

JOINT LAND USE BOARD OF THE BOROUGH OF DUMONT

RESOLUTION OF DENIAL FOR MINOR SITE PLAN APPROVAL

WITH BULK VARIANCES, AND/OR WAIVERS

APPLICANT: 32 OLE, LLC

Michels

PREMISES: 32 WEST MADISION AVENUE
BLOCK 904; LOT 29

WHEREAS, the within Application is brought before the Board by 32 OLE, LLC which seeks to operate a restaurant on the Property known as "Ole Chicken"; and

WHEREAS, the Property is owned by William & Elisa Deegan and currently contains a 2 story mixed use building which includes a commercial vacancy on the first floor and apartment units on the second floor, and

WHEREAS, the Property is located in the "B-2" Business Zone of the Borough and Restaurants are a permitted use therein; and

WHEREAS, Ole Chicken made an application to the Joint Land Use Board of the Borough of Dumont for Site Plan Approval with variances and was heard by the Board at public hearing on January 30, 2018 (hereinafter, "the Hearing" or "Public Hearing") for the required approvals; and

WHEREAS, the Applicant is not seeking any variances or waivers in connection with the within application; and

WHEREAS, Pre-existing variances are as follows: Lot Coverage, as 70% is permitted and 97.07% is proposed; Parking, as no parking is provided on the Property; Loading, as 1 off street loading space is required and none are provided; Sidewalk Area as a minimum sidewalk area of 10 is required and existing is 6.5'. All variances aforesaid are pre-existing.

WHEREAS, the Applicant and the Board introduced the following Exhibits into evidence:

Exhibit A-1 4 Page Preliminary and Final Site Plan, prepared by Michels & Waldron, dated February 8, 2019;

Exhibit A-2 Mechanical Drawings prepared by Michels & Waldron

WHEREAS, Planning Board Engineers, Boswell McClave Engineering, Dennis Harrington, PE, submitted a Letter Report, dated February 21, 2019, which report was accepted into evidence and made part of the submission; and

WHEREAS, at Public Hearings, the following relevant testimony was adduced through Applicant's counsel, Stephen A. Geffner, Esq., ("Geffner"), of the law firm of Schenk, Price, Smith and King, utilizing the following witnesses:

- 1) Juan Gonzalez ("Gonzalez");
- 2) Art Michels, AIA, ("Michels");
- 3) 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. Geffner set forth the background of his client's ownership and use of the Property. He indicated that the uses on the Property include residential and commercial uses and that Ole Chicken seeks to occupy a recently vacated retail space. There is no change to parking, loading areas, lot coverage, and sidewalk width. Each of these deviations is pre-existing.
2. Gonzalez testified as to operations of the proposed restaurant. He testified as to the scheduling of deliveries and trash removal as well as the number and ability of employees to gain access to the Property. He testified as to the hours of operation and that the restaurant would have between 20 and 35 seats. He testified as to the percentage of "take out" and the desire to work in conjunction with the LaTaberna Restaurant across the street which has common ownership. He testified that operations would comply with the New Jersey State noise code. He testified that you could dine in or take out and that BYOB would be permitted.
3. Michels testified as to the configuration of the interior and the layout of the kitchen and eating areas. He indicated there was no change to the Site Plan and that there would be minimal exterior changes. He testified as to the design by reference to A-1 and as to venting and mechanical drawings as A-2. In order to install the venting system, a portion of the vent would intrude on the municipal ROW (approximately 8'

above the sidewalk) so that these systems could access the roof. The Applicant indicated that if the application was approved, it would be subject to the approval of the Mayor and Council as to this intrusion into the ROW.

4. Numerous residents testified as to difficulties encountered with the occupants and potential occupants of the Property. They testified that whoever utilizes the Property causes litter in the area and will increase the neighborhood parking problems. Nearby neighbors testified that full use of the Property results in people parking in front of his driveway and garbage on his property.

CONCLUSIONS AND DETERMINATIONS

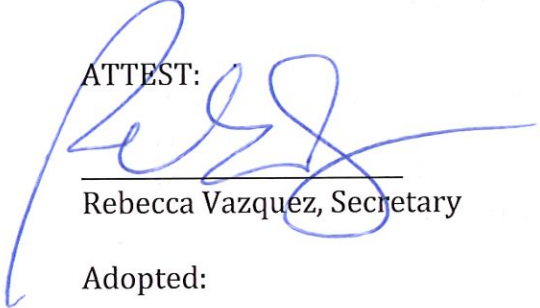
1. The Applicant requires the following approvals, variances or waivers:
 - Minor Site Plan Approval.
 - Pre-existing variances for Lot Coverage, as 70% is permitted and 97.07% is proposed; Parking, as no parking is provided on the Property; Loading, as 1 off street loading space is required and none are provided; Sidewalk Area as a minimum sidewalk area of 10 is required and existing is 6.5'.
 - The waiver of various submission requirements.
2. 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.
3. 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.
4. 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.
5. Upon hearing all of the evidence, the Board voted to **deny** the Application. The Board found that the burden on the neighborhood as to parking and litter was a significant, detrimental impact that could not be resolved.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Joint Land Use Board of the Borough of Dumont upon a roll call vote at its regular meeting held on February 26, 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.

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:



Rebecca Vazquez, Secretary

Adopted:

SO APPROVED:



William Bochicchio, Chairman