

**ZONING BOARD OF ADJUSTMENT  
BOROUGH OF DEMAREST**

**FILE NO.**

ZB23-003

IN THE MATTER OF THE APPLICATION OF:

SETH & LAUREN NULMAN, FOR VARIANCES  
RELATING TO BLOCK 87.02; LOT 2 ALSO  
KNOWN AS 9 DONNYBROOK DRIVE, 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:

<b>Variance</b>	<b>Permitted</b>	<b>Existing</b>	<b>Proposed</b>
Building Coverage	15%	14.98%	16.51%
Maximum Improved Coverage	30%	27.84%	31.02%*

**\*Maximum Improved Coverage was not originally sought by the Applicants and was determined to be required upon review of the Engineer’s Review Letter indicating that the Maximum Improved Coverage calculation should include approximately 600sf of compacted, synthetic “playground mulch”.**

**FINDINGS OF FACT**

A Public Hearing was held on March 21, 2023, utilizing an electronic meeting platform. The Application was filed by Craig R. Weis, Esq. (“Weis”), and was presented by the Applicants, through

counsel, Dean Stamos, Esq. (“Stamos”).

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

1. Site Plan, prepared by Hubschman Engineering, PA, dated January 3, 2022, revised through February 1, 2023;

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

1. Michael Hubschman, PE (“Hubschman”);
2. Dr. Seth Nulman (“Nulman” or the “Applicant”)

The subject property is in the R-B Residence Zone of the municipality. The address of the property is 9 Donnybrook Drive, and it is also designated as Block 87.02; Lot 2 on the Borough’s Tax Assessment Map (hereinafter, “the Property”). Hubschman testified that the Property was 24,438sf in area and slightly larger than required in the Zone. He testified that the Property was fully developed with a single-family residence and that variances were required for Building Coverage and Maximum Improved Lot Coverage.

Stamos provided an overview of the area and the purpose of the Application. Hubschman offered testimony as to the existing conditions on the Property, as well as the Applicants’ proposal to construct a 20’ x 20’ covered porch and additional patio area.

Hubschman testified that the Applicants sought a variance for Building Coverage of 16.51% - where 14.98% was existing and 15% was permitted. He testified that the Proposed Building Coverage was 369sf in excess of the permitted Building Coverage and that the entirety of this excess was the proposed open, covered, porch. Additionally, Hubschman testified as to the Maximum Permitted Lot Coverage of 31.02%, where 30% is permitted, and that the overage was the result of approximately 600sf of “playground mulch” placed by the Applicants. Nulman confirmed this placement and Hubschman confirmed that Maximum Improved Coverage was approximately 373sf in excess of permitted.

Hubschman testified that the proposed 20’x 20’ covered porch consisted of a roof that was supported by columns. He testified that walls were not included in the design and that the “open” nature of the structure was less intrusive than a “closed” porch. He testified that, in his opinion, there was no detriment to the granting of the requested variances and that two “Cultec Chambers” were proposed to accommodate any increase in runoff. Hubschman noted that a large, existing, patio would be partially removed and that the calculations were “net” increases. In short, it was testified that the post construction patio and covered porch (combined with the “playground mulch”) would require the variances herein.

During the course of the Hearing an adjoining Property Owner, Noel Pugh provided extensive testimony about drainage both on, and off, the Applicants’ Property. Mr. Pugh presented photographs of flooding on his property and the Applicants’ Property as well as photographs of the installation of

drainage lines on the Applicants' Property which "tie in" to the municipal drainage system. The photographs were collectively marked as **O-1**. Nulman testified that in 2020, due to water ponding on his Property, he had hired a local landscaping company to install a French Drain around the play set and significant portions of the rear yard, in order to lessen standing water on his Property. This French Drain bypassed the existing drywells on the Property and was directed (directly or via the drywell overflow) into the municipal drainage inlet, located in a municipal drainage easement, and into the Borough's 15" storm drainage line located to the south-east of the Property. Mr. Pugh testified, and it is demonstrated on **O-1**, that the municipal drainage inlet cannot address the volume of water placed into it from all sources and overflows.

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

The Application before the Board is for variances as to Improved Coverage of 31.02% for the patio, covered porch and the playground area. A variance for Building Coverage of 16.51% was required for the covered porch.

The Property is fully developed. The requested bulk variances require proofs pursuant to NJSA 40:55D-70 (c)(2). The Applicants have demonstrated the positive criteria for a (c)(2) variance. The Applicants have demonstrated that the increase in the patio area and covered porch provides for adequate outdoor recreation.

The Applicants have 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. The Applicants have also satisfied the "negative criteria" and has demonstrated that the requested increase is not detrimental to the zoning ordinance, the zone plan or the purposes of zoning.

The Board has carefully considered the testimony and Exhibits presented by Mr. Pugh. These issues were presented in the presence of the Board Engineer. It is the Board's position that these issues of area drainage and the perceived inadequacy of the Borough's stormwater system should be addressed on a larger scale and as part of a comprehensive approach to area drainage. The issues do not impact the Board's determination with regard to the pending Application.

The Board finds that the following specific conditions apply to the within Application.

1. The permitted, excess, Building Coverage and Maximum Improved Coverage are granted solely for the purposes, and in the specific locations, proposed on the Site Plan. The permitted deviation cannot be utilized elsewhere on the Property for any purpose.
2. Drywells shall be installed at the discretion of the Board Engineer. All issues as regards to these drywells (quantity, capacity, type, brand name, if necessary) shall be in the discretion of the Board Engineer.

Motion was made by: Mr. Tim Woods

Motion was seconded by: Mr. Robert Corrado

Roll Call to Approve:

Mr. Tim Woods  
Mr. Robert Corrado  
Mr. David McLain  
Mr. Todd Adelman  
Ms. Hayden, Chair

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 18, 2023.

*Teresa Ferrentino*

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Teresa Ferrentino, Zoning Board Secretary