

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

FILE NO. 814-21

IN THE MATTER OF THE APPLICATION OF:

ERIC RUBIN RELATING TO BLOCK 78; LOT 1
ALSO KNOWN AS 30 ANDERSON AVENUE,
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	Required/ Permitted	Sought
Gate and "Return" Height	4' (50% open)	6'6" (approx.)
Mesh Fence Height (Deer Fence)	4'	6'

FINDINGS OF FACT

Public hearing commenced on April 20, 2021 by electronic meeting platform. The Application was presented by the Applicant.

At public hearing, the Applicant sought the construction of the two fences:

1. A black mesh "Deer Fence" of 6' in height across the length of the Lot Width and turning down each side lot line for a distance of approximately 50% of the Lot Depth and connecting to an existing chain link fence. This fence was proposed to be located behind an existing row of hedges that extend across the Lot Width and along the side lot lines.
2. A 20.6' wide electronically operated gate that swings inward and is secured to a pillar on each side of the existing driveway. The distal side of each pillar is attached to a quarter-circular "return". The gate, pillar and return assembly is 33' wide and approximately 6.52' tall. The gate will be connected to the Deer Fence by radial fence

arms that are within the required front yard.

The Applicant was represented through Counsel, Daniel Steinhagen, Esq. The following documents were considered by the Zoning Board in review of this matter:

1. Application for Variance;
2. Exhibit A-1, Survey of Property, prepared by James Deady Surveyor, LLC, dated November 15, 2018;
3. Exhibit A-2, "Gate Plan", prepared by Walpole Outdoor, dated September 25, 2020, last revised May 5, 2021;
4. Exhibit A-3, Zoning Permit Notice, dated June 9, 2021 for 6' Driveway Gate and 6' Chain Link Fence;
5. Exhibit A-4, Comparison of April, 2021 Application and Current Application;
6. Exhibit A-5, Approved Gate;
7. Exhibit A-6, Photo Display of Similar Gates (10 Photographs).

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

1. Applicant, Eric Rubin (hereinafter, "Rubin")

The subject property is located in the Residence Zone A within the municipality and contains a single family home. The address of the Property is 30 Anderson Avenue, also designated as Block 78; Lot 1 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property"). The Property is approximately 62,980 s.f.

The Applicant seeks to add a fence and gate to the Property as outlined above. The Applicant provided testimony as to the proposal and by reference to the Exhibits presented, explained the proposal. The Applicant described the gate assembly, the materials, the actual and apparent height, and the preference for the gate.

The Applicant testified as to the specifics and measurements of the gate. Exhibits demonstrated as to the height of the proposed gate of 78.25" (6.52'). The posts on either side of the gate were approximately the same height as the gate assembly and the "returns" on either side if the gate were 62.5" and 66.5" in height respectively.

The Deer Fence is 6' tall, but is only set back 18' from the curb of Anderson Avenue, where a maximum fence height of 4' is permitted.

The Applicant indicated that there were more conforming, but less attractive, fence and gate options that were out of character with the design of the dwelling on the Property and those in the neighborhood, many of which are taller than what is proposed here.

The Applicant argued that the gate satisfied the requirements for a c(2) variance and that the purposes of the Municipal Land Use Law would be advanced by the granting of the application and that the benefits of deviation from the Ordinance would substantially outweigh any

detriments. Testimony was presented that the benefits of granting the variance outweighed the detriments thereof and that the purposes of the Municipal Land Use Law were advanced by the granting of the requested variance. These advanced purposes were public safety, preservation of light, air and open space, and a desirable visual environment. He further testified that there was no substantial detriment to the public good in the construction of the fence as designed. The Applicant sought the variances based upon the requirements of NJSA 40:55d-70(c)(2) and offered testimony that the benefits of the granting of the variance outweighed any detriment and any detriment was determined to be minimal. An element of the testimony presented was that a much less aesthetically pleasing gate would have been permitted and that the requested variances resulted in a more attractive appearance. Additional testimony was that the deer fence was virtually invisible.

CONCLUSIONS OF LAW; RESOLUTION

The Board finds that the Applicant has satisfied the burden of proof with regard to the variances requested. The Board finds that the proposed fences and gates serve to advance the purposes of zoning. The board finds that the granting of the variances would not be detrimental to the purposes of zoning and the public good.

The Board also finds that its prior denial is not barred by *res judicata*. In the prior application, the Applicant sought approval for a gate that was substantially taller than what the Board has approved here. The Board finds that the plan approved here is substantially different than the one it previously denied.

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

Roll Call to Approve:

Mr. Woods - absent
Mr. Davis - no vote
Mr. Corrado - yes
Mr. Morrison - no vote
Mr. Park - no vote

Mr. Press - yes
Ms. Hauden - yes
Mr. McLain - yes
Mr. Adelman - 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 August 17, 2021

Marti Francis
Marti Francis, Board Secretary