



Borough Of Dunellen
 Planning Board
 Regular Meeting Minutes
 September 25, 2023

Call to Order & Statement of Compliance

Chairman Dornbierer called the meeting to order at 7:16 pm and read the Statement of Compliance adopted by the board January 23, 2023.

Pledge of Allegiance

Roll Call

<u>Attendance</u>		
Name	Present	Absent
Tom D'Amico	X	
Adam Gordon	X	
Theresa Ratner	X	
Barbara Seif		X
Eric Walker	X	
Mayor Cilento	X	
Councilwoman Rios	X	
Michael Mullin		X
Chairman Roger Dornbierer	X	
Christopher Brillante (Alt. 1)	X	
Robert Krause (Alt. 2)	X	
Total:	9	2

Quorum: Yes / No

<u>Attendance</u>		
Name	Present	Absent
Michael Collins (Attorney)		X
Krishna R. Jhaveri (Attorney)		X
Lou Ploskanka (Engineer)		X
Daniel Hauben (Planner)	X- VIRTUAL	
Ryan Windels	X-VIRTUAL	
Lauren Staats (Recording Sec.)	X	
Cherron Roundtree (PB Sec.)	X	

Approval of Meeting Minutes

Approval of Special Meeting Minutes of June 13, 2023					
Name	Motion	Second	Yes	No	Abstain
Tom D'Amico					X
Adam Gordon					X
Theresa Ratner		X	X		
Eric Walker					X
Mayor Cilento	X		X		
Councilwoman Rios			X		
Roger Dornbierer			X		
Christopher Brillante (Alt. 1)			X		
Robert Krause (Alt. 2)			X		

Approved: Yes / No

Approval of Regular Meeting Minutes of June 26, 2023					
Name	Motion	Second	Yes	No	Abstain
Tom D'Amico		X	X		
Adam Gordon	X		X		
Theresa Ratner			X		
Eric Walker			X		
Mayor Cilento			X		
Councilwoman Rios					X
Roger Dornbierer			X		
Christopher Brillante (Alt. 1)					X
Robert Krause (Alt. 2)			X		

Approved: Yes / No

Mr. Krause: Asked if cyber cement siding can be changed to fiber cement siding. Ms. Staats said that she would change the wording.

Old Business

Mr. Gordon: There was a part in the resolution that talks about the parking meters that they would have to work with the parking authority to get meters installed. Remembers a discussion about the parking but not the parking meters.

Mr. Windels: Spoke about having it in his notes, that they would have to apply for parking meters for the street parking as a contingency. They didn't have to get them approved, only apply for them.

Mr. Hauben: Recalls a discussion on parking signage. This was for the retail space.

Mr. Dornbierer: Doesn't recall meters either. Page 8 Item L. Applicant shall coordinate the installation of parking meters along the site frontage with the Parking Authority.

Mr. Windels: That is what he has in his notes. He believes that the engineer had that in their notes as well. If the board does not want to include that we can remove it.

Mr. Dornbierer: Asked if there were any objections to removing that condition and there were none.

Mr. Gordon and Mayor Cilento: Spoke about how they asked if the spaces could be striped.

Mr. Windels: From his notes the striping was not mandatory and something that we had to look into.

Ms. Rountree: Item V in the resolution talks about striping. Page 8.

Mayor Cilento: We requested that they would work with NJDOT and streetscape agreements to do striping. NJDOT said no.

Mr. Gordon: Lou may have worked this out after.

Mr. Dornbierer: His recommendation would be to strike item L.

**MEMORIALIZING RESOLUTION OF THE
PLANNING BOARD OF THE BOROUGH OF DUNELLEN
APPROVING THE APPLICATION OF 120-126 NORTH AVENUE URBAN RENEWAL, LLC FOR
PRELIMINARY AND FINAL SITE PLAN FOR BLOCK 1, LOTS 19- 21, KNOWN AS 120-126 NORTH
AVENUE.**

WHEREAS, pursuant to the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 et seq. and Dunellen Ordinance 52-1 et seq. and 115A-1 et seq., the Planning Board of the Borough of Dunellen ("Board") is established and empowered to hear and determine applications for site plan approval; and

WHEREAS, on or about April 21, 2023, 120-126 North Avenue Urban Renewal, LLC ("Applicant") filed an application (the "Application") seeking preliminary and final site plan approval with variance relief and design waivers for the property currently located at 120-126 North Avenue and designated as Block 1, Lots 19-21 on the official tax map (the "Property") to construct a 3-story building with 2,192 SF of commercial space on the ground floor and a total

of 33 apartment units on the upper stories, to be comprised of 17 one-bedroom units with 1 affordable unit, 14 two-bedroom units with 2 affordable units, and 2 three-bedroom affordable units (the "Project").

WHEREAS, the matter was heard at public hearings of the Board on June 26, 2023 and July 24, 2023 (the "Hearings"); and

WHEREAS, the following evidence was submitted to and considered by the Board at the hearing:

1. The Board reviewed the following reports, which are attached hereto and incorporated by reference (the "Review Letters"):
 - a. Report of Board Engineer Louis Ploskonka, PE, dated June 5, 2023; and
 - b. Report of Board Planners Daniel Hauben, PP, AICP and Francis Reiner, PP, LLA dated May 23, 2023.
2. The Board reviewed the following submitted plans, documents and exhibits:
 - a. Plans entitled: "Preliminary & Final Major Site Plan for 120-126 North Avenue Urban Renewal, LLC Proposed Mixed-Use Development," consisting of thirteen (13) sheets, prepared by Stonefield Engineering & Design, dated April 14, 2023;
 - b. Architectural Plans entitled: "120-126 North Avenue Mix-Use Development," consisting of four (4) sheets, prepared by VLBJR Architects, dated April 14, 2023;
 - c. Report entitled: "Stormwater Management Statement", prepared by Stonefield Engineering & Design, dated April 14, 2023;

- d. Report entitled: "Traffic Engineering Evaluation", prepared by Klein Traffic Consulting, LLC, dated March 29, 2023;
 - e. NJDEP LOI Verification Application prepared by Arthur Kuyan PE, CME, dated October 24, 2022;
 - f. Application and Supplemental Application Information, dated April 21, 2023;
 - g. Exhibit A-1, which is a colorized site plan of the Property;
 - h. Exhibit A-2, which is colorized site plan rendering;
 - i. Exhibit A-3, which is a series of photos of properties in the area with similar setbacks to the proposal;
3. The Applicant was represented by Michael E. Silbert, Esq. of DiFrancesco Bateman.
 4. The Applicant presented testimony by the following individuals at the June 26, 2023 and July 24, 2023 hearings, who were sworn and testified as follows:
 - a. Afton Savitz, PE – Ms. Savitz is a project engineer and is from Stonefield Engineering & Design. She provided expert testimony on the engineered site plan which was submitted as part of the application at the June 26, 2023 portion of the hearing. She provided specific testimony on the site's runoff and drainage plans. Ms. Savitz also provided testimony on the engineered site plan at the July 24, 2023 hearing.
 - b. Mark Trimbath, RA – Mr. Trimbath is a registered architect and is from VLBJR Architects. He provided expert testimony on the architectural plan which was submitted as part of the application at the June 26, 2023 portion of the

hearing. Mr. Trimbath provided specific testimony on the requested variance for the setback from the curb front, and the size of the apartment units.

- c. Frank Miskovich, – Mr. Miskovich is the traffic consultant for the project and is from Miskovich Consulting Engineers, LLC. He provided expert testimony regarding the impact the building will cause on local traffic, and the required parking spots necessary for the parking garage. Mr. Miskovich provided testimony at the July 24, 2023 hearing in place of Lee Klein of Klein Traffic Consulting LLC who appeared at the June 26, 2023 hearing but did not provide testimony.

; and

WHEREAS, the Board also afforded an opportunity for members of the public to ask questions of witnesses and provide public comment, including inquiries from Harriet Sojka, the owner of 110 North Avenue, Dunellen, NJ, on how the proposed project will impact the sewage system; and

WHEREAS, the Board makes the following findings of fact and conclusions based upon the foregoing evidence:

1. The Applicant seeks site plan approval to erect a three (3) story mixed-use building containing 2,192 square feet of commercial space on the ground floor and 33 apartment units within the Transition Zone of the Downtown Redevelopment Area. The use is permitted pursuant to the Downtown Redevelopment Plan.
2. Under New Jersey law, site plan approval is designed to “assure compliance with the standards under the municipality’s site plan and land use ordinances,” such that

- planning boards are expressly authorized to “to impose general terms, conditions, and requirements peculiar to site plan approval as related to public health and safety.” See, e.g. W.L. Goodfellows & Co. of Turnersville, Inc. v. Wash. Tp. Planning Bd., 345 N.J. Super. 109, 116 (App. Div. 2001).
3. Under New Jersey law, a “(c)(2)” bulk variance may be granted pursuant to N.J.S.A. 40:55D-70(c)(2) affording relief from a bulk or dimensional provision of a zoning ordinance, such as frontage, when: (i) the application relates to a specific piece of property; (ii) where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirement; (iii) where the variance can be granted without substantial detriment to the public good; (iv) that the benefits of the deviation would substantially outweigh any detriment and (5) that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. See Jacoby v. Englewood Cliffs Zone. Bd. of Adjustment, 442 N.J. Super. 450, 471 (App. Div. 2015).
 4. Under New Jersey law, the Board is authorized to grant so-called design waivers, which are exceptions from the requirements contained in a site plan ordinance, pursuant to N.J.S.A. 40:55D-51. See, e.g. Wawa Food Market v. Planning Bd. of Borough of Ship Bottom, 227 N.J. Super. 29, 34 (App. Div. 1988).
 5. The Board finds that the proposed site plan to erect a three (3) story multi-use building containing 33 rental apartment units including 5 affordable housing units is consistent with the provisions of the applicable zoning contained within the Downtown Redevelopment Area, and thus site plan approval is warranted.

6. The Board finds that the proposed off-street parking spaces for the Project (in conjunction with the parking credits and parking deductions afforded to the Applicant as set forth in the Redevelopment Plan) is compliant with the number of required parking spaces (the reduced-adjusted required total of parking spaces being 33 spaces) and that a parking deficiency does not exist for the Project.
7. The Board finds that bulk variance relief requested by Applicant in connection with this application are appropriate and may granted under the “(c)(2)” criteria in that the requested variance relief advances the purposes of the MLUL, that it can be granted without substantial detriment to the public good, that the benefits of the deviation would substantially outweigh any detriment, and that the variance will not substantially impair the intent and purpose of the Downtown Redevelopment Plan, the zone plan and zoning ordinance.
8. The Board further finds that the design waiver relief requested by Applicant is appropriate, as further addressed in the Review Letters and on the record.
9. The Board imposes reasonable conditions upon the foregoing relief, as set forth herein, to ensure health and safety as it relates to the proposed improvements.

; and

WHEREAS, at the July 24, 2023 hearing, the Board voted 8-0 to approve the Application as provided on the record at said meeting, with aye votes from Mayor Cilento, Chairman Dornbierer, Members Brillante (seated alternate) D’Amico, Gordon, Krause (seated alternate), Seif, and Walker, which the Board seeks to memorialize herein, in accordance with N.J.S.A. 40:55D-10(g).

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Dunellen,
as follows:

1. The foregoing recitals are hereby incorporated as if set forth at length.
2. Applicant's application for preliminary and final site plan approval with variance relief and design waivers is hereby granted, subject to the terms and conditions contained herein. The relevant variances and design waivers include as follows:
 - i. A 16 foot setback from the curb face is required whereas a 11.3 foot setback from the curb face is proposed and shall be permitted;
 - ii. Deliveries to commercial uses and loading and unloading of tenants' belongings and furniture in the street right-of-way shall be permitted;
 - iii. One façade sign is the maximum allowable number of signs whereas three façade signs is proposed and shall be permitted;
 - iv. The proposed locations for waste collection do not need to accommodate a typical trash and recycling truck.
3. The terms of this Approval are to be strictly in accordance with the plans, testimony, and representations presented to the Board and the same are incorporated into this Resolution by reference.
4. The Applicant shall comply with the review report of Report of Board Engineer Louis Ploskonka, PE, dated June 5, 2023 and Board Planners Daniel Hauben, PP, AICP and Francis Reiner, PP, LLA dated May 23, 2023 except as amended on the record and/or within this Resolution. Said reports are attached hereto and incorporated herein by reference.
5. The Applicant must obtain all necessary approvals from any state, county, or other government agencies necessary for construction of the project.
6. Applicant shall be subject to the following special conditions that were established upon the record at the Hearings:

- a. Applicant agrees that there will be no on-street dining.
- b. Applicant agrees that all parking spaces that are furnished with EV charging equipment will be located in the open-air portion of the garage.
- c. Applicant shall obtain approval for on-street loading and unloading.
- d. Applicant agrees to install fencing along all property lines.
- e. Applicant shall contract with a private hauler for trash and recycling pickup with the understanding that dumpsters will be moved from the enclosure for pickup.
- f. Applicant agrees to screen all mounted mechanical units from view.
- g. Applicant agrees that all utility meters will be located within the parking garage.
- h. Applicant shall incorporate language into its leasing documents that prohibits residents from hanging any items from balconies.
- i. Applicant agrees that there will be one main sign and two retail signs on the building. The signs will be halo-type letters and backlit.
- j. Applicant shall install decorative lampposts with hanging planters along the site frontage, in accordance with current Borough standards.
 - k. Applicant shall install two gooseneck-type lights, with one being placed at each entry door.
- l. Applicant agrees that the lots will be consolidated by Deed.
- l. Applicant shall provide pretreatment to the parking area to address stormwater runoff.

- I. Applicant shall install benches, trash receptacles, and flower pots along the site frontage, in accordance with current Borough standards.
- I. Applicant agrees that the mulched area along the southwesterly property line will be planted. Plant types are subject to the review and approval of the Planning Board Engineer.
- I. Applicant agrees to provide street trees along the site frontage. Tree types are subject to the review and approval of the Borough Shade Tree Commission.
- I. Applicant agrees that the light fixtures located in the parking garage will be activated by motion sensors.
- I. Applicant agrees that lighting will be provided for the paver walkway along the northeastern side of the building.
- I. Applicant agrees to install stop markings, one 36' by 36' stop sign, and a rumble strip on the egress out of the parking garage.
- I. Applicant agrees to provide electrical outlets near the bike parking area to accommodate charging of e-bikes and/or electric scooters.
- I. Applicant agrees to request striping for the on-street parking spots located in front of the site.
- I. Applicant agrees that all lighting in the parking garage shall be recessed.

7. All taxes, fees, escrows, assessments and other monies due to the Borough of Dunellen shall be paid in full prior to resolution compliance under the terms of this Resolution.

8. The Applicant shall comply with all rules, regulations, statutes, and ordinances of the United States of America, State of New Jersey, County of Middlesex, and the Borough of Dunellen, the latter of which shall include all obligations under the Borough’s Affordable Housing Development Ordinance § 89-4.

The undersigned Chairman of the Borough of Dunellen Planning Board hereby certifies that the within resolution of memorialization was adopted by this Board pursuant to N.J.S.A. 40:55D-10(g) at its meeting on September 25, 2023.

<u>Memorializing Resolution Approving the PB-2003-300 Application</u>					
Name	Motion	Second	Yes	No	Abstain
Tom D’Amico			X		
Adam Gordon			X		
Theresa Ratner		X	X		
Eric Walker			X		
Mayor Cilento	X		X		
Councilwoman Rios					X
Roger Dornbierer			X		
Christopher Brillante (Alt. 1)			X		
Robert Krause (Alt. 2)			X		

New Business

1.Review of Borough Ordinance 2023-27

Mr. Hauben: Gave a summary of the ordinance and spoke about parking variance and change of use.

Mr. Krause: Asked a question about the change of use. Mr. Krause gave the example of what would happen if the store was a cell phone store and they changed it to a restaurant. Mr. Hauben answered the question.

Ms. Roundtree: Stated that this is only for projects in the Redevelopment Zone that are permitted uses. Gave different examples of coming before the board and not coming before the board.

Mr. Hauben: Spoke about sometimes how there are thresholds in the ordinance.

Mayor Cilento: Gave the example of the dry cleaners across from Mikes Subs and said that they would want to put a drive through on the side. This would mean they would have to come before the board.

Ms. Rountree gave many examples and Mr. D'Amico agreed and stated that then this would be handled administratively through zoning. Ms. Rountree said yes.

Mr. Windels: Gave many examples of where they would have to come before the board and where they would not as well as Mayor Cilento.

The following ordinance was Introduced for first reading on September 18, 2023. It will be presented for public hearing and adoption on October 2, 2023, at 7:00 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey. Copies of this ordinance will be posted on the Municipal Bulletin Board and will be available at the Office of the Borough Clerk for any interested members of the public.

ORDINANCE NO. 2023-27

**BOROUGH OF DUNELLEN
COUNTY OF MIDDLESEX**

ORDINANCE REVISION SECTION 115-13 TITLED "DETERMINATION OF CHANGE IN USE"

WHEREAS, the Borough of Dunellen currently maintains Ordinance § 115-13, titled "Determination of change of use"; and

WHEREAS, said provision governs the instances in which a change of use exists, requiring a new site plan approval before the issuance of permits; and

WHEREAS, the governing body seeks to revise this Ordinance to ensure that changes of use are applicable to reasonable circumstances.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Dunellen the County of Middlesex, State of New Jersey, as follows:

Section 1. Section 115-13 of the General Ordinances, titled "Determination of change of use," is hereby amended as follows:

§ 115-13 Determination of change of use.

A. A change in the occupancy of a building or the utilization of a building or land which meets any of the following criteria shall be determined to be a change of use under this chapter:

(1) The proposed use requires more off-street parking spaces than the previous use, based upon parking requirements in Chapter 115A, Land Development, of the Code of the Borough of Dunellen, except that this subsection shall not apply if the proposed use is compliant with the parking requirements contained in a redevelopment plan, adopted under

the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., constituting the applicable zoning to the building or land;

(2) The proposed use has significantly different hours of operation than the previous use;

(3) The proposed use has special pickup and discharge or loading and unloading requirements which affect either on-site or off-site circulation; or

(4) The proposed use involved the storage or handling of chemicals or hazardous substances.

B. All such changes of use shall require site plan approval prior to the issuance of any required municipal permits.

C. A signed affidavit stating that the proposed use does not meet any of the above criteria must be submitted to the Borough Zoning Officer prior to issuance of certificate of occupancy.

Section 2. Severability.

The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

Section 3. Repealer.

All ordinances and resolutions, and parts of ordinances and resolutions which are inconsistent with provisions of this Ordinance shall be, and are hereby, repealed to the extent of any such inconsistency.

Section 4. Effective Date.

This Ordinance shall take effect upon final adoption and publication in accordance with law.

2.Resolution Establishing Not-To-Exceed Amounts for Borough Planning Board Professionals

Ms. Roundtree: Explained why we needed this resolution as per the borough auditor.

Mr. Dornbierer: When borough professionals are reappointed in 2024, we will put those amounts not to exceed on their resolutions. These are charges that cannot be charged to an escrow. Ms. Rountree confirmed that they cannot and stated that this makes sure we have budgeted properly.

Ms. Rountree: For an example the master plan review would be charged to this specific not to exceed account. These amounts are what the borough planned for this year. CFO requested the resolution and has looked over the resolution.

Mr. D’Amico questioned the amount for the engineer.

Ms. Rountree: The engineer would have very little non-escrow charges. The numbers may change next year.

**RESOLUTION
DUNELLEN PLANNING BOARD**

**RESOLUTION ESTABLISHING NOT-TO-EXCEED AMOUNTS FOR BOROUGH PLANNING BOARD
PROFESSIONALS**

WHEREAS, pursuant to N.J.S.A. 40:55D-24, the Planning Board “may employ, or contract for, and fix the compensation of legal counsel, other than the municipal attorney, and experts, and other staff and services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the governing body for its use”; and

WHEREAS, N.J.S.A. 40:55D-24 further provides that “[t]he governing body shall make provision in its budget and appropriate funds for the expenses of the planning board”; and

WHEREAS, consistent with N.J.S.A. 40:55D-24, at the January 2023 reorganization meeting, the Dunellen Planning Board awarded professional services contracts for Ordinary Duties to the following firms to serve in the listed capacities:

King, Moench & Collins LLP	Board Attorney
CME Associates	Board Engineer
DMR Architects	Board Planner

; and

WHEREAS, the Borough of Dunellen has budgeted for and appropriated funds from the General Fund for expenses of the Planning Board for calendar year 2023, and it has further requested that the Planning Board establish not-to-exceed amounts for its board professionals.

NOW, THEREFORE, BE IT RESOLVED that the Dunellen Planning Board hereby establishes the following not-to-exceed amounts for Ordinary Duties, for professional services and expenses paid through the general fund for the Board’s professionals in calendar year 2023:

King, Moench & Collins LLP	\$10,000	under Budget account 3-01-21-180-000-220
CME Associates	\$1,600	under Budget account 3-01-21-180-000-220

DMR Architects

\$15,000

under Budget account 3-01-21-181-000-299

BE IT FURTHER RESOLVED that the foregoing not-to-exceed amounts shall not restrict the payment of any valid expenses that are billed against an escrow account posted by a land use board applicant pursuant to ordinance; and

BE IT FURTHER RESOLVED that the Planning Board, prior to authorizing professional services on Additional, Extraordinary projects that may arise from time to time and throughout the year, that are not part of the above referenced Not-to-Exceed amounts, must secure a separate certification of funds from the Office of the Chief Financial Officer prior to award of such services; and

BE IT FURTHER RESOLVED that the Planning Board Secretary shall notify each professional that Additional, Extraordinary services beyond the scope of the not-to-exceed amounts shall not commence until a certification of funds has been secured.

<u>Resolution Establishing Not-To-Exceed Amounts For Borough Planning Board Professionals</u>					
Name	Motion	Second	Yes	No	Abstain
Tom D'Amico			X		
Adam Gordon			X		
Theresa Ratner		X	X		
Eric Walker			X		
Mayor Cilento			X		
Councilwoman Rios	X		X		
Roger Dornbierer			X		
Christopher Brillante (Alt. 1)			X		
Robert Krause (Alt. 2)			X		

Approved: Yes / No

Board Member Comments

Mr. D'Amico: Asked a question about the Art Color building, specifically the front with historical signage.

Mr. Dornbierer referred to Mr. Krause to answer the question. He stated that people were supposed to gather the parts and pieces that they had for it. Also, there were supposed to be some old facts about the building as well for signage. He believes that the wordage is in the resolution adopted many years ago and possibly would be in a set of minutes.

Mayor Cilento: They were supposed to put some type of placard on the new building honoring the Art Color name. Since then, there were conversations had with Rutgers and Mason Gross about the brick

and old marquee and creating a small monument with some type of sculpture art with the water tower. The conversation now is who maintains it and will there be some form of easement agreement.

Public Comment

There were none.

Adjournment					
Name	Motion	Second	Yes	No	Abstain
Tom D'Amico			X		
Adam Gordon			X		
Theresa Ratner			X		
Barbara Seif			X		
Eric Walker			X		
Mayor Cilento	X		X		
Councilwoman Rios		X	X		
Roger Dornbierer			X		
Christopher Brillante (Alt. 1)			X		
Robert Krause (Alt. 2)			X		


Approved: Yes / No

Meeting Ended at: 7:53 pm

The next regular planning board meeting will be on October 23, 2023.

Minutes Approved: January 22, 2024


 Roger Dornbierer, Chair


 Cherron Rountree, Board Secretary

