

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO. 23-002

IN THE MATTER OF THE APPLICATION OF:

6 VAN HORN, LLC, FOR VARIANCES RELATING
TO BLOCK 4; LOT 3 ON THE TAX ASSESSMENT
MAP OF THE BOROUGH AND COMMONLY KNOWN AS
6 VAN HORN STREET, 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	Proposed
Lot Frontage	100'	70.20'	70.20'*
Lot Depth	100'	68.7'	68.7'*
Front Yard Setback (Van Horn)	25'	NA	18'
Rear Yard Setback	30'	NA	17.5'
Accessory Uses in Side Yard	Not permitted	NA	Requested

*Existing and Proposed deviations as to Lot Dimensions are Existing and No Variance is Required

A public hearing on the within matter was held on March 21, 2023, utilizing the Zoom Electronic Meetings Platform. The Applicant presented the matter through counsel, Matthew E. Gilson, Esq. of the Weiner Law Group, LLP (“Gilson”). Jameson Van Eck, Esq., of the Law Firm of Wells Jaworski & Liebman, LLC (“Van Eck”) represented John Galdi, the Owner of Block 4; Lot 131, located immediately to the East of the Property, otherwise designated as 16 Lenox Avenue.

The Applicant adduced the testimony of the following witnesses:

- A. Sean McClellan, PE, of Lantelme, Kurens & Associates, PC (hereinafter, “McClellan”);
- B. Uri Rapaport, AIA, of Rapaport & Associates, Inc. (hereinafter, “Rapaport”);
- C. David Spatz, PP, (hereinafter, “Spatz”).

The Applicant provided the following Exhibits:

- A-1** – Engineering Plans, prepared by Lantelme, Kurens & Associates, PC, dated May 20, 2022, revised through March 3, 2023.
- A-2** - Architectural Plans, prepared by Rapaport & Associates, dated May 20, 2022, revised through March 13, 2023.
- A-3** – Page 1b of the Architectural Plans, prepared by Rapaport & Associates demonstrating the lawful Building Envelope on the Property and Zoning Constraints.

Adjoining Property Owners, John & Maureen Galdi (“Galdi”), residing at 16 Lenox Avenue (Block 4; Lot 131), retained counsel, Jameson Van Eck (“Van Eck”) of Wells, Jaworski & Liebman, LLP.

The Board’s professionals adduced the following Exhibits into Evidence:

- B-1** – Review Letter by Colliers Engineering and Design, dated September 30, 2022, as amended.

TESTIMONY BY VARIOUS WITNESSES

The Testimony set forth herein is limited to the latest revisions of **A-1** and **A-2** and does not reference prior versions of the Application that included different designs and variances.

McClellan testified as to the following factual matters regarding the Property. The Property is a substantially rectangular, corner lot consisting of 13,319 s.f. The proposed dwelling front faces Van Horn Street to the west and the side of the

dwelling faces Lenox Ave to the south. Driveway access is proposed on Lenox Avenue, so the garage accesses the side of the proposed home. The Property is located in residence Zone-D according to the Borough Zoning Map. The lot is currently occupied with a single-family dwelling. The Applicant proposes to demolish all existing improvements.

Inasmuch as the Property is a corner lot, the Board is obligated to designate the “Front” of the home. (See, Borough Code, 175-27) The Board determined, based on all factors, that the Front Yard of the home was on Van Horn Street. As a result of this designation, the yard area to the east of the dwelling is a “rear yard”, and the yards to the north and south of the proposed dwelling are “side yards”.

McClellan testified as to all other matters of engineering concern, including drainage, retaining walls, tree removal and all existing and proposed variances. Significantly, it was testified that the Property had a conforming Lot Area, but the Lot Width was between 67’ and 70’ wide. Inasmuch as the required Front Yard Setback is 25’ and the required Rear Yard Setback is 30’, a permitted building envelope on the Property varies between 14.8’ and 12.2’. This testimony was confirmed by A-3 and the testimony of Rapaport. He testified that the Application proposed a Front Yard Setback of 18’ and the proposed Rear Yard Setback was 17’5”.

Rapaport testified as to all matters of architectural concern with specific reference to A-2 and A-3. He testified that the cellar contains an extensive “unfinished” living area that, pursuant to the Ordinance, is not included in the calculated FAR. The first floor contains 1,771 s.f. of “livable” area with 755 s.f. of garage area (3 car) for a total of 2,479 s.f. of “footprint” (excluding a “covered deck”). The east to west “depth” of the home is dictated by the proposed 3-car garage mandating the 33’3” measurement. Rapaport testified that the 3-car garage was a desirable amenity. Rapaport testified that the second floor contains 3 bedrooms, a master suite, 4 bathrooms and laundry and ancillary areas. He testified that the second floor contains 1,712 s.f. of livable area resulting in a total livable area 3,483 s.f. and 4,191 of total area (including the garage). He testified that if the cellar is included, the living area of the home is in excess of 5,000 s.f.

Rapaport testified that the existing home on the Property – which was to be demolished – had a footprint of 1,393 s.f. and that the proposed home conformed to Lot Coverage, Building Coverage and Building/Drive Coverage.

Rapaport testified that the first floor maintained a wall of approximately 69’ in length facing the neighbor to the east measured at the first floor and 47’5” facing the neighbor to the east on the second floor. The structure was setback 17’5” from the rear property line (where 30’ is required) but that the second floor was

setback an additional 13'9" thereby creating a conforming setback on the second floor.

Spatz testified as to planning matters. He noted that Section 40:55D-70(c)(1) of the Municipal Land Use Law allows variances to be granted where:

- (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property.

He noted that in prior Resolutions regarding the Property that the Board had found that the Property did suffer from an exceptional narrowness that resulted in a "Building Envelope" that was too small to construct a home. Spatz testified that while the subject site is 3,319 sq. ft. larger than the minimum lot size required in the D Zone, it is 30 ft. narrower than the required lot width and nearly 90 ft. longer than the required depth.

Spatz testified that the driveway for the dwelling on the adjacent Lot 131, which fronts on Lenox Avenue, provides an increased setback from the subject site and the dwelling is at a lower elevation. The porch for the proposed dwelling has been relocated to the northern portion of the site, which provides a great setback than currently exists. He also noted that a conforming front yard setback is provided on Lenox Avenue and the proposed dwelling meets the height, Floor Area Ratio and coverage limitations of the D Zone.

Spatz testified that the grant of the requested variance will not be substantially detrimental to the public good nor will it substantially impair the intent and purpose of the zoning ordinance for the following reasons:

- A. The existing dwelling is a permitted use in the D Zone, is in character with the surrounding residential land uses and is compatible with the other dwellings in the neighborhood. There is no impairment of the intent and purpose of the zoning ordinance and master plan.
- B. The proposed dwelling is further from the adjacent dwelling on the east than the existing dwelling, and therefore, does not have a negative impact on light, air or open space.
- C. The non-conforming lot frontage and lot depth are pre-existing conditions. There is no ability to acquire additional property to bring the lot into conformity.

The Applicant and Galdis agreed to the following on the record to resolve the Galdis' concerns as an interested party:

1. The rear building wall of the first floor facing towards the property to the east would be no greater than 68'11", as shown on page 3 of the revised architectural plans marked as Exhibit A-2.

2. The layout and dimensions of the second floor of the building would conform to the layout and dimensions as shown on page 4 of the revised architectural plans marked as Exhibit A-2, including but not limited to, the requirement that the dimension of the rear building wall of the second floor facing towards the property to the east be no greater than 47'5.5", and that the master suite be set back at least 13'9" from the rear building wall line of the first floor.

3. The rear yard setback adjacent to the property to the east would be at least 17'6", as shown on the revised site plan marked as Exhibit A-1.

4. The height of the building shall be no greater than as shown on page 5 of the revised architectural plans marked as Exhibit A-2, and shall at all times comply with the height requirements in the zone.

5. There shall be no further changes to the site layout as shown on the revised site plan marked as Exhibit A-1, including but not limited to, the requirement that the a/c condensers and generator be located on the north side of the building and not in the rear yard behind the building.

6. Subject to the Approval of the Shade Tree Commission, if applicable, the Applicant shall remove the 30" oak tree and 36" oak tree located along the easterly property line.

7. The Applicant shall plant and maintain evergreen shrubs along the rear foundation wall facing the property to the east, and shall plant and maintain green giants along the property line to the east, subject to review and approval by the Borough or Board Engineer, as appropriate, and shall submit revised plans depicting same before final zoning approval is granted.

CONCLUSIONS OF LAW

The Application before the Board is for a Front Yard Setback (Van Horn) of 18' where 25' is required, as well as a variance for Rear Yard Setback (East) of 17'5" where 30' is required. Accessory uses are also proposed in the northern, Side Yard. They are not located in the setback – and this is not a setback variance – but they are located in a side yard which is not permitted.

The Applicant has satisfied the requirements of the affirmative criteria set forth in NJSA 40:55D-70(c)(1). The Applicant has proffered no evidence in support of a variance pursuant to (c)(2). A variance pursuant to NJSA 40:55D-70(c)(1) requires proof as follows:

c. (1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship;

The Board finds that the Applicant has satisfied the affirmative proofs for a (c)(1) variance. The Board finds the Property is of conforming Lot Area but that the Lot Width is deficient and permits the construction of a home that is only 14.8' to 12' deep. The Board finds that the Property is of an exceptional narrowness, shallowness and shape that makes construction without a variance functionally impossible. The Board finds the Property is unique and exceptional.

The requested variances also require the negative proofs pursuant to NJSA 40:55D-70(c)(1) or (c)(2). More specifically, the statute requires proof as follows:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

The Applicant has submitted proofs as to the negative criteria. Planning testimony made clear that the variances could be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

Based on the foregoing, and the testimony presented, a motion was made granting

the requested variance on the merits.

Upon the motion and a second, a majority of the Board voted to approve the Application as presented with the following conditions:

1. Air conditioning units and the generator pad located to the north of the proposed structure, shall be generously screened at the discretion of the Board Engineer.
2. The Eastern Property line shall be generously screened between the intersection of the eastern property line with Lenox Avenue R.O.W. northward to the intersection of the rear property line of Lot 131 with the Property.
3. The covered deck and deck at the north end of the house shall be retained as “open” and shall not be enclosed or “walled-in”.
4. To the extent not already addressed by the aforesaid conditions, the Applicant shall comply with the seven terms agreed to with the neighboring property owner on the record and set forth above in the Testimony section.

Motion was made by: Mr. Corrado

Motion was seconded by: Mr. McLain

Roll Call to Approve:

YES: Woods, Corrado, McLain, Adelman, Hayden

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 18, 2023.

Teresa Ferrentino

Teresa Ferrentino, Board Secretary