

**ZONING BOARD OF ADJUSTMENT – BOROUGH OF DEMAREST**

**MINUTES**

**REGULAR MEETING – May 17, 2022**

The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time, and place of this regular meeting in the annual schedule and notice of regular meetings of this Board. Such annual schedule and notice of regular meetings are posted at Borough Hall, were mailed to the Star Ledger and The Record, and have been filed with the Borough Clerk of Demarest on December 28, 2021.

Join Zoom Meeting

<https://us02web.zoom.us/j/7318183076?pwd=cGY3R3JOQnlmSGE1V0pQMkp1NG9RZz09>

Meeting ID: 731 818 3076

Passcode: 271918

1. Roll Call
2. Flag Salute
3. Matters to Address
4. Administrative Matters

<b>BOARD ROLL CALL:</b>	<b>PRESENT</b>	<b>ABSENT</b>
Mr. Woods, Vice-Chair	X	
Mr. Davis		X
Mr. Corrado	X	
Mr. Morrison	X	
Mr. Park	X	
Mr. Press	X	
Ms. Hayden, Chair	X	
Alternate #1 Mr. McLain		X
Alternate # 2 Mr. Adelman		X
<b>Present:</b>		
Secretary, Jessica Wang	X	
Mark Madaio, Board Attorney	X	
Nick , Board Engineer	X	

Chair Ms. Hayden announced that 5 Laurel Road has withdrawn their application.  
40 Lincoln Street has also withdrawn their application.

**Variance Application #822.22**

5 Laurel Road  
Block 1.01, Lot 16  
Applicant: Mr. Steve Kamin  
Zone D

Relief sought: N.J.S.A. §40:55D-70(C) & Chapter 175: §175-27 for Improved lot coverage and §175-19(B) accessory structure in a side yard

**Hearing History:**

April 19, 2022, request to carry to May meeting to revise plans.  
May 11, 2022, application withdrawn.

**Variance Application 806.20.**

40 Lincoln Street  
Block 65 Lot 40  
Mr. and Mrs. Lavin  
Zone D

Relief sought: N.J.S.A. §40:55D-70(C) and Chapter 175 §175-27 for Improved lot coverage

**Hearing History:**

March 16 rescheduled due to improper notice; heard at May meeting, requested carry to August, then October, December, January, and May 2022 meetings.  
April 19, 2022, application withdrawn

**Variance Application #822.XX**

**Applicant Name:** Eitan Magid  
 68 Serpentine Road  
 Block # 21, Lot #765  
 Zone D

**Relief sought:** N.J.S.A. §40:55D-70(C) and Chapter 175 §175-27 for Improved lot coverage & §175-24 Fences

<b>GENERAL ZONING Zone D</b>	<b>REQUIRED/ALLOWED</b>	<b>EXISTING</b>	<b>PROPOSED</b>
Lot Area	10,000 sq. ft.	11,813 sq. ft.	11,813 sq. ft.
Frontage	100 ft.	120 ft.	120 ft.
Lot Depth	100 ft.	97.12 ft.	97.12 ft (ENC)
Min. Front Yard (Serpentine)	25 ft.	12.67 ft.	12.67 ft. (ENC)
Min Side Yard ( Street)	25 ft.	19 ft.	19 ft. (ENC)
Min Side Yard (Lot)	10 ft.	18.13 ft.	18.13 ft.
Min. Rear Yard	30 ft.	69.75 ft.	62.5 ft.
Bldg. Height	30 ft.	24 ft.	29.5 ft.
Max. Livable Floor Area (FAR)	30%	28.20%	28.20%
Building Coverage	20%	19.91%	19.91%
Maximum % Improved coverage: principal residence, vehicle access, parking	25% (2953 sq. ft.)	23.72% (2802 sq. ft.)	23.72% (2802 sq. ft.)
Total Improved Lot Coverage	30% (3544 sq. ft.)	37.48% (4428 sq. ft.)	37.48%* (4428 sq. ft.)

<b>ACCESSORY STRUCTURE (POOL)</b>	<b>REQUIRED/ALLOWED</b>	<b>EXISTING</b>	<b>PROPOSED</b>
Min. Accessory side setback	10 ft.	TBC	no change
Min. Accessory rear setback	10 ft.	TBC	no change

<b>ACCESSORY STRUCTURE (FENCE)</b>	<b>REQUIRED/ALLOWED</b>	<b>EXISTING</b>	<b>PROPOSED</b>
Fence Openness in Front Yard*	50%	100% closed	no change
Fence Height in Front Yard*	4ft maximum	~ 5+ ft.	no change
Pool Fence	5 ft.	TBD	no change

**\*VARIANCE NEEDED**

Board attorney Mr. Madaio swore in applicant Mr. Magid of 68 Serpentine Road. Mr. Madaio requested that Mr. Magid to speak louder as it's being taped so it can be preserved long term if it's ever required. Mr. Madaio said it appears that Mr. Magid is presenting pro-se, representing it himself and has no witnesses that he will rely on. Mr. Magid replied, "Correct."

Ms. Hayden explained to Mr. Magid the overview of what the process is, saying it is more than just completing the application and appearing before the board. Testimonies need to be provided for the application and explanation of how things got to be where they are today in terms of the lot coverage. Testimonies need to be based on certain statutory standards that are prescribed by New Jersey Municipal Land Use Law, those standards relate to the property and not to the personal situation. Ms. Hayden asked Mr. Magid if he was familiar with zoning regulations, and he replied, "Yes." Ms. Hayden then asked if Mr. Magid understood that variances can only be granted if he can prove the statutory criteria. Mr. Magid agreed in understanding.

Ms. Hayden asked if he was familiar with the “positive and negative criteria.”

Mr. Magid replied, “No.” Ms. Hayden requested for Mr. Madaio to give a quick overview of “positive and negative criteria.” Mr. Madaio said he wished to be candid and gently explained to Mr. Magid that there was no way to present an application without witnesses. Mr. Madaio said he thinks it’s Mr. Magid’s intention to explain how he got to the 37.48% lot coverage over the years and then have the Board say “that’s fine” but said that Mr. Magid really needs to prove his application and the Board will have questions of how it got to this point of being 7.48% over the allowed lot coverage, which is a 25% deviation. Mr. Madaio said this is the biggest covered lot variance that this board has ever seen. Mr. Madaio suggested that Mr. Magid might like to review statute NJSA 40:55D-70C. Mr. Madaio also said Mr. Magid probably would want to produce an engineering drawing. There are architectural plans that cannot be used as evidence as there is no architect to testify, also that it is most likely deficient as it was based on a 2-year-old survey by Koestner rather than what is currently onsite. Mr. Madaio said there are many engineers that testify quite often before the Board, he recommended an engineering plan that outlines the numbers and also a dimension plan, because currently the plan is not dimensioned, such as it does not show how far the house is from the side yard, or from the front yard an rear yard, setbacks are not shown, etc. Mr. Madaio also mentioned that there was an error noted that the concrete was not included in the first application by mistake and then was interrupted by Mr. Magid saying, “Not correct. Everything you are saying is not correct.” Mr. Madaio replied in an incredulous tone, “Everything?” And Mr. Magid confirmed by saying, “Everything. From the moment you started, you went off.”

Ms. Hayden and Mr. Madaio asked that Mr. Magid present his application. Mr. Magid said, “Let me present and then get lawyers involved and we will get a little bit crazy.”

Mr. Magid said he purchased the house in 2018. Mr. Magid explained that back then, to get the house built, it was approved by Kate who now works at a market, and Bob who was the zoning official approved the plans. Ms. Hayden explained that Kate was not in a position to approve anything, and that there was a letter of denial by Mr. Robert Rusch for the original application. Mr. Magid interrupted Ms. Hayden asking if he can finish his presentation and said, “Listen we are going to end up in court anyway, so let me tell my side, it’s recorded, so a judge reviews it, and at least my side is here, ok?”

Mr. Magid continued with his presentation saying then “when they moved here, they applied to the zoning, my architect put it at 29.9% and at that point we were allowed to start building. We went through all the inspections...and the only reason we were granted a TCO (Temporary Certificate of Occupancy) and not a CCO (Certificate of Continued Occupancy) is because the driveway could not be finished because of negligence by the town. It took the town 3.5 years to finish a road and make sure my driveway is not a cesspool and there is no ice every winter. My wife fell twice, and I have the hospital bills and I am waiting to go to court, my lawyers are begging me. It took 3.5 years to fix the negligent”.

Mr. Madaio said that it was difficult to hear Mr. Magid, so Mr. Magid took off his headset and Mr. Madaio said it was much better to hear him.

Mr. Magid continued saying “after 3.5 years of town’s negligent to fix the water issue which I have proof. I have pictures and videos of every winter; I know it’s not personal and you don’t care about my family.”

Ms. Hayden asked Mr. Magid to stop for one minute so she can comment, “You may have an issue with your driveway and water, that is not what we are here to discuss this evening.”

Mr. Magid explained this was the reason why he was over the covered lot % because the town could not fix it and he will stop paying taxes starting tomorrow. He said he was allowed to be angry at the negligence when he pays over \$100,000 in taxes and to be ignored for 3.5 years. Mr. Magid also said News 12 knows this story and the corruption of this town.

Ms. Hayden said, "You are not discussing the issue that we are here to discuss."

Mr. Magid shouted that the plans were approved. Ms. Hayden said but that is not what was built.

As Mr. Madaio is reminding not to be speak over each other, Mr. Magid threateningly yelled, "I'll come to your house. (applicant shouts address of the Chair), and I'll judge your house, your kids, and your family. How's that?! After 4 years!" (video time point 22:40).

Ms. Hayden asked Mr. Magid to calm down. The video switches to the applicant's wife and Mr. Magid is heard angrily yelling "I'm going to pay a visit to these people. I'm going to come!" (video time point 22:56).

Applicant's wife then stated, "I'm guessing you told my husband that you are declining the application?" Many Board members shook their heads and Mr. Madaio said, "No, not at all." Ms. Hayden explained to the wife, "No, we have not told him anything. He's not listening to what we are here for."

Mr. Magid is heard in the background ragefully screaming "You come after my family, I come after your family." (video time point 23:14)

Mr. Madaio explained to the wife that the Board was trying to tell him how to present his application better and what paperwork would make it better. Ms. Hayden explained to the wife, "We were actually trying to be helpful."

Mr. Madaio said, "He mentioned about going after families." Ms. Hayden said, "He mentioned my address."

Mr. Madaio said the Board will stay quiet as the applicant (the husband or wife) finishes presenting the application with no witnesses. Mr. Madaio is interrupted by more yelling and ending his sentence with "Idiots!...if I don't get this f\*cking approved today..." with his face briefly shown holding a young child (video timepoint 24:10) The wife makes a request to her husband, "Can you let me finish this please?"

The wife asks, "for permission to speak for just a moment" and Mr. Madaio says "of course, it's your application, ma'am."

The wife explained she was taking care of 5 children downstairs, so her husband and Board is not disturbed. The wife explained that the household has very small children and the work was done for the safety for the children. She said she cannot condone where her husband has gone. (video time point 25:00).

Mr. Madaio asked her to kindly present her application. Ms. Hayden reminded her that the application is about improved lot coverage and it's not about the water issue but about all the coverage issue in the yard. The wife agreed by saying "correct, can you please understand that the reason why we finished the work (work being the driveway) because that Kevin had already informed the applicant

that they would have to do a variance. Ms. Hayden said that the driveway was not what the board was most concerned about but rather is all the coverage in the backyard, such as the concrete around the pool that was never in any survey, the paved patio, and commented that they are over almost 900 square feet than what is allowed. And that the plans that were approved didn't have any of that stuff on it. The wife stated that everything is shown on the survey, and Ms. Hayden said, "No, that's not true."

As Mr. Madaio is trying to give excellent free advice and wished people would listen to that, the wife is saying "stop stop" to someone off screen, and the Mr. Magid's voice is heard saying "Don't talk to them. We will sue them, that's it." (video time point 27:00)

Mr. Madaio asked if they are withdrawing the application. Mr. Magid is heard off screen "FUCK YOU, YOU MOTHERFUCKER...you piece of shit! I come to see you" (video time point 27:18)

Ms. Hayden then reminded him he is being recorded. They disappeared from the zoom screen.

Mr. Madaio requested a copy of the video. Ms. Hayden said it is being recorded video and audio. Mr. Woods asked "How are we not calling the police right now? He threatened us multiple times!" Mr. Madaio agreed and said, "This is unacceptable, and that the Chairwoman should not have to walk home feeling weird" and Ms. Hayden said, "I am going on a business trip tomorrow, and there is someone who looks just like me who is going to be here (her home)" (video time point 28:12).

Ms. Hayden stated that she is going to write a letter to Borough Administrator Jim Powderly and send him a recording, noting the applicant threatened the Board and specifically gave her address.

Mr. Morrison, Mr. Corrado, Mr. Park advised Ms. Hayden to call the police right now. (video time point 29:14) with Mr. Woods stating, "He's all fired up, who's to say where he is going right now?"

Mr. Park asked if the police could be called right now as a part of this meeting.

Ms. Hayden calls the police (201-768-1540) and reports who she is and that the meeting was on Zoom, is ongoing and the applicant threatened the whole Board and cursing like crazy and mentioned the her (Chairperson's) address. And that we were all concerned about our safety. She also gave the applicant's address and name. Mr. Corrado stated, "He was quite hostile." Mr. Morrison stated, "I think he's dangerous right now."

Mr. Madaio mentioned that nobody requested a carry or to schedule a new date. Mr. Park also mentioned that the applicant "hung up on us." Mr. Madaio also said if the board wanted to take a vote, they can. Ms. Hayden said she did not know how the application could be approved due to the paperwork being inaccurate and totally false. The photos of the backyard show it to be super crowded.

Mr. Wood made the motion that application should be denied, paperwork doesn't represent the information Mr. Magid gave, it far exceeds ordinances, there is no benefit to the zoning plan. Mr. Morrison seconded.

Mr. Park mentioned that the town should really take a look at the structure standing there.

Applicant returned onto the Zoom screen without video. Applicant, the wife, stated how they would like to proceed by not withdrawing the application and that further meetings will be represented by

their attorney, and she would like to take that information now, and attorney would represent them so there will no longer be these very charged personal feelings involved.

Mr. Morrison restated that he seconds to deny the application, as he believed the call got way out of hand, it passed the legal boundaries and that he did not think the board was obliged to continue the conversation with the applicant. The wife asked, "what legally happened here that is illegal?"

Ms. Hayden said, "first of all, your behavior was threatening, and it's recorded." The wife then said, "I don't think anyone threatened you." Board members then chimed in "he did!" Ms. Hayden told the wife that the husband threatened the entire board and said her address. The wife denied her husband threatened Ms. Hayden but admitted to saying the address and saying "I am going to come."

Ms. Hayden said the board perceived everything as a threat.

The wife stated that the board are members of the community, are not elected officials and have their address and make judgments on their house. And that anyone can come to anyone's house and say things. (video time point 36:12)

Mr. Madaio said it would be completely inappropriate to visit board members' homes.

Ms. Hayden told the wife that the board felt very threatened, so the police were called. Ms. Hayden asked the wife, "Do you realize how serious this is, that someone called the police?" The wife said, "That's a personal decision based on your feeling."

The motion was already made with a second to deny the application. "Yes" means to deny application. Roll call was taken.

**Motion:** Mr. Woods

**Second:** Mr. Morrison

<b>Roll Call to Deny</b>	<b>Eligible to Vote</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>
Mr. Woods, Vice-Chair	yes	X		
Mr. Davis	absent			
Mr. Corrado	yes	X		
Mr. Morrison	yes	X		
Mr. Park	yes	X		
Mr. Press	yes	X		
Ms. Hayden, Chair	yes	X		
Alternate #1 Mr. McLain	absent			
Alternate #2 Mr. Adelman	absent			

Ms. Hayden informed the wife that the application was denied. Ms. Hayden will inform the building department. Ms. Hayden kindly suggested contacting a lawyer that has expertise in land use. If they want to come before the board again with a revised application with detailed engineering drawings and architectural plans. What was currently submitted was not sufficient and has false material and information on it, such as the proposed two front yard setbacks being at 25.5 square feet, those aren't the front yard setbacks. The information needs to be accurate, and it would be good to get a good engineer. The wife agreed.

Mr. Madaio said once they have counsel, their counsel is more than welcome to contact him. The wife stated she understood. Mr. Madaio said he is offering his office only to discuss with their counsel in attempt to put them on the right track. Ms. Hayden asked if the wife understood, and wife said, "I understand."

The wife requested to be emailed the proof of concrete surroundings, and Mr. Madaio politely told her the applicant must provide every survey, every set of plans, everything which indicates how they are proving their case. The applicant carries the burden of proof, should have expert witnesses, have the entire building department documentations that support their application including the original application of 2018 and letters that were approved for construction, surveys that were submitted. Those are the obligation of owners to produce so owners can carry their burden of proof. Mr. Madaio's said the board looks forward to seeing all this material and 1-2 expert witnesses, organized documents, any letters, and the wife replied "ok." Mr. Madaio said that is how to dispel any misunderstandings.

The wife stated she did not realize there were going to be these types of misunderstandings and she is feeling a lot of anger that they weren't told they were deficient in paperwork. Mr. Madaio said he thought it was going to be a pleasant 5 minutes or so of explaining what more information was required with the hope that applicants come back with a better chance of success. Mr. Madaio stated he was trying to tell her husband what was needed before the "FU's and I know where you live" threats started. Mr. Madaio said that the Board is very conscious that the applicants are neighbors, and he was glad this meeting was on video.

Mr. Morrison stated he has never sat in a meeting like this. This was scary and he was worried for Ms. Hayden and very glad police was called.

Mr. Corrado made a motion to open to the public. Mr. Park seconded. Mr. Ralph Lopez thanked the board for the work being done on Stelfox St. repaving the road to take care of the problem. Ms. Hayden said, "thank you but not us." Mr. Corrado made the motion to close to the public.

**Approval of Minutes of April 19, 2022, Meeting**

***only those present at prior months' meeting are eligible to vote***

Motion: Mr. Park

Second: Mr. Morrison

<b>Roll Call to Approve/Deny</b>	<b>Eligible to Vote</b>	<b>YES</b>	<b>NO</b>
Mr. Woods, Vice-Chair	Yes	X	
Mr. Davis	No		
Mr. Corrado	No		
Mr. Morrison	Yes	X	
Mr. Park	Yes	X	
Mr. Press	Yes	X	
Ms. Hayden, Chair	Yes	X	
Alternate #1 Mr. McLain	Absent		
Alternate #2 Mr. Adelman	Absent		

**Motion to Close the Meeting:** Motion: Mr. Corrado Second: Mr. Park

<b>Roll Call to Approve:</b>	<b>YES</b>	<b>NO</b>
Mr. Woods, Vice-Chair	X	
Mr. Davis	absent	
Mr. Corrado	X	
Mr. Morrison	X	
Mr. Park	X	
Mr. Press	X	
Ms. Hayden, Chairwoman	X	
Alternate #1 Mr. McLain	absent	
Alternate #2 Mr. Adelman	absent	

***Next Meeting June 21, 2022, at 7:30 p.m. via Zoom conference***