

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

FILE NO. 824-22

IN THE MATTER OF THE APPLICATION OF:

EITAN MAGID, FOR VARIANCES
RELATING TO BLOCK 21; LOT 765 ALSO
KNOWN AS 68 SERPENTINE ROAD, 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	Deviation
Improved Lot Coverage	30%	37.48%*	37.48%*	24.9%
Front Yard Setback	25'	12.67'**	12.67'**	49.3%
Side Yard Setback (West)	25'	19.28'***	19.28'***	22.9 %

*Existing and Proposed is based on 2020 Survey incorporated onto Architect's 2021 Plans and requires verification

** Architectural Plans prepared by Jacob Solomon, RA, dated March 3, 2018, last revised August 1, 2018, (hereinafter, the "Renovation Plans") and submitted for Building Permit for Renovation specified 25.5'

*** The Renovation Plans submitted for Building Permit for Renovation specified 25.5'

FINDINGS OF FACT

Public hearing was held on May 17, 2022 by the Zoom Electronic Meetings Platform. The Applicant presented the matter, pro se.

The Applicant did not mark any documents into evidence during the course of the public hearing, through a "Plot Plan/Zoning Info", dated May 24, 2021, and prepared by The Room Architects, LLC, ("the Plot Plan/Zoning Info") was submitted with the Application and is made part hereof. Prior to public hearing, the Board received correspondence dated May 12, 2022, from Board Engineer, Craig Zimmerman, PE, which is made part hereof (hereinafter, "Zimmerman Report").

The Applicant did not produce any witnesses at public hearing except for himself.

The Application Statement provides that:

Work began on the renovation and extension of our home in Summer, 2018. No work began on the property until we had secured all the necessary permits for desired improvements. The land survey submitted with the applications showed the concrete pool surround but our architects failed to include it in the calculations...At this point, if we completed all work as shown in the plans, we would have been over the allowable improved lot coverage.

The Applicant adduced very limited evidence with regard to the requested variance. He testified he purchased the Property in 2018 with the intention of expanding and renovating the residence. As to the Renovation Plans, he indicated that the "the plans were approved by Bob Rauch". No evidence was introduced as to "the plans" or what was "approved". No plans or permits for construction were presented. Applicant testified that he resides in the Premises under a TCO because the driveway could not be finished and that he has been waiting for issues related to the Borough and the public street to be resolved before he could finish his driveway. Soon thereafter, the Applicant terminated the Zoom call and left the meeting. He subsequently reappeared – as did his spouse – but no additional relevant testimony was provided.

The Zimmerman Report notes:

The Applicant had previously constructed an addition, paver driveway, walkway, and patio to which permits had already been issued. It should be noted that only the addition and driveway was depicted on the architectural plans submitted in 2018. The rear patio adjacent to the house, retaining walls, and the patio surrounding the pool were not depicted on the original architectural plans.

Additionally, the Zimmerman Report provides:

The existing improved lot coverage was approximately 3,060 SF (25.9%) prior to the currently installed improvements according to the provided site plan. The current or proposed lot coverage is 4,428 SF (37.48%) where a maximum of 3,544 SF (30%) is allowed. The net increase in impervious area appears to be 1,368 SF. **Based on a site visit, it appears there is additional improved lot coverage beyond what is**

represented on the submitted plan. The apparent coverages that have not been quantified can be summarized by the following:

- a. There is a gravel area in the eastern side yard (Approximately 380 SF)**
- b. There is a tile patio area in the rear yard between the steps up from the retaining wall and the pool that appears to be larger than what is represented on the plan (Unknown Dimensions) – See figure 3**
- c. It is unclear if the paver patio area adjacent to the east side of the dwelling is accounted for in the coverage calculations.**

CONCLUSIONS OF LAW; RESOLUTION

The application before the Board is for an Improved Lot Coverage Variance. Very limited testimony was offered with regard to this variance. The Applicant offered comments about his driveway and the claimed municipal obligation to make certain improvements rather than provide evidence as to the requested variance. The Applicant offered no witnesses and marked no exhibits. The Applicant made no relevant legal argument.

The requested variance requires proofs pursuant to NJSA 40:55D-70(c)(1) or (c)(2). The Applicant submitted no such proofs. The Applicant offered no proofs whatsoever as to either the “positive” or “negative” criteria as they relate to the requested variance. No proofs were presented as to claimed “prior approvals”.

The Application appears to claim that the overage in coverage is only that amount which his Architect failed to include on the Renovation Plan. There was no proof which supports this position and it is not related to the criteria for the approval of a variance. Additionally, the Zimmerman Report makes clear that the improvements on the Property both exceed what is permitted (even accounting for any failure to include various improvements on the Renovation Plans) and appear to exceed that which is shown on the Plot Plan/Zoning Info as an existing condition. No verified engineering plans were provided as to the existing condition and the Applicant has failed to provide the necessary evidence to examine this claim. No engineering testimony whatsoever was provided. No information as to prior approvals, plans or permits was provided. No engineering plan of existing conditions was provided.

The Applicant has failed to demonstrate compliance with Borough Ordinance §175-24 or “William’s Law” as to pool fencing and protection. The Applicant has failed to provide drainage or runoff calculations, and the related drainage system design, with regard to the additional coverage. The Applicant has failed to prove the quantum of the existing coverage or how it got there.

The residence does not appear to be constructed in accordance with the Renovation Plan, which required no variances as submitted, as noted in the Zimmerman Report. There is no explanation as to this or proofs as to the two additional yard setback variances that result

from this construction that is not in compliance with the approved plans. The Board would have considered all these issues – including required yard setback variance approval – if information on these yard setback variances were applied for, noticed, or presented. The Board also notes there is a wooden fence on Brookside Avenue that is non-conforming and wrongfully located in the municipal Right of Way. No approvals were ever sought or granted for these deviations.

Based on the foregoing, and the testimony presented, a motion was made denying the requested variance on the merits. The Movant indicated that the motion to deny was made due to the scant testimony that failed to satisfy the Applicant’s affirmative burden of proof and the lack of testimony as to the “positive and negative criteria”.

Motion was made by:

Motion was seconded by:

Roll Call to Deny

Upon the motion and a second, a majority of the Board voted to deny 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

, Board Secretary