersection; and (3) light pole on the northeast corner of the property that provides illumination for the driveway and parking spaces shown on the Site Plan.

12. At the conclusion of Mr. Frenzel's testimony, the meeting was opened to the public. Ms. Patricia Mikulski, 386 New Milford Avenue, Dumont, New Jersey asked about the size of the project and Ms. Karen Valido, 24 Overlook Drive, Dumont, New Jersey asked about zoning changes and environmental contamination at the site. Mr. Capizzi stated that Applicant and its professional advisors felt that the proposal was the best use of the property. Mr. Frenzel testified that the report from a Licensed Site Remediation Professional will address measures to be taken or to be continued to remediate any contamination at the site. At that time the testimony of Mr. Frenzel was closed to the public and the Board felt all concerns were adequately addressed.

13. In support of the Application, the Applicant's Attorney Matthew Capizzi, Esq.

presented the testimony of Kevin Spink, AIA, a licensed architect in the State of New Jersey. Mr. Spink was sworn in by the Board attorney and was qualified as an expert architect. Mr. Spink testified that the plans incorporated reusing the existing structure to the greatest extent possible. He testified further that removal of the underground storage tanks compromised the office portion the existing structure, so that portion will be demolished.

14. Mr. Spink testified that three sheets of architectural plans were filed with the Board and described the plans, which include designing the overall look of the building to be that of a residential one-family house. Mr. Spink stated that an addition will be made in the existing building footprint on the west side of the property. Mr. Spink testified further that the entry hallway was lengthened so as not to compromise the stairway and reduce the usable floor space of the apartments.

15. Mr. Spink testified that to lower the roof would make its pitch too shallow, which would appear out of place on the street. Granting of the height variance will allow the building to conform with the neighborhood and will allow an aesthetically pleasing design.

16. Mr. Spink testified that the garage elevation is pushed back 11', and that the second-floor cantilever encroaches into the front yard and that a cantilever design was included at the rear to accommodate a kitchen and bedrooms.

17. Mr. Armellino asked Mr. Spink about the use of the garage and whether fireproofing was required therein. Mr. Spink testified that vehicles could be stored in the garage bays, but that its intended use is for tools and equipment only. Mr. Spink testified further that no additional fireproofing is required in the garage, but that one-hour separation is required.

18. Mr. Moriarity asked about the one existing man door and two windows on the south side of the building, which windows are to be replaced with a second man door. Mr. Spink testified

that the second man door is not needed and would be eliminated from the plan.

19. At the conclusion of Mr. Spink's testimony, the meeting was opened to the public. Ms. Mikulski asked a question about the apartments to which Mr. Capizzi stated that Applicant's planner would answer the question during his testimony. There were no further questions from the public for Mr. Spink. At that time, the testimony of Mr. Spink was closed to the public and the Board felt all concerns were adequately addressed.

20. In support of the Application, the Applicant's Attorney Matthew Capizzi, Esq. presented the testimony of Applicant's Planner, David Spatz, P.P., A.I.C.P., who was sworn in by the Board Attorney and was accepted as an expert witness in planning.

21. Mr. Spatz testified that he visited the site for a visual inspection and reviewed the zoning ordinances, the master plan, the Site Plan and architectural plans.

22. Mr. Spatz introduced a set of four photos showing the existing building from New Milford Avenue and from Lafayette Avenue, the adjacent house east of the property on New Milford Avenue and a view across the property of the houses on Lafayette Avenue. Mr. Spatz testified that the photos show a lack of curbs and shows a perspective of the building height.

23. Mr. Spatz testified that being a corner lot, the site has two front yards, and undersized side and rear yards, but that the site is appropriate for the granting of the requested front yard and rear yard setback and height bulk variances.

24. Mr. Spatz testified as to the positive reasons for approving the requested use and bulk variances. In particular, the site will be brought into conformity with the character of the residential neighborhood and a heavy commercial use is eliminated. Further, significant green space is being added with the impervious coverage being reduced from 95.1% presently existing to approximately 69.8%. Moreover, the project will provide new sidewalks, elimination of a



portion of the drop curbs, environmental cleanup, driveway access and improved traffic circulation and control.

25. Mr. Spatz testified further that the project advances the purposes of the Municipal Land Use Law, N.J.S.A. Title 40:55D in that cleaning up the site promotes public safety, health and welfare. Mr. Spatz testified that the resulting population density is appropriate for the site because the surrounding one-family lots are smaller than the subject lot. Further, the project will promote an appropriate and efficient expenditure of public funds where it will add new sidewalks, and a handicap crossing ramp at the intersection of New Milford and Lafayette Avenues. Moreover, the project will promote a desirable visual environment removing a nonconforming use and developing a safe building, in scale with the neighboring buildings.

26. Mr. Spatz testified that there is a conforming amount of parking spaces planned for the project and that there will be no work performed in the garage, which is intended solely for storage use.

27. Mr. Spatz testified that there are special reasons for granting the use variance. He testified that the site cannot be enlarged but that it is appropriate for development, and that reducing the size of the second floor to remove the cantilever would make the floor area of the units too small. Mr. Spatz agreed that flattening the roof angle will not conform with the look of the neighborhood.

28. Mr. Spatz testified that there are no significant negative criteria where the applicant is bringing the property to a conforming residential use and retiring the nonconforming gas station and auto repair shop uses and that the positive criteria are met for both the use variance and the bulk variances, which outweigh the negative criteria in favor of granting the variances. Further, if the variances are not granted, the nonconforming use could remain and Applicant could redevelop

the site to be operated as an auto shop or other industrial use in this residential neighborhood.

29. Board Member Mr. Attanasio asked whether the site could become a gas station again to which Board Engineer, Mr. Carl O'Brien stated that it could subject to complying with all applicable laws, but that granting the use variance would eliminate the possibility of the site being used again as a gas station absent subsequent Board and other governmental approvals.

30. At the conclusion of Mr. Spatz's testimony, there were no further questions from the Board at which time, the Board opened the meeting to the public for questions and general comments. Two members of the public questioned Mr. Spatz. Ms. Patricia Mikulski asked whether a three-family house was appropriate for this area, to which Mr. Spatz replied that it is. Next, Ms. Karen Valido asked whether any of the apartment units would be devoted to affordable housing to which Mr. Capizzi stated no. Ms. Valido then asked the Board to not approve the application. At that time the testimony of Mr. Spatz was closed to the public and the Board felt all concerns were adequately addressed. There were no further comments from the public.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

**WHEREAS**, the Board, after careful deliberation, found that granting the use variance will promote the general welfare, and the property is particularly suited for the use proposed, thus satisfying the so-called "positive criteria". Further, the Board has determined that the relief sought can be granted without a substantial negative impact on the zone plan and the zoning ordinances, 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 change of use and bulk variance approvals 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 and proposed buildings, access, parking spaces and driveways, drainage facilities and utility services, landscaping, structures, lighting,

screening and other information concerning the site which adequately addressed any concerns and inquiries of the Board; and

**WHEREAS**, 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 had determined that the relief sought does not impair the intent and purpose of the Master Plan or Zoning Ordinance of the Borough of Dumont.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Dumont Joint Land Use Board, in the County of Bergen and State of New Jersey on the 18<sup>th</sup> day of May 2021, upon motion made by Chairman Graeme Dutkowsky, and seconded by Mr. Nico Attanasio that the Application of PD 387 LLC for change of use, as well as the variance relief sought be granted subject to the following terms and conditions:

**CONDITIONS SPECIFIC TO THE APPLICATION**

1. Applicant would comply with the requirements of the Board Engineer's review correspondence dated May 5, 2021.
2. Garbage cans are to be screened from view.
3. Continue cooperation with New Jersey Department of Environmental Protection ground water contamination sampling and Licensed Site Remediation Professional's plan.

**GENERAL CONDITIONS**

1. The Applicant shall comply with all of the stipulations made during the hearing on this Application.
2. The Application must comply with the necessary requirements of the zoning ordinances of the Borough of Dumont and the Municipal Land Use Law of the State of New Jersey, N.J.S.A. 40:55D-1 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. No building structure or land shall be occupied until such time as the Zoning Officer of the Borough of Dumont shall issue a final Certificate of Zoning Compliance to ensure compliance with the Board's decision.

5. Unless otherwise addressed herein or at the hearing held on May 18, 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. A Planting Plan shall be submitted to the Board Planner for her approval. Failure to provide same within this time may result in this Resolution being declared null and void.

6. 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.

7. 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.

8. 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 May 18, 2021 upon motion of Mr. Graeme Dutkowsky and seconded by Mr. Nico Attanasio upon the roll call as follows:

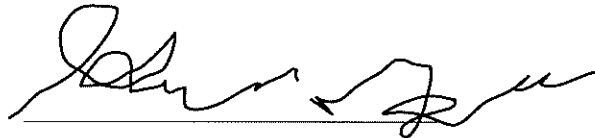
Ayes: 5

Nays: 2

Absent: 1

Abstain: 0

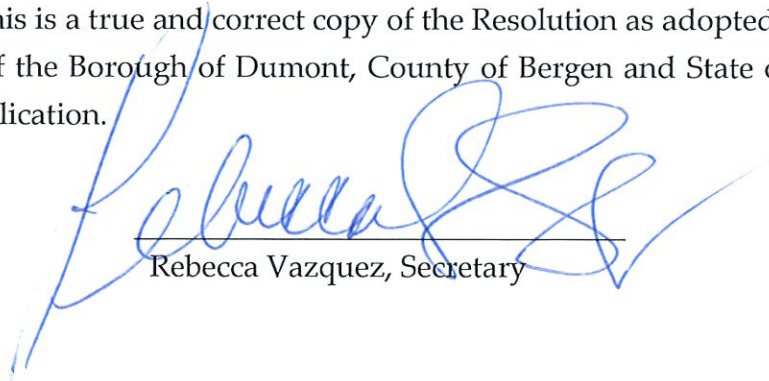
*This Resolution was adopted on the 15<sup>th</sup> day of June, 2021 upon the motion of*  
NICO ATTANASIO *and seconded by* GRAEME DUTKOWSKY *a vote of* 5 *( ) ayes and*  
2 *( ) nays.*



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