

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO. 802-20

IN THE MATTER OF THE APPLICATION OF:

JOSEPH CANNEY FOR VARIANCES RELATING
TO BLOCK 65; LOT 123 ALSO KNOWN
AS 41 RODNEY PLACE, DEMAREST, NEW JERSEY

BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Demarest that the following Procedural History, Findings of Fact, Conclusions of Law and Conclusion/Determination be and are hereby adopted:

PROCEDURAL HISTORY

The within application was commenced by the filing of an application for variances, as follows:

Variance	Permitted	Existing	Sought	Deviation
Improved Lot Coverage	30%	31.99%*	33.75%*	12.5%
Rear Yard Setback	30'	>30'	26.75'***	NA

*Letter of Denial says 33.8%. Amended and reduced during Application process. No approval for Existing Condition exceeding 30%

** Request for variance was withdrawn during the Application Process

FINDINGS OF FACT

Public hearing was held on January 19, 2021 utilizing a Virtual Meeting Platform due to the COVID Emergency.

The following documents were considered by the Zoning Board in review of this matter:

1. Application for Variances;
2. Exhibit A-1, Site Plans, prepared by Michael Hubschman, PE, dated August 6, 2020, revised through November 4, 2020;
3. Exhibit A-2, Landscape Plan, prepared by Mufson Landscape & Design, LLC, dated August 14, 2020, and revised through November 2, 2020;

4. Exhibit A-3, Architectural Plan, captioned "Proposed Pergola & Outdoor Kitchen for Canny Residence", prepared by Stephanie DeCarlo Pentale, AIA, dated August 15, 2020, revised through November 2, 2020;
5. Exhibit A-4, Photographs of Property;
6. Exhibit B-1, Report of Maser Consulting, dated December 14, 2020;

The following witnesses appeared and may have been called upon to offer sworn testimony on behalf of the Applicants:

1. Michael Hubschman, PE ("Hubschman");
2. Nat Mufson, ("Mufson");
3. Stephanie DeCarlo Pentale, AIA ("Pentale");

1. The address of the Property is 41 Rodney Place and is also designated as Block 65; Lot 123 on the Borough's Tax Assessment Map- (hereinafter, "the Property"). The Applicant was represented by Matthew Capizzi, Esq. The subject property is located in the Residence Zone D within the municipality.
2. Mr. Capizzi presented an introduction to the existing Property and to the issues to be presented during the Application. It was indicated the Property was occupied and, fully developed, with a two story, single family dwelling with a three car garage, covered porch and a paver driveway. The Property has existing seepage pits and is located in Flood Hazard Zone X. The Property is an oversized, interior, Lot of 14,400sf.
3. Mr. Capizzi specified as to the proposed development and the relief sought during the Application: The Applicant proposes to construct a paver patio - with a pergola above - and a keystone block wall in the rear yard to flatten and expand the usable rear yard area. This equates to 372sf of additional impervious/improved lot coverage on the Property. During the course of the Application, the Applicant withdrew the request for the pergola and altered the paver patio design so it did not extend into the rear yard setback. This eliminated the rear yard setback variance and the proposed amount of improved lot coverage on Property.
4. Hubschman testified that the information provided by Capizzi during his opening was accurate and that the increase in Lot Coverage of approximately 242 s.f. resulted in a Lot Coverage that is 529s.f. over the permitted Lot Coverage. As a percentage, this resulted in a Lot Coverage of 33.75% rather than the required 30%.

5. Hubschman testified as to the existing conditions, the neighborhood and the proposed addition. He testified that the Property was a fully developed interior lot with single family home and a very small – nearly unusable patio. The expansion of the patio – and the grading of the property by the installation of a retaining wall created a far more usable rear yard and a reasonable patio area. Hubschman testified that there would be a “0” increase in runoff as a result of the improvements and that the proposal was the minimum necessary to create a usable rear yard and patio.
6. Hubschman also testified that there was no negative impact of granting the requested variance and that the existing large home and driveway utilized a significant amount of Lot Coverage permitting no additional coverage as being available for “normal” exterior recreational use.
7. The garage and existing improvements resulted in the need for a Lot Coverage variance in order to do any improvements at all. He also noted the patio is an “at grade” improvement that is minimally intrusive as a structure.
8. Several neighbors sought to comment on the Application and their concerns were placed on the record. These concerns were addressed by the removal of the pergola and the reduction of coverage to create a minimum sized usable patio.

CONCLUSIONS OF LAW; RESOLUTION

- A. The application before the Board is for a patio and related improvements and landscaping in accordance with submitted plans except that total permitted Coverage shall be no greater than 33.67%.
- B. The Applicant seeks these variances pursuant to both NJSA 40:55d-70(c)(1) and (2). The Board found in its review that the variance was justified and should be granted for the reasons set forth herein in testimony offered by the witnesses. The Board found that the variance could be granted without any detrimental impact to the adjoining property owners or the zone plan and that the grant would not compromise the intent and purpose of the zoning ordinance. The Board found that the unique factors concerning the location of the patio limited options to provide a reasonable use of the property and that the configuration of the Property and the nature of the improvements served to

eliminate any negative impact of the variances. The Board further found that there are no adverse impacts of the variance; that there are no detriment to the purposes of zoning; and that light, air and open space are preserved while providing a desirable visual environment and providing sufficient zoning for a variety of uses.

- C. The within approval is specifically conditioned on the following:
1. Applicant shall provide drainage and retention to assure "0" additional runoff and otherwise comply with the recommendations of the Board Engineer.
 2. The pergola and rear yard setback variances are removed.
 3. Updated plans with amended drainage, an additional seepage pit, and other Board conditions shall be provided.
 4. An as-built shall be provided.
 5. Existing gravel in the area of the existing air conditioners should be removed.
 6. All improvements shall be in compliance with the reports of the Borough professionals.

Motion was made by: *Mr. Corrado*
Motion was seconded by: *Mr. Park*

Roll Call to Approve:

Mr. Woods - yes
Mr. Corrado - yes
Mr. Morrison - yes
Mr. Park - yes

Mr. Press - yes
Mr. McLain - yes
Ms. Hayden - yes

Accordingly, a majority of the Board voted to approve the application as presented.

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment at its meeting held on February 16, 2021.

Marti Francis

Marti Francis, Board of Adjustment Secretary