

**BOROUGH OF DUMONT  
COUNTY OF BERGEN  
JOINT LAND USE BOARD**

**RESOLUTION GRANTING BULK VARIANCE APPROVAL  
WITH RESPECT TO THE PROPERTY KNOWN AS  
199 NEW YORK AVENUE, BLOCK 1005, LOT 25.01  
BOROUGH OF DUMONT,  
COUNTY OF BERGEN, STATE OF NEW JERSEY**

**WHEREAS**, an Application for bulk variance has been made to the Dumont Joint Land Use Board pursuant to N.J.S.A. 40:55D-70(c) by **KYLE KHOROZIAN**, (the "Applicant") in connection with improvements upon the property commonly known as 199 New York Avenue, more particularly described as Block 1005, Lot 25.01 on the Tax Map of the Borough of Dumont, County of Bergen, State of New Jersey (the "Property"); and

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

Ordinance Section 455-35                      Side Setback

<b>Category</b>	<b>Allowed</b>	<b>Proposed</b>	<b>Variance</b>
Side Yard	5' minimum/15' aggregate minimum	4.6' / 14.2'	Yes

**WHEREAS**, the Application was duly considered by the Joint Land Use Board at a public hearing on October 19, 2021; and

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

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

1. Architectural Plans consisting of one (1) sheet entitled: "Floor Plans" drawing prepared, signed, and sealed by Stanley J. Kufel, Jr. R.A., of S.J. Kufel Associates/Architects, date unknown;
2. As-built survey consisting of one (1) sheet, prepared and signed by Steven L. Koestner, P.E, L.S. of Koestner Associates, dated June 23, 2021; and
3. Photograph of side yard and basement stairwell; and

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

**WHEREAS**, the Joint Land Use Board heard the sworn testimony from the Applicant's Architect, Stanley J. Kufel, Jr., having an address at 337 Demarest Avenue, Oradell, New Jersey 07649; and

**WHEREAS**, the Board received a report on the Project dated October 14, 2021 from Carl P. O'Brien, P.E., P.P., C.M.E., C.P.W.M., Board Engineer, of Colliers Engineering and Design; and

**WHEREAS**, following the hearing held on October 19, 2021, the Joint Land Use 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 Joint Land Use Board that the following facts are hereby made and determined:

1. The proceedings in this matter were 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 Applicant is the owner of the property commonly known as 199 New York Avenue, Dumont, New Jersey, and more particularly described as Block 1005, Lot 25.01 on the Tax Map of the Borough of Dumont. Said property is located within the "RA" Residential district pursuant to the Zoning Ordinance of the Borough of Dumont. The property is a single-family residence.
3. The Applicant's Attorney, Matthew G. Capizzi, Esq., of Capizzi Law Offices, 11 Hillside Avenue, Tenafly, New Jersey 07670 presented an overview of the project stating that Applicant constructed an exterior basement stairwell in a location where a basement window well was shown on the architectural plans. The field change was verbally approved by a former Borough zoning official. During a final inspection, the then current zoning official instructed Applicant that installation of a handrail was required, after which Applicant would receive a certificate of occupancy for the dwelling. Upon installing the handrail, a subsequent Borough zoning official has informed Applicant that the as-built stairwell, which lies within approximately 4'6" of

the property line, encroaches on the side yard. Applicant now seeks a variance with respect to the existing stairwell.

4. In support of the Application, the Applicant's attorney, Matthew Capizzi, Esq., presented testimony from the Applicant's architect, Stanley J. Kufel, who was sworn in by the Board, and who was accepted as an expert witness.
5. Mr. Kufel testified that the Borough is now on the third construction official since this project began, and that the file had been misplaced. The architect testified further that it is his belief that but for the change in zoning official after being instructed to install a handrail in the stairwell, the stairwell would have been accepted and a certificate of occupancy issued. He stated that as built, the outside wall of the stairwell is no closer to the property line than the window well as shown on the approved architectural plans would have been had it been constructed.
6. Mr. Kufel testified that a minimum of 5' of side yard is required, with a minimum aggregate of 15', but there is less than 10' on both side yards. He stated that presently, Applicant is approximately 4" short on the east side of the property.
7. Mr. Kufel testified that the purpose of the stair well is for egress from a finished basement with bedroom. He stated that two-family residences are prohibited, and there will not be a separate apartment. Further, there is presently a snack area in the basement, but no cook-top facilities.
8. Marie Raffay from Colliers Engineering questioned the Architect about the driveway trench drains. He responded that the trenches are drained to the 500-gallon seepage tank, and that there are no drains in the stairwell. He stated further that the stairwell walls are constructed from key stone, and the walls have weep holes to permit drainage.
9. Mr. Kufel testified that the original plan provides for installation of a 500-gallon seepage tank on the property, which receives water from drainage trenches on the property that flow to sumps, and which sumps are then drained by sump pumps. During Tropical Storm Ida, on or about September 1, 2021, there was no impact on neighboring properties from stormwater drainage from the Property. Neighboring properties are at elevations higher than the Property.
10. Mr. Kufel testified that it is his opinion that the variance requested is de minimus and warranted because the benefits outweigh any detriments to the public good and neither

the zone plan nor the Borough ordinances would be impaired. Further, the purposes of the Municipal Land Use Law will be advanced, particularly N.J.S.A. 40:55D-2(a), to encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare, N.J.S.A. 40:55D-2(c), to provide adequate light, air and open space, and N.J.S.A. 40:55D-2(i), to promote a desirable visual environment through creative development techniques and good civic design and arrangement.

11. At the conclusion of Mr. Kufel's testimony, the meeting was opened to the public. There were no questions from the public for Mr. Kufel, however, Ms. Margaret Galligan, having an address at 40 Pershing Street, Dumont, New Jersey addressed the Board. Ms. Galligan stated that as of the past several months water has been ponding on her property, which is located to the southeast of the Property. She stated that such ponding had never occurred on her property prior to Applicant's construction, and she believes that the ponding is caused as the result of an encroachment into a drainage easement for runoff from New York Avenue and Blauvelt Street on Borough property located to the east of the Property and oriented in a north to south direction. Ms. Galligan provided no evidence linking the stairwell on the Property to water accumulating on her property. Following Ms. Galligan's testimony, the testimony of Mr. Kufel was closed to the public and the Board felt all concerns were adequately addressed.

### **CONCLUSIONS OF LAW:**

**WHEREAS**, the Board, after careful deliberation, acknowledges that the as-built basement stairwell change has no discernible impact on the zone plan and zoning ordinance, and found that this Application has met the requirements for bulk 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 the purposes of zoning are advanced where the proposal promotes the upgrading of the area through creative development techniques and good civic design and arrangement and complies with the Borough's site plan ordinance. The Board concludes and

agrees that the site can operate safely with the proposed improvements.

**NOW THEREFORE**, be it resolved by the Joint Land Use Board of the Borough of Dumont that the within Application for bulk variance approval shall be granted subject to the following conditions:

**CONDITIONS SPECIFIC TO THE APPLICATION**

1. Board Engineer, Colliers Engineering and Design, shall evaluate the property grading and recommend corrections for any improperly graded surfaces.
2. Applicant shall correct any improperly graded surfaces.
3. Applicant will rectify any conditions created in the drainage easement as a result of the development on the Property.
4. Applicant shall obtain from Bergen County a soil conservation letter with respect to the property.

**GENERAL CONDITIONS**

1. The Applicant shall comply with all 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 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. 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 October 19, 2021, the Applicant shall comply with the recommendations of the Board's professional and any

other post-approval reports. The Applicant's professionals shall amend the architectural 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 period 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 Certificate of Zoning Compliance, 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 Joint Land Use Board at its regular meeting on October 19, 2021 upon motion of Board Member, \_\_\_\_\_ and seconded by Board Member, \_\_\_\_\_ upon the roll call as follows:

Ayes: 9  
Nays: 0  
Absent: 0  
Abstain: 0

**ROLL CALL:**

Nico Attanasio	Class I	Y
Rafael Riquelme	Class II	Y
Jimmy Chae	Class III	Y
Kenneth Armellino	Class IV	Y
Graeme Dutkowsky	Class IV	Y
Ken Melamed	Class IV	Y
Alfred Moriarty	Class IV	Y
Andrew Warta	Class IV	Y
Gino Zilocchi	Class IV	Y

*This Resolution was adopted on the \_\_\_ day of \_\_\_\_\_, 2021 upon the motion of \_\_\_\_\_ and seconded by \_\_\_\_\_ by a vote of \_\_\_ Ayes and \_\_\_ 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