

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

**FILE NO. 798-20
(Amended Resolution: April 20, 2021)**

IN THE MATTER OF THE APPLICATION OF:

**MARK ARZOOMANIAN FOR VARIANCES RELATING
TO BLOCK 156; LOT 7 ALSO KNOWN
AS 15 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%	29.69%	32.88%*	3.33%

*Letter of Denial – 38.05%; Revised to 35% for Original Submission; Revised to 32.88% on 2/4/20

FINDINGS OF FACT

Public hearing was held on January 21, 2020 in the in the Council Chambers of the Demarest Municipal Building, as well as on August 18, 2020 and October 20, 2020 utilizing a virtual meeting platform.

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 November 14, 2019, revised through September 3, 2020;
3. Exhibit A-2, Landscape Plan, prepared by Meumann Associates, dated February 5, 2020, and revised through September 3, 2020;
4. Exhibit A-3, Drainage Report, prepared by Michael Hubschman, PE, dated November 3, 2019, revised through September 3, 2020;
5. Exhibit B-1, Report of Maser Engineering, dated September 14, 2020;

6. Exhibit O-1, Resume of Geoffrey Goli, PE;
7. Exhibit O-2, Report of Geoffrey Goli, PE, Princeton Hydro, dated August 18, 2020;
8. Exhibit O-3, Photographs provided by adjoining residents.
9. Exhibit O-4, Photographs provided by adjoining residents.

The following witnesses appeared and offered sworn testimony on behalf of the Applicants:

1. Michael Hubschman, PE (“Hubschman”);
2. Bradley Meumann, PE (“Meumann”);
3. Geoffrey Gold, PE (“Gold”);
4. Carl O’Brien, PE (“O’Brien”).

The address of the Property is 15 Rodney Place and is also designated as Block 156; Lot 7 on the Borough’s Tax Assessment Map of the Borough (hereinafter, “the Property”). The Applicant was represented by Matt Capizzi, Esq. The subject property is located in the Residence Zone C within the municipality.

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 two seepage pits and is located in Flood Hazard Zone X. The Applicant seeks the construction of a 38’ x 18’ pool (716 s.f. – including coping) which results in Lot Coverage of 32.88% where 30% is permitted. Mr. Capizzi indicated this is the sole variance related to this Application.

Hubschman testified that the information provided by Capizzi was accurate and that the increase in Lot Coverage of 716 s.f. resulted in a Lot Coverage that is 648 s.f. over the permitted Lot Coverage. As a percentage, this resulted in a Lot Coverage of 32.88% rather than the required 30%.

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. Prior plans which included a patio – and increased Lot Coverage – were altered so that the sole improvement is the requested pool and appurtenant drainage improvements such as yard inlets and two additional seepage pits. Hubschman testified that there would be a “0” increase in runoff and that lawn inlets would make the existing situation better. Hubschman

testified that the drainage capacity was approximately 7 times greater than required (965cf v. 227 cf) and that the plans had been reduced from a pool and a patio to simply a pool. He further testified that there would be no additional lighting as a result of the application and that added lighting would be limited to swimming pool lights.

Hubschman also testified that there was an oversize rear yard and that there was no negative impact of granting the requested variance, and that the oversize garage and existing improvements resulted in the need for a Lot Coverage variance in order to do any improvements at all. Hubschman noted that the pool is included in the total for impervious coverage purposes but that the pool is distinct from all other classes of items that constitute Lot Coverage in that the pool does not result in runoff and it actually captures and stores water. He also noted the pool is an "at grade" improvement that is minimally intrusive as a structure.

Numerous neighbors sought to comment on the Applicant and ask questions of Hubschman and to provide testimony. Two adjoining property owners, Patty Rotile and Jeffrey Shelton testified and introduced photographs into evidence. Virtually all neighbors offered testimony that focused on the following factors:

1. The Lot Coverage has been maximized by the construction of the house and its appurtenances thereby maximizing the size of the home and leaving no room for improvements such as patios and pools. The summary of this position is that the houses are "built to the limit" and then any additional construction requires variances.
2. The removal of trees and the regrading of the Property during construction has resulted in an alteration of drainage patterns, flooding, and ponding in the area.
3. Lot Coverage is not just about drainage or water retention. It also constitutes a check on total developed area of the Property that provides for better visual impact, plantings and undisturbed area on the Property.

Meumann testified as to the proposed landscaping plan and the inclusion of landscaping in order to provide screening and drainage improvements in accordance with his plans. It was testified that screening would also be placed around the pool equipment. Meumann testified that the revegetation of the property would provide a benefit to the general welfare. He also testified there would be no negative impact to the application, in part, due to the extensive landscaping and screening. He testified that approximately 112 trees and shrubs would be

placed on the Property and a 6' fence would surround the rear yard.

Gold was retained by various neighbors and testified as an expert in the field of Hydrology. Gold testified that he had studied the area and concluded that natural water flow is from the right front of the Property to the left rear of the Property. He concluded that grading on the Property – likely during construction – resulted in ponding on the property of the neighbor to the rear and disrupted “traditional drainage patterns”. He also testified that a berm placed on the Property during construction “channeled” water toward the property behind the Property (12 John Street) resulting in ponding on that property. He agreed that the sizing and placement of seepage pits and yard inlets were appropriate but that there was some “fine tuning” necessary to assure the best performance. It was his recommendation that the berm be removed to permit surface water to move in a manner that was more consistent with the historic flow patterns.

Board Members had numerous comments about the application. They ranged from concerns about the “global ponding”; the “challenge to the neighborhood” that exceeded the scope of the Application; the need to insure grade changes did not impact the drainage patterns; the need to “tweak” lawn inlets and adjacent grades; and the fact that pools catch water and don’t generally overflow. They are net “collectors” and provide “detention”.

O’Brien testified as a Board Witness and was qualified as a Professional Engineer. He indicated that the Applicant’s efforts far exceed that which is required to handle on site stormwater and that they likely make “global” or area problems better. While there might be some small changes to the system, the overall impact would be better than existing. He confirmed that a pool, by its nature, increases water storage – even when covered. He testified that this Application presented a chance to revise certain drainage issues that occurred during construction and construction in accordance with the application would improve the status quo.

Hubschman testified that the variance was warranted as a (c)(1) variance in that there was hardship based on the proposed location of the pool. There are limited options for development necessary to create a reasonable use of this residential property. Due to the location of the pool and the house, there is limited space available for the construction of a patio

and it was removed from the Plans. He also testified that there are no adverse impacts of the variance and that there was 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.

CONCLUSIONS OF LAW; RESOLUTION

The application before the Board is for a pool and related improvements and landscaping in accordance with submitted plans except that total permitted Coverage shall be no greater than 32.88%.

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 proposed pool 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 were no adverse impacts of the variance, that there was 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.

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. The Applicant shall provide an elevation study that is satisfactory to the Board Engineer prior to construction. Further the Applicant shall work in conjunction with the Board Engineer to assure that the grading on the Property is satisfactory to the Borough.
2. All improvements shall be in compliance with the reports of the Borough professionals.
3. The Applicant and the Board Engineer shall assure that the lawn drains and seepage pits are functioning properly and maximize drainage from the Property. Applicant shall in all events comply with the Board Engineer.

4. The Applicant shall remove any berm from the Property which directs water flow onto adjoining properties and impedes water flow from adjoining properties.
5. Because of the unique nature of a swimming pool to retain water, despite counting toward Lot Coverage, the Lot Coverage is permitted to be 32.88% only if the increased Lot Coverage is the result of a swimming pool. The Lot Coverage variance may not be used for any other construction or purpose and if the Swimming Pool is removed or not constructed Lot Coverage must return to a conforming amount.

Motion was made by: Mr. Woods
Motion was seconded by: Mr. McLain

Roll Call to Approve:

Ayes: Mr. Woods, Mr. McLain, Ms. Hayden

Absent: Mr. Park

No vote: Mr. Davis, Mr. Corrado, Mr. Morrison,

Abstain: Mr. Press

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 April 20, 2021.

M. Francis

Diane Frohlich, Board Secretary

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