

RICHARD A. CARLUCCI, ESQUIRE
GRIFFITH and CARLUCCI, P.C.
761 Asbury Avenue - Suite 201
Ocean City, New Jersey 08226
(609) 399-6900
Attorneys for the Ocean City Planning Board

IN THE MATTER OF THE APPLICATION
OF DUNC RE, LLC
FOR PRELIMINARY AND FINAL
MAJOR SITE PLAN APPROVAL,
CONDITIONAL USE APPROVAL, AND
VARIANCES FOR BLOCK 604, LOT 7

OCEAN CITY PLANNING BOARD

APPLICATION NO. PBA 26-009

DECISION AND RESOLUTION

BACKGROUND OF DECISION AND RESOLUTION

1. DUNC RE, LLC ["Applicant"] is the owner of certain lands and premises located in the City of Ocean City known as Block 604, Lot 7 as shown on the current official tax map for the City of Ocean City, New Jersey commonly known as 629 Asbury Avenue, Ocean City, New Jersey ["Property"].

2. The Applicant has made application to the Ocean City Planning Board for **(i) preliminary and final major site plan approval** to construct a new three-story mixed-use building consisting of a commercial use on the first floor and one (1), three (3) bedroom residential unit on the second floor and one (1), three (3) bedroom residential unit on the third floor at the Property which is located in the CB, Central Business Zone; **(ii) conditional use approval** for the second and third floor residential units; **(iii) variances** to permit (a) minimum lot area of 3,000 square feet; (b) minimum lot width of 30 feet; (c) maximum landing area of 54 square feet; (d) minimum parking space set back of 1 foot; (e) porches/decks on front of building; and (f) street scape design

standards for the color of sidewalks and curb; (g) commercial floor area of 1488 square feet; **(iv) design waiver** from § 25-1700.31.5. of the Ocean City Zoning and Land Development Ordinance requiring enclosed refuse areas located within or adjacent to a parking area to be separated from such parking area or access drive by curbing; and **(v) checklist waivers**.

3. The application to the Ocean City Planning Board as aforesaid was deemed complete and a public hearing in respect of the aforesaid application was held before the Ocean City Planning Board on August 12, 2026.

4. Ocean City Planning Board Members Birch and Stell recused themselves and did not participate in the public hearing in respect of the aforesaid application that was held before the Ocean City Planning Board on August 12, 2026.

WITNESSETH

NOW, THEREFORE, the Ocean City Planning Board based upon the exhibits submitted and the analysis by the Planner for the Ocean City Planning Board, Randall E. Scheule, A.I.C.P. & P.P. [“Planner”] and the Engineer for the Ocean City Planning Board, David S. Scheidegg, P.E., P.P., C.M.E. [“Engineer”] and the testimony presented makes the following findings of fact:

1. Paragraphs 1 through 4 set forth above in the Background of Decision and Resolution are incorporated by this reference as if specifically set forth herein at length; all appropriate applications have been filed; all required application fees have been paid; and, all notices required by law have been given.

2. The Applicant has submitted and the Planner and Engineer have reviewed the plans and documents identified and delineated by the Planner in the Planner’s Report

dated June 19, 2026 [“Planner’s Report”] all of which are incorporated by this reference as if specifically listed herein at this place and identified and delineated by the Engineer in the Engineer’s Report dated June 23, 2026 [“Engineer’s Report”] all of which are incorporated by this reference as if specifically listed herein at this place. The Planner’s Report is attached to this Decision and Resolution as Exhibit A and expressly made a part hereof and the Engineer’s Report is attached to this Decision and Resolution as Exhibit B and expressly made a part hereof.

3. The Applicant was represented by Jon D. Batastini, Esquire at the time of public hearing. Mr. Batastini presented the Applicant's application for preliminary and final major site plan approval, conditional use approval, variances and waivers in respect of the Property. The Property is located in the CB, Central Business Zone and is identified as Block 604, Lot 7 as shown on the current official tax map for the City of Ocean City, New Jersey. The street address of the Property is 629 Asbury Avenue, Ocean City, New Jersey.

Andrew Bechtold, R.A. & P.P., was the first witness to testify in respect of the application. Mr. Bechtold is a registered architect and professional planner and was recognized by the Ocean City Planning Board as an expert. Mr. Bechtold is the architect and planner engaged by the Applicant in respect of the preliminary and final major site plan approval, conditional use approval, and variances for the Property. Mr. Bechtold provided a general description of the Property and the proposed preliminary and final site plan, conditional use, and variances for the Property. Mr. Bechtold provided an overview of the project development. Mr. Bechtold indicated that it was the Applicant’s intention to construct a new three-story mixed-use building consisting of a commercial

use on the first floor and one (1), three (3) bedroom residential unit on the second floor and one (1), three (3) bedroom unit on the third floor at the Property which is located in the CB, Central Business Zone. The residential use of the Property as proposed by the Applicant is permitted as a conditional use in the CB, Central Business Zone. Variances to permit (a) minimum lot area of 3,000 square feet; (b) minimum lot width of 30 feet; (c) maximum landing area of 54 square feet; (d) minimum parking space set back of 1 foot; (e) porches/decks on front of building; and (f) street scape design standards for the color of sidewalks and curb; (iv) design waiver from § 25-1700.31.5. of the Ocean City Zoning and Land Development Ordinance requiring enclosed refuse areas located within or adjacent to a parking area to be separated from such parking area or access drive by curbing; and (v) checklist waivers are required for the project development.

He testified that the new building proposed by the Applicant would replace a non-conforming use with a conforming use. Mr. Bechtold testified concerning the conditional use standards applicable for the project development and opined that the project as proposed satisfied the conditional use standards to permit residential dwellings on the second floor and third floor of the new building. He identified all the variances required for the project development. Mr. Bechtold also identified the checklist waivers and design waiver requested by the Applicant and he provided testimony supporting the Applicant's request for all of the waivers. A Design waiver is required for trash enclosure curb as identified in the Planner's Report as item #5 in the Summary of Variances and Design Waivers on page 7.

The Applicant proceeded under the c. (1) and c. (2) criteria of N.J.S. 40:55D-70 in presenting its proofs for the variances requested and Mr. Bechtold testified using the

c. (1) and c. (2) criteria of N.J.S. 40:55D-70 as the basis for his professional testimony and opinions.

He testified that the new building (i) would be a conforming use (appropriate use of land) (ii) offer an improved streetscape with front porches and decks (promotion of a desirable visual environment), (iii) would be flood compliant (secure safety from flood), (iv) would have a fire suppression system that meets current code requirements (secure safety from fire), (v) would comply with off street parking requirements and (vi) would be similar to adjacent properties.

Mr. Bechtold testified that there was no detriment resulting from the proposed preliminary and final major site plan, conditional use approval and variances requested by the Applicant. He testified further that there was a benefit to the public by granting the preliminary and final major site plan, conditional use approval, and variances, especially when taking into consideration the permitted uses of the Property, including the conditional use proposed by the Applicant, the aesthetic quality of the proposed new building, the enhanced visual environment offered by the proposed project, the intent of the CB, Central Business Zone and the nature of the variances requested by the Applicant. In summarizing the testimony, Mr. Bechtold offered his expert opinion that the positive criteria consistent with N.J.S. 40:55D-70 c. (1) and c. (2) to grant the variance relief requested by the Applicant were satisfied and particularly as to the c. (1) criteria the Property is undersized and a hardship exists as there are no adjoining parcels of land that could be acquired. Consequently, due to the unique size of the Property, the variances are warranted. He testified that pursuant to the c. (2) criteria, that the benefits of any deviation permitting the variance relief would substantially outweigh any

detriment and that the negative criteria consistent with the standards required in N.J.S. 40:55D-70 were likewise satisfied, indicating that the relief requested by the Applicant, could, in his professional opinions, be granted without any substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

Upon completion of Mr. Bechtold's testimony, he addressed questions from Ocean City Planning Board Members.

4. Comments from the Planner were received consistent with Planner's Report. The Planner's Report was received by the Ocean City Planning Board. Comments from the Engineer were received consistent with the Engineer's Report. The Engineer's Report was received by the Ocean City Planning Board. The Applicant will comply with (i) the Planner's Report and (ii) the Engineer's Report, as agreed by Applicant's counsel, Mr. Batastini.

The site plan will be revised to show all changes thereto consistent with the foregoing and all the representations and agreements placed on the record by the Applicant's counsel and professionals at the public hearing on August 12, 2026.

5. Upon completion of Mr. Bechtold's presentation on behalf of the Applicant, receipt of the Planner's Report and the Engineer's Report, and receipt of comments by the Planner and the Engineer, the meeting was then opened to the public. The following members of the public testified or offered comments in respect of the application:

1. Mike Stankiewicz, 625C Asbury Avenue--Comment about walkway and ADA accessibility
2. Gloria Baker, 625C Asbury Avenue—Comment about walkway inaccessibility

6. Upon conclusion and closing of the public portion of the meeting, there was further discussion and deliberation by the Ocean City Planning Board.

7. In response to the concerns expressed by adjacent neighbors and to alleviate those concerns, the Applicant agreed to reduce the size of the floor area of the first floor commercial unit by redesigning the first floor to have a two (2) feet by six (6) feet indent to accommodate a wheelchair turning radius thereby reducing the floor area of the first floor commercial unit to 1488 square feet. This accommodation triggered the need for a *de minimis* variance for commercial floor area of 1488 square feet.

NOW, THEREFORE, the Ocean City Planning Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The Applicant has made application to the Ocean City Planning Board for (i) **preliminary and final major site plan approval** to construct a new three-story mixed-use building consisting of a commercial use on the first floor and one (1), three (3) bedroom residential unit on the second floor and one (1), three (3) bedroom residential unit on the third floor at the Property which is located in the CB, Commercial Business Zone; (ii) **conditional use approval** for the second and third floor residential units; and, (iii) **variances** to permit (a) minimum lot area of 3,000 square feet; (b) minimum lot width of 30 feet; (c) maximum landing area of 54 square feet; (d) minimum parking space set back of 1 foot; (e) porches/decks on front of building; (f) street scape design standards for the color of sidewalks and curb; and (g) commercial floor area of 1488 square feet; (iv) **design waiver** from § 25-1700.31.5 of the Ocean City Zoning and Land Development Ordinance requiring enclosed refuse areas located within or adjacent to a parking area to

be separated from such parking area or access drive by curbing; and (v) **checklist waivers**.

Under the Municipal Land Use Law, N.J.S. 40:55D-1 *et seq* and particularly, N.J.S. 40:55D-60, a Planning Board, when considering a site plan, as in this case, may grant variances as provided for in N.J.S 40:55D-70 c. The Applicant has the burden of proof to satisfy both the positive and negative criteria necessary to grant the variance relief requested. The Applicant must satisfy certain specific proofs which are enunciated in N.J.S 40:55D-70 c. Specifically, pursuant to N.J.S 40:55D-70 c. (1), the Applicant may be entitled to relief if the Property is limited by exceptional narrowness, shallowness, or shape. The Applicant may also show the exceptional topographic conditions or existing physical features which uniquely affect the Property and may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect the Property or any structure lawfully existing thereon and that the strict application of any regulation contained in the Ocean City Zoning and Land Development Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the Applicant, as developer of the Property and a variance from the strict application would relieve such difficulty or hardship. Furthermore, pursuant to N.J.S 40:55D-70 c. (2), the Applicant may be entitled to relief, if the Applicant can demonstrate that in a particular circumstance relating specifically to the Property, the purposes of the Municipal Land Use Law would be advanced by allowing a deviation from the Ocean City Zoning and Land Development Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, variance relief may be legally granted. The categories specifically

enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or c. variance relief. Finally, the Applicant must also show that the variance relief requested can be granted without any substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Ocean City Zoning and Land Development Ordinance. It is only in those instances when an applicant has satisfied the statutory criteria, that a Planning Board acting pursuant to statutory and case law can grant relief. The burden of proof is upon the Applicant to establish these criteria.

Based upon the application, plans and documents, reports, and testimony, including the expert opinions furnished by Mr. Bechtold, the Ocean City Planning Board finds that the Applicant **has met** the minimum requirements of the Municipal Land Use Law, case law and the Ocean City Zoning and Land Development Ordinance so as to grant the relief requested. Specifically, as it pertains to the c. variance relief sought by the Applicant, the Ocean City Planning Board finds that: 1. The c. (1) and c. (2) criteria to grant the variances to permit (a) minimum lot area of 3,000 square feet; (b) minimum lot width of 30 feet; (c) maximum landing area of 54 square feet; (d) minimum parking space set back of 1 foot; (e) porches/decks on front of building; (f) street scape design standards for the color of sidewalks and curb; and (g) commercial floor area of 1488 square feet **have been satisfied** and, specifically as to the c. (2) criteria, the purposes of the Municipal Land Use Law would be advanced by a deviation from the Ocean City Zoning and Land Development Ordinance and the benefits of the deviation would substantially outweigh any detriment, taking into consideration the purposes of zoning detailed in N.J.S. 40:55D-2 a. (appropriate use of land), b. (secure safety from fire and

flood), and i. (promotion of a desirable visual environment) the permitted uses of the Property, including the conditional use proposed by the Applicant, the aesthetic quality of the proposed new building, the enhanced visual environment offered by the proposed project, the intent of the CB, Commercial Business Zone, and the nature of the variances requested by the Applicant; and, 2. There is no evidence whatsoever before the Ocean City Planning Board that the preliminary and final major site plan, conditional use approval, variances, and design and checklist waivers as requested, if approved and granted, would have a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and the Ocean City Zoning and Land Development Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Ocean City Planning Board on August 12, 2026 that the application made by the Applicant, Dunc Re, LLC requesting land use approvals is determined as follows: (i) **preliminary and final major site plan approval** to construct a new three-story mixed-use building consisting of a commercial use on the first floor and one (1), three (3) bedroom residential unit on the second floor and one (1), three (3) bedroom residential unit on the third floor at the Property which is located in the CB, Commercial Business Zone; (ii) **conditional use approval** for the second and third floor residential units; and, (iii) **variances** to permit (a) minimum lot area of 3,000 square feet; (b) minimum lot width of 30 feet; (c) maximum landing area of 54 square feet; (d) minimum parking space set back of 1 foot; (e) porches/decks on front of building; (f) street scape design standards for the color of sidewalks and curb; and (g) commercial floor area of 1488 square feet; (iv) **design waiver** from § 25-1700.31.5. of the Ocean City Zoning and Land Development

Ordinance requiring enclosed refuse areas located within or adjacent to a parking area to be separated from such parking area or access drive by curbing; and (v) **checklist waivers** are **APPROVED AND GRANTED**.

IT IS FURTHER RESOLVED that the above approvals all as aforesaid are **GRANTED** with and subject to the following terms and conditions:

A. Prior to the issuance of any construction permit, reimburse the City of Ocean City for all professional fees and other expenses incurred by the City of Ocean City as a result of processing Applicant's application in accordance with the Ocean City Zoning and Land Development Ordinance.

B. The Applicant will comply with the Planner's Report and the Engineer's Report.

C. The Applicant shall comply with all the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on August 12, 2026.

D. The Applicant shall obtain the approval of all other municipal, county, state or federal agencies or boards having jurisdiction over the proposed site plan in respect of the Property, including but not limited to approval from the Cape-Atlantic Soil Conservation District, if necessary.

E. The Applicant shall cause all plans and documents to be revised consistent with the above referenced conditions and all of the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on August 12, 2026 which revisions include, but are not limited to, (1) the revisions contained in the Engineer's Report dated June 23,

2026 and Planner's Report dated June 19, 2026; and (2) revision of Drawing No. PB-1, PB-2 and PB-3 to show finish materials, water vault location, tree grate details, remove/replace sidewalk details, identify and show the front yard setbacks of adjoining properties, identify the surface treatment of the proposed wall on the property line, concrete parking area details, and the 2 feet by 6 feet indent.

F. The Applicant shall comply with Article 1600 of the Ocean City Zoning and Land Development Ordinance in respect of Guarantees and Improvement Procedures.

G. The Applicant's requests for the checklist waivers and design waiver identified in the Planner's Report and the Engineer's Report are granted.

H. If applicable, the Applicant (or future owner) shall satisfy the legal requirements of § 25-1900 (Affordable Housing Development Fees) for any development of the Property.

I. The Applicant shall provide utility letters from all utilities.

J. The Applicant agrees to have the Board Engineer prepare an Engineer's cost estimate.

K. All existing structures, improvements, and existing concrete or flat work, now located on the Property are to be demolished and removed.

L. Eating establishments including but not limited to cafes, coffee shops, luncheonettes, pizzerias, restaurants and snack shops, candy, nut, confectionery stores, and bakeries shall not be prohibited or limited at any time or by any means including, but not limited to conditions contained within a master deed, deed restriction, Certificate

of Occupancy, Mercantile License, Certificate of Zoning Compliance or other instrument.

M. The Applicant shall comply with all provisions of the Ocean City Zoning and Land Development Ordinance, including without limitation **§ 25-1500.8.3 and § 25-1500.10.3** thereof, and any and all other municipal, county, state, or federal laws or regulations relating or applicable to the proposed project development at the Property.

This Decision and Resolution was adopted upon a motion, to be considered in the affirmative to approve the Applicant's request for land use approvals as aforesaid, made by Ocean City Planning Board Member Jessel and seconded by Ocean City Planning Board Member Sheppard on August 12, 2026 ["Jessel Motion"]. The vote on the Jessel Motion was seven (7) in favor of and zero (0) against with Ocean City Planning Board Members, Sheppard, Bekier, Barnes, Halliday, Jessel, Adams, and Loeper all voting in the affirmative.

OCEAN CITY PLANNING BOARD

Dated September 2, 2026

JOHN LOEPER,
CHAIRPERSON

CERTIFICATION

I, JAIME M. FELKER, Secretary to the Ocean City Planning Board, do hereby certify that the foregoing Decision and Resolution was duly adopted at the meeting of the Ocean City Planning Board held on August 12, 2026 memorialized herein pursuant to N.J.S. 40:55D-10 g. (2) on September 2, 2026. This resolution has been filed in the office of the Board and is available for inspection upon request.

JAIME M. FELKER,
Secretary, Ocean City Planning Board