

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

**FILE NO.** 812.21

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IN THE MATTER OF THE APPLICATION OF:

SHIRAZ HUSSAIN, FOR VARIANCES RELATING  
TO BLOCK 82.01; LOT 3 ALSO KNOWN AS  
28 WELLWOOD ROAD, DEMAREST, NEW JERSEY

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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:

<b>Variance</b>	<b>Permitted</b>	<b>Existing</b>	<b>Proposed</b>
Lot Area	10,000sf	8799.90sf	No Change
Frontage	100'	80'	No Change
Building Coverage	20%	19.73%	22.39%
FAR	30%	24.18%	34.09%
Improved Coverage	30%	32.47%	32.06%*
Max Building and Driveway	25%	26.99%	29.65%

**\*Less than Existing, but still a variance.**

**FINDINGS OF FACT**

Public hearing was held on August 17, 2021 and September 21, 2021 by the use of an electronic meeting system. The Application was presented by the Applicant through counsel, Mathew Capizzi, Esq.,

The Applicant marked the following documents into evidence for consideration by the Board:

1. Colorized Plans for Presentation;
2. Application for Variances;
3. Architectural Plans, prepared by Paredes-Grube, (Xiomara Paredes, AIA), dated August

- 25, 2021.
4. Site Plan, prepared by Hubschman Engineering, dated May 11, 2021, last revised September 7, 2021.
  5. Colliers Engineering Letter, dated September 17, 2021.

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

1. Xiomara Paredes, AIA ("Paredes");
2. Michael Hubschman, PE ("Hubschman").

The subject property is located in the Residence Zone D within the municipality. The address of the Property is 28 Wellwood Road and it is also designated as Block 82.01; Lot 3 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property").

The Applicant, through counsel, Mathew Capizzi, Esq., presented its case and provided an overview of the area. It was explained that the Property is an existing, rectangular, undersized lot containing an existing frame dwelling. The structure presently has a second story over the main portion of the home, but no second story over the garage. The existing second story is of limited size.

The Applicant adduced the testimony of Hubschman. Hubschman testified as to his Engineering Plans and all matters of engineering concern. He testified to the existing conditions on the Property – including existing variances – and the physical and topographical layout of the Property. He testified as to the Zoning Table (including all requested variances and existing conditions) and all proposed stormwater retention that would be applicable if the matter was approved. He testified that the Applicant could comply with the Board Engineer's report. He confirmed the original – and amended – requested variances. His statement of the variances and deviations is set forth in the Table above and confirmed by Paredes.

Paredes testified as to both the original and revised Architectural Plans. She indicated that the Applicant was seeking several additions to the existing home, including the creation of a Master Suite over the existing garage and a first and second floor addition to the rear of the existing home to create a larger first and second floor. These rear additions did not require a rear yard setback variance and the proposed structure fully conforms to all yard setbacks on the undersized Property. In order to lessen the increase in impervious coverage, the Applicant is seeking to remove some areas of existing Impervious Coverage creating a net decrease Improved Coverage. The height of the structure remains conforming.

Paredes further testified that the proposed side yard setbacks would not be lessened and will remain conforming despite the undersized Property and a Lot Width of only 80'. As a result, distance to both neighbors is maintained. She testified that the home was moderately sized and that it was consistent with the homes in the area.

The Board Engineer's review letter notes that the maximum allowable Improved Lot Coverage

is 20% or 1,760sf. The Applicant seeks 22.39% or 210sf over the actual square footage permitted in the Zone. Paredes noted that this was, once again, without incursion into the yard areas.

Similarly, the Board Engineer's review letter notes that maximum FAR is 30% and would permit a home of 2,460sf. The Applicant seeks 34.09% for a total coverage in square footage of 360sf over the two floors being constructed.

Improved Lot Coverage is permitted at 30% - or 2,460sf - and the Applicant seeks 32.06% or 182sf in excess of permitted lot coverage on the subject undersized Property.

Finally, the Applicant is permitted a maximum Lot Coverage (Building and Driveway) of 25% or 2,200sf. The Applicant seeks 29.65% or 409sf over that which is permitted. Again, without incursion into any required yard setback.

In short, it was testified that the structure was slightly larger than permitted on the undersized lot while still maintaining all required setbacks.

### **CONCLUSIONS OF LAW; RESOLUTION**

The application before the Board is for variances as to:

<b>Variance</b>	<b>Permitted</b>	<b>Existing</b>	<b>Proposed</b>
Lot Area	10,000sf	8799.90sf	No Change
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The Board finds that the requested variances can be approved based on the facts known to the Board and the evidence presented. The Property is an existing undersized lot that has an existing home thereon. The Board notes that the requested variances for Lot Area, Lot Frontage and Improved Coverage are existing or actually less than currently existing.

The Board finds in light of the lot size, the design proposed, and the maintenance of all setbacks the requested variances are reasonable and appropriate.

The Board finds that the Applicant has satisfied the proofs required for a variance pursuant to NJS 40:55D-70(c)(1) or (c)(2). The proofs indicate that the Applicant both has a hardship as to the undersized property, as well as the exceptional conditions resulting from the existing structure. Additionally, the proposed development uniquely satisfies the purposes of zoning and maintains an older home with improvements, rather than a new development.

The Applicant also requires a variance as to Maximum Livable Floor Area requiring proofs pursuant to NJSA 40:55D-70(d). The Applicant has demonstrated that a smaller home would not be a satisfactory use of the property and that the deviation from the permitted FAR is warranted.

The Applicant has submitted evidence which demonstrates any "exceptional narrowness, shallowness or shape" of the Property or any "exceptional condition or physical features uniquely affecting" the structures on the Property.

The Applicant has demonstrated that the within application advances the purposes of the Municipal Land Use Law and that the benefits of any such deviation would substantially outweigh any detriment to the purposes of zoning.

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

Roll Call to Approve: Mr. Woods - yes  
Mr. Davis - no vote  
Mr. Morrison - yes  
Mr. Park - yes  
Mr. Press - yes  
Ms. Hayden - yes  
Mr. McLain - no vote  
Mr. Adelman - abstain  
Mr. Corrado - absent

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 October 19, 2021

  
Marti Francis, Board Secretary