

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO. 23-007

IN THE MATTER OF THE APPLICATION OF:

JOSHUA JAGID FOR VARIANCES RELATING
TO BLOCK 68; LOT 119 ALSO KNOWN AS
38 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, Testimony & Evidence Presented, 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
Maximum Residential and Parking Coverage*	25%	32.36%%	25.61%
Total Improved Lot Coverage**	30%	35.16%	33.25%

*This is made up of the principal residence, vehicle access, access walkways, and parking areas

** This is made up of all Impervious Coverage

FINDINGS OF FACT

Public Hearing was held on December 19, 2023, in the Council Chambers of the Demarest Borough Hall.

The following documents were considered by the Zoning Board in review of this matter:

1. Exhibit A-1 Site Plan Set consisting of 6 Pages (C-01 through C-02), prepared and signed by Michael E. Dipple, P.E., of L2A Land Design, LLC, dated October 23, 2023, with the exception of C-02 (Site Plan), revised through November 7, 2023;
2. Exhibit A-2, Colorized Site Plan, prepared and signed by Michael E. Dipple, P.E., of L2A Land Design, LLC, dated October 23, 2023, revised through November 7, 2023;

The following witnesses appeared and were called upon to offer sworn testimony on behalf of the Applicant:

1. Michael Dipple, PE (“Dipple”) of L2A Engineering;
2. Nicholas Graviano, PP (“Graviano”) of Graviano & Gillies, PP.

TESTIMONY AND EVIDENCE PRESENTED

1. The address of the Property is 38 Rodney Place and is also designated as Block 68; Lot 119 on the Borough’s Tax Assessment Map (hereinafter, “the Property”). The Applicant was represented by Daniel L. Steinhagen, Esq., of Beattie Padovano, LLC (hereinafter “Steinhagen”). The Property is located in the Residence Zone D within the municipality.
2. Steinhagen presented an introduction to the existing property conditions and to the issues to be presented during the Application. It was indicated that the Property was occupied and fully developed with a two-story, single-family dwelling with a three-car garage, covered porch and driveway.
3. Steinhagen indicated that the Applicant had previously obtained an approval for all existing property construction by Resolution 817-21 which was submitted with the Application. He noted that the prior Resolution and approval was obtained subsequent to construction of the home and was, ultimately, to assure that all existing improvements (and unapproved deviations) were rendered lawful by Board action. He noted that his client was the first purchaser of the Property from the Developer and that the original application had included the request for the construction of a pool and patio on the Property that would have resulted in an increase in existing Total Improved Lot Coverage and Maximum Residential and

Parking Coverage but that these requests were withdrawn in favor of an application that maintained the development of the Property “as is” and seeking approval only for that which was actually in place and constructed by the Developer.

4. Finally, Steinhagen noted that Resolution 817-21 provided a condition that the Coverage variances granted at that time for existing conditions could not be “re-allocated” to provide the basis for construction that was different than that which is proposed.
5. Dipple testified as to the Exhibits presented and, specifically, the Site Plan (A-2). He described the Property and all existing and proposed improvements thereon, including a proposed swimming pool, patio, grill and pool equipment pad (the “Improvements”). He testified that the Applicant sought the reduction of Total Improved Lot Coverage from 35.16% by 303 s.f. to 33.25%. This is largely accomplished by the removal of the existing, lengthy, angled driveway providing ingress and egress from Rodney Place and replacing it with a far shorter, straight, and direct driveway providing access to Demarest Avenue.
6. Dipple testified that Demarest Avenue was far less busy - especially during school hours – and that the short, straight driveway to Demarest Avenue provided better sight distances for motorists traveling on Demarest Avenue and better visibility for persons exiting the driveway. He testified that this was approximately 50% reduction in the driveway area and the driveway was reduced from 1,597 s.f. to 781 s.f. This reduction creates a circumstance where the Improvements can be constructed and still result in a reduction of the existing Total Improved Lot Coverage variance.
7. During the course of testimony, Dipple also testified as to the Maximum Residential and Parking Coverage. While the Applicant provided argument – and sought an interpretation that a variance was not required as to Maximum Residential and Parking Coverage – focused largely on whether the front “stepping-stone” walk was included in this calculation, the Board rejected their position and concluded such a variance was required. The Board noted that it has uniformly interpreted the Ordinance in this manner since it’s adoption. As a result, the Applicant also required a variance for the reduction of Maximum Residential and Parking

Coverage from 32.36% to 25.61% (where 25% is permitted). Dipple testified that this reduction was also, largely, the result of the removal of the driveway area.

8. Dipple provided further testimony that, despite the reduction in Impervious Lot Coverage, the Applicant proposed to install an additional 1,000-gallon drywell capacity.
9. Graviano was qualified and testified as a licensed Professional Planner. He testified as to the affirmative and negative statutory criteria as it relates to a variance pursuant to N.J.S.A. 40:55D-70(c)(2). He noted that the Applicant was seeking the reduction of both Total Improved Lot Coverage and Maximum Residential and Parking Coverage. He testified that, in both cases, these reductions were significant and that the reduction in the quantum of the variances advanced the purposes of the Zoning Ordinance and Master Plan. Specifically, he testified that closer adherence to the Zoning Ordinance and a safer and better location for the driveway advanced the purposes of the Zoning Ordinance and the Master Plan. Moreover, he indicated that Reduction Impervious Coverage – while enhancing stormwater management – was also a significant benefit and helped secure the Property from flooding or causing flooding to its neighbors.
10. Graviano testified that, while advancing the purposes of zoning, the Application did so without substantial negative impact and that the benefits of the requested deviations substantially outweighed any detrimental impact. He also noted that the improvements served to protect and enhance residential uses and were in compliance with the Master Plan. He testified that the Improvements were permitted Accessory Uses, common in residential areas, and could be accomplished while still reducing existing deviations from the Zoning Ordinance.
11. No members of the public sought to comment on the Application.

CONCLUSIONS OF LAW; RESOLUTION

1. The Application before the Board seeks the reduction of two existing variances: Total Improved Lot Coverage and Maximum Residential and Parking Coverage while bettering the

site's stormwater management and providing safer ingress and egress.

2. The Applicant seeks these variances pursuant to N.J.S.A. 40:55d-70(c)(2). The Board found in its review that the variances were justified and should be granted for the reasons set forth herein in testimony offered by the witnesses. The Board found that the variances 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 Property, and the desire of the Applicant to reduce the quantum of existing variances, and install upgraded stormwater management, while still constructing permitted Accessory Uses and reducing existing variances, assures that the benefits of the deviations outweigh any detriments.
3. The Board also finds that 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 and that there was no detriment to the purposes of zoning and that light, air and open space was preserved while providing a desirable visual environment, safer access, and providing for a variety of uses. The Board can find no reason to not permit the reduction of existing variances and the creation of a safer ingress and egress.
4. The within approval is specifically conditioned on the following:
 - a. Any improvements which are located in the Borough Right of Way of Demarest Avenue shall be removed or the Applicant shall obtain the consent of the Borough for same. The Board cannot, and does not, "approve" this existing condition.
 - b. The Applicant shall comply with all comments of the Board Professionals.
 - c. Subsequent to construction, the Applicant shall provide "As-Built" plans of the improvements that verify the deviations permitted herein and demonstrate no additional variances are required and that the variances granted have not been exceeded.
 - d. The pool equipment shall be relocated to a conforming location that – upon consultation with the Board Engineer - is reasonable and least intrusive to the adjoining property owners.

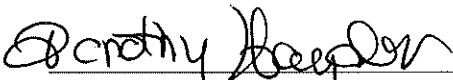
Motion was made by: Mr. McLain
 Motion was seconded by: Mr. Corrado

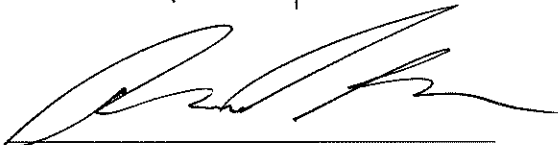
Roll Call to Approve:

	YES	NO	ABSTAIN	ABSENT	NOT ELLIGABLE
Vice Chair Woods	✓				
Mr. Davis	✓			✗	
Mr. Corrado	✓				
Mr. McLain	✓				
Mr. Park				✓	
Mr. Adelman					✓
Chair Hayden	✓				
Mr. Hirsch A#1	✓				
Ms. Pavlova A#2				✓	

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


 Dorothy Hayden, Board of Adjustment Chair


 Michael Greco, Board Secretary