

**JOINT LAND USE BOARD OF THE  
BOROUGH OF DUMONT**

**RESOLUTION OF APPROVAL FOR A "D" VARIANCE  
FOR A NON-PERMITTED TWO FAMILY USE  
AS WELL AS BULK VARIANCES AND WAIVERS**

**APPLICANT:** 89 GRANT AVENUE, LLC AND  
HELEN WILKENS

**OWNER:** 89 GRANT AVENUE, LLC AND  
HELEN WILKENS

**PREMISES:** 89 GRANT AVENUE  
BLOCK 603, LOT 12

**WHEREAS**, the lands and premises which are the subject of the within Application are owned by 89 Grant Avenue, LLC and Helen Wilkens; and

**WHEREAS**, 89 Grant Avenue, LLC, (an LLC made up of John Wilkens and Helen Wilkens) and Helen Wilkens, individually (hereinafter, the "Applicant") have made an application to the Joint Land Use Board of the Borough of Dumont for Amended Final Site Plan Approval; a variance pursuant to N.J.S.A. 40:55D-70(d) for a two family use; as well as Variances and Waivers, which application was heard by the Board at public hearings on February 28, 2019 and May 28, 2019 (hereinafter, "the Hearings" or "Public Hearing"); and

**WHEREAS**, the Property is located within the RA Zone of the Borough, approximately 330 feet west of the intersection with Charles Street. It is also directly across the street from a Borough School; and

**WHEREAS**, the Applicant seeks the following relief: A variance pursuant to N.J.S.A. 40:55D-70(d) to convert the existing medical and one family use to a two family use in a zone that does not permit same and/or a variance from the standards for a Conditional Use that permits two family homes that are pre-existing only. The Applicant also seeks Bulk Variances for the proposed converted use as follows, if necessary:

	Required for Two Family	Proposed/Existing
Lot Area	15,000	6,945 on Tax Map 7,133 on Survey

Lot Width	120'	90.5'
Lot Depth	100'	77'
Lot Frontage	150'	92'
Front Yard	25'	9.7'
Side Yard	15'	18.2'/6.6'
Aggregate Side Yard	40'	24.8'
Rear Yard	25'	8.6'
Green Area	50%	41%

- All variances are pre-existing as relate to the existing medical and residential use they are only necessary to the extent that that the proposed two family use is not the same as the prior, "grandfathered" use

**WHEREAS**, the Applicant does not seek to alter the footprint of the structure. The existing structure contains one medical unit and one residential unit. The Applicant seeks to convert the structure to a two family use; and

**WHEREAS**, the Applicant, Neighbor(s) and the Board introduced the following Exhibits into evidence:

- Exhibit A-1** Parking Plan, prepared by Mark Martins, PE, dated 4/29/19;
- Exhibit A-2** Architectural Plans, prepared by Waldron Architecture, as originally submitted and revised through 5/1/19;
- Exhibit B-1** Boswell McClave Engineering, Dennis Harrington, PE, Review Letter dated March 13, 2019;
- Exhibit B-2** Boswell McClave Engineering, Dennis Harrington, PE, Review Letter dated May 28, 2019;
- Exhibit 0-1** Survey of adjoining Property (Block 149; Lot 4), presented by neighbor during public comment.

**WHEREAS**, at Public Hearings, the following relevant testimony was adduced through Applicants' counsel, John G. Ryan, Esq., ("Ryan"), utilizing the following witnesses: 1) Robert Waldron, AIA, ("Waldron"); 2) Michael Kauker, PP ("Kauker"); 3) John Wilkens ("Wilkens"). Additional testimony was provided by 1) Dennis Harrington ("Harrington"); and

1. 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.

**TESTIMONY PRESENTED AT PUBLIC HEARING**

2. Ryan set forth the history of his client's ownership of the Property and the various options that that the Applicant has considered for the use of the Property. Ryan noted, and the Board confirmed, that for many years the Property was a "mixed use" containing a medical office and a single residential unit. The Property was purchased by the Applicant, who operates an insurance agency within the Borough, for the relocation of their insurance offices. Subsequent to acquiring ownership, the Applicant determined to remove any, intensive, office use, and to utilize the Property as two, three-bedroom, residential units.
  3. Wilkens confirmed the facts presented by Ryan in his introduction. He indicated that the "better" use of the Property was two residential uses rather than one commercial unit and one residential unit. He indicated that – knowing the volume of business likely to be at the Property if utilized as an insurance agency – the proposed use was less intense and preferable to the insurance agency (or pre-existing medical office use). He indicated this might be of special concern to the Board being located directly across the street from a school and near a Fire Department property.
  4. Kauker testified as a Professional Planner. He indicated that the structure was proposed as a two family home – rather than a mixed use. He testified the proposal could be viewed in the context of two "d" variances. The first is for a conditional use where the Applicant does not meet all the conditions. The second is for a variance for a non-permitted, two-family, use. He indicated that the Property was well suited as a two-family use due to the location and the layout of the existing structure. He also testified that the "trade off" from a two-use mixed use to a two family home was a less intense and less "problematic" use. The two family use – while not permitted – is a residential use in the residential zone. The existing mixed residential and medical use (though "grandfathered") introduces a commercial use and commercial signage into the zone and does not "protect" the residential nature of the use.
  5. Kauker testified that the Property was particularly well suited for a two family use and that the two family use is actually a conditional use in the zone for which a deviation from a condition is sought. He indicated that the two family use supports the purposes of zoning far better than a mixed use and that there is no detriment whatsoever to the proposed conversion. He testified that the use is consistent with the zoning ordinance, zone plan and the area where the Property is located. Kauker
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also testified that Property is near the B-2 Zone and that the two family use was an appropriate transitional use and that it was better than a commercial use in the RA Zone.

6. Waldron described all site plan, layout and boundary concerns regarding the Property. He described the layout of the proposed two family home as well and the conversion from a mixed use to a 2 family use. He testified that the Property had sufficient parking as to a two family and that the plans indicated 4 well striped parking spaces on the Property for a 2 family use.
7. Much discussion was held regarding Lot 13 located immediately to the west of the Property. That Lot is owned by the Borough. Prior owners of the Property appear to have paved portions of that lot to better effectuate parking at the Property.

#### **CONCLUSIONS AND DETERMINATIONS**

8. The Applicant requires the following approvals, variances or waivers:
  - A. A (d) variance for a non-conforming use or for a conditional use where a condition is not met.
  - B. The continuation of bulk variances that exist for the prior, non-conforming, grandfathered, mixed commercial and residential use to the proposed two-family use.

#### **AS TO THE BULK VARIANCES**

9. N.J.S.A. 40:55D-70(c) (1) provides that a variance may be granted due to hardship. The Board finds that the Applicant has sufficient parking and has no means to access greater parking. Parking which is presently available is non-conforming in nature and appears to include Borough property in some part of the parking movement. The Board finds that this hardship is existing and that there is no detriment to permitting the proposed expansion and the expansion of the parking variance.
  10. 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 substantially outweigh any possible detriment that could occur by the granting of the variances. The Board further finds, based upon the
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testimony of the Applicant's experts, and its own determination, that the purposes of the MLUL would be advanced by virtue of a grant of variance from the requirements of the Borough's zoning ordinances.

11. The Board finds there is no substantial detriment to the zone plan or zoning ordinance to the granting of the requested variances, waivers or deviations.

**AS TO THE "D" VARIANCES**

12. To obtain a use variance, an applicant must demonstrate that there are "special reasons" for the grant of the variance and that there will not be substantial negative impact if the variance is granted. N.J.S.A. 40-55D-70d. The "special reasons" are often referred to as the "positive criteria" and can be demonstrated if the use carries out purposes of zoning or the refusal to allow the project would impose an undue hardship upon the applicant. In addition, "special reasons" exist if the proposed site is particularly suited for the proposed use. Medici v. BPR Co., 107 N.J. 1, 4 (1987).
13. The Board finds that the Applicant has demonstrated entitlement to a "d" variance based upon a deviation from a condition in a conditional use and for a non-permitted use. The board finds that the negative criteria for such "d" variances has been met.

NOW, THEREFORE, BE IT RESOLVED that the application for variance relief is approved by this Board subject to the conditions set forth below:

- A. Compliance with all review letters by Dennis Harrington, PE.
- B. No parking shall be permitted except in the 4 designated parking spaces. Applicant shall stripe and sign the parking area to the satisfaction of the Board Engineer to assure there is no parking elsewhere on the Property and no parking on the adjoining Borough Lot.
- C. Placement of the solid waste container in a manner that it does not interfere with the Borough Lot.
- D. All necessary Municipal and County Approvals.

This Application was approved by the Dumont Joint Land Use Board upon a roll call vote of all members eligible to vote at its regular meeting on May 28, 2019.

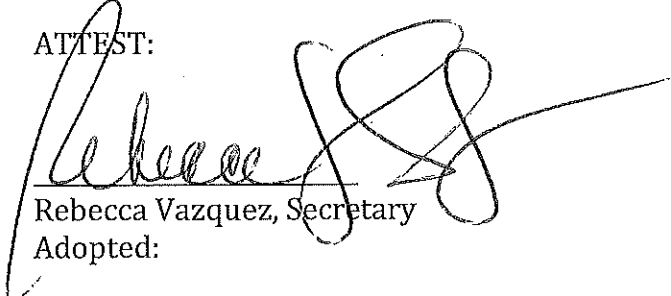
A copy of this Resolution shall be given to the Tax Assessor, Applicants (through counsel), Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

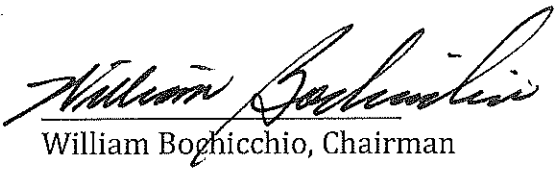
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**A NOTICE OF THE ADOPTION OF THIS RESOLUTION AND THIS DETERMINATION  
SHALL IMMEDIATELY BE PUBLISHED IN THE BOROUGH'S NEWSPAPER OF  
RECORD BY THE APPLICANT.**

ATTEST:

SO APPROVED:

  
Rebecca Vazquez, Secretary  
Adopted:

  
William Boghichio, Chairman