

**ZONING BOARD OF ADJUSTMENT  
BOROUGH OF DEMAREST**

File No. 667-06

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In the Matter of the Application  
of Sang Bae Kim, Applicant for  
variances relating to Block 14  
Lot 759.02 also known as 32 Brookside  
Avenue, Demarest, New Jersey.

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**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 be and the same are hereby adopted:

**PROCEDURAL HISTORY**

The within Application was commenced by the filing of an application for the construction of a single family residence which site plan was modified to provide for a 25' front yard setback, 20' rear yard, 33.49% impervious coverage and 75' lot depth.

**FINDINGS OF FACT**

Public hearings were held on August 15, 2006 and September 19, 2006 in the Council Chambers of the Municipal Building. The Application was presented by the Applicant's attorney, Elliot Urdang, Esq.

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

1. Application for a variance dated July 5, 2006;
2. Site Plan prepared by Hubschman Engineering PA dated June 21, 2006 and as modified by Site Plan dated September 11, 2006.
3. Allowable Building Area Sketch prepared by Hubschman Engineering PA dated July 18 2006;
4. Floor Plans, Elevations & Building Data prepared by Simon Kim, Architect dated June 25, 2006 and revised August 28, 2006;
5. Letters of Denial dated July 5, 2006 and September 11, 2006.
6. Photographs of Premises and adjacent properties.

The property in question is located in the residence D Zoning district. The street address for the property is 32 Brookside Avenue also known as Block 14, Lot 759.02, Demarest, New Jersey.

## MINUTES FROM AUGUST 15, 2006 MEETING

Board Attorney advised that the application commenced at the last meeting without attorney representation. Mr. Urdang, representing the applicant, advised they would be starting a new application this evening. He said that a letter was sent to the rear yard neighbor to ascertain if property could be purchased and letter was received from the owner that they were not interested in selling any property and same was marked into evidence. He advised that the application is for three variances that include lot depth, front yard setback and rear yard setback.

Michael Hubschman, 263 South Washington Avenue, Bergenfield, New Jersey was sworn in by the Zoning Board Attorney, and advised that he had been previously qualified by the Board.

**Motion** by Mrs. Fox seconded by Mr. Morrison to accept Mr. Hubschman as an engineer and planner. Carried.

Mr. Hubschman advised that he is familiar with the site and the environs and that he had prepared the plan for the property located at the northeast side of Brookside Avenue and its intersection with Serpentine Road in a D zone requiring 100' by 100'. The property has a square footage of 10,004 square feet. Presently located on the property is a 1½ story small dwelling on the north east quadrant of the lot with the foundation of the garage in the center of the lot and a shed in the southeast area of the lot. The lot is 75' deep by 130' wide and an irregular 95' section in the rear. The existing house is located 26.7' from Brookside Avenue, 16' from Serpentine Road and 7' from the rear property line. Because of the averaging requirement for the front yard setback, 34.78' is required and a 25' setback is required from Serpentine Road. The plan dated June 21, 2006 was marked into evidence as well as a set of photographs of the subject and adjacent properties, garage and fence. He said that it is proposed to demolish the existing house, foundation and shed and to construct a two-story dwelling, fronting on Brookside Avenue, with a footprint of 1,926 square feet, measuring 30' deep and 68' wide, with a two-car garage fronting on Serpentine Road. Except for the variances being requested, the house conforms to the bulk requirements of the zoning. The front yard setback is proposed at 25' to a porch on the proposed house, the proposed rear yard setback is 11.98' from the garage and 16.98' from the house. The proposed house is a center hall colonial with four bedrooms. There is no other area to expand the property to meet the required depth and to build a home within the required setbacks would provide only a 10' wide strip in the middle. There would be no substantial impact on the surrounding properties with the proposed house and same is a modest style house that fits in the neighborhood. The existing house is set back 26' from Brookside Avenue and the proposed house would be set back 25' to the porch and 28' to the house and the location of the house is driven by the lack of lot depth. There would be no substantial detriment to the streetscape.

In answer to questions from Board members. Mr. Hubschman said the height of the house

is 29' to the peak of the roof and the adjacent house is set back 32' from the street. The lot to the right measures 109' by 94' as shown on the aerial map that was marked into evidence and measures approximately 25' in height. The wall of the proposed garage would be 10' to the gutter. Moving the house closer to Brookside Avenue would be better for the neighbor leaving more open space in the rear of the property. The house to the rear of the subject property is approximately 48' from the property line.

**Motion** by Mr. Barber seconded by Mr. Shur to open the meeting to the public. Carried.

Charles Emanuel, 68 Serpentine Road, was sworn in by the Zoning Board Attorney and advised that his property is located directly across the street from the subject property. He said he was not here to object to the application but was concerned about the proposed driveway location. He said that Serpentine Road is a very narrow street and with currently three driveways located in close proximity access to the property could be difficult if vehicles were parked on the street inasmuch as none of the current driveways can accommodate back to back car parking. He felt this was a safety issue. Mr. Hubschman said that this issue could be addressed by flaring the proposed driveway or by putting the garage on the other side of the structure but then the family room would be facing the street.

Phil and Nancy Redisch, 71 Serpentine Road, were sworn in by the Zoning Board Attorney. Mr. Redisch cited that their deck is located 26' from the rear property line. Serpentine Road is a direct route to the Borough Hall and the Fire Department and is used as a cut through. On Brookside Avenue almost at the intersection of Serpentine Road, there is a hill causing a blind spot. Directly across the street on Brookside Avenue, the residents have students who come and go and there are constantly cars parked on Brookside Avenue and Serpentine Road.

Mrs. Redisch noted that to accommodate the applicant's request to purchase property would eliminate her back yard and she expressed concern about the proposed driveway location. She submitted photographs of the activity at the different driveways and same were marked into evidence. Brookside Avenue is more of a main road but Serpentine Road is active because it is a cut through street to access the school and Borough Hall and the Fire Department. She also expressed concern about the excavation coming close to the tree between the properties causing the tree to die. Mr. Urdang said that he would not know if the construction could damage the tree but precautions would be taken to preserve the tree. He said that he had spoken to his client and the location of the driveway and garage could be changed to access Brookside Avenue in order to accommodate the neighbors. Same would impact the impervious coverage calculation to provide a side entry garage by 2.3%.

Mrs. Redisch noted that the patio would be 10' from the fence and would impact her property. She expressed concern about the height of the structure and that same could eliminate a lot of the existing sunlight in her side yard. She questioned the size of the house and if same could be reduced to fit the scale of the property.

No one else wished to be heard.

**Motion** by Mr. Nafash seconded by Mr. Barber to close the meeting to the public. Carried.

In answer to Chairman Clarke, Mr. Hubschman indicated that the height of the roof could be reduced to 28' to the peak. There were questions on the location of the house when the structure was flipped on the lot and Mr. Urdang noted that the applicant was trying to accommodate the neighbors.

Mr. Morrison questioned moving the house forward in the event Brookside Avenue is widened in the future and Mr. Shur said the reduced height and the relocation of the garage makes sense but he was not in favor of moving the house forward. Mr. Barber and Mr. Nafash expressed agreement with the height and house location. Mrs. Fox said that she had problems with the size of the house and the need to allow more sunlight on the neighbor's property, and she felt that good screening should be planted. The Board decided that the applicant should supply new plans for review. The applicant agreed to do so.

**Motion** by Mr. Morrison seconded by Mr. Press to carry the application to the meeting of September 19, 2006. Carried.

#### **MINUTES FROM SEPTEMBER 19, 2006 MEETING**

Mr. Urdang explained that the plan has been revised in accordance with comments made at the last public hearing. The house location has been flipped and the driveway access has been moved to Brookside Avenue from Serpentine Road necessitating a variance for impervious coverage of 33.49%. The house has been moved to increase the back yard to 20' and the height of the structure has been lowered to 28', and the new plans shows a slight decrease in the building coverage to 19.89%.

Michael Hubschman, 263 South Washington Avenue, Bergenfield, New Jersey previously sworn in by the Zoning Board Attorney and qualified by the Board. The colorized site plan was marked into evidence as A-5. He advised that the house now has a side loading garage with a driveway from Brookside Avenue in addition to a turnaround for safety purposes that necessitated the 3% coverage variance. The rear yard was 11.98% and has now been increased to 20', the building height has been reduced to 28' and the front yard remains at 25%. The impervious coverage is justifiable under C-2 inasmuch as the turn around is provided for safety. The negative impact of the previous plan has been substantially reduced. There is no substantial detriment to the neighborhood.

**Motion** by Mr. Barber seconded by Mr. Nafash to open the meeting to the public. Carried.

No one wished to be heard.

**Motion** by Mr. Press seconded by Mr. Barber to close the meeting to the public. Carried.

**Motion** by Press seconded by Mr. Morrison to approve the revised application. The applicant has made a significant effort to address the concerns of the neighbors and there is no neighbor present this evening to oppose the variance. The utility of the house and the lot would be increased and the neighborhood beautified by the proposed home. There is no detriment to the neighbors, neighborhood or the Borough.

### CONCLUSIONS OF LAW

The application before the Board is for for the construction of a single family residence which site plan was modified to provide for a 25' front yard setback, 20' rear yard, 33.49% impervious coverage and 75' lot depth.

The Applicant seeks the variances pursuant to N.J.S.A. 40:55D-70(c)(2). The Board, in reviewing the application, determined that the application should be approved pursuant to the requirements of (c)(2). The purposes of the Municipal Land Use Law would be advanced by granting the requested variances. The Applicant met all requirements of the limiting schedule contained in the zoning ordinance, except for the proposed variances. The Board found that the proposed new house is modest in size and the variances enhance the proper utilization of the property, which fronts on two streets, and locates the driveway entrance on a wider street, Brookside Avenue, for safety purposes, allowing turnaround space on the property for cars.

The Board further found that the proposed variances will not have a negative impact on surrounding properties, and the Board specifically found that the benefits of granting the proposed variances clearly outweighed any potential detriment to the public.

<b>ROLL CALL VOTE:</b>	Mr. Barber	Aye	Mr. Nafash	Aye
	Mr. Clarke	Aye	Mr. Press	Aye
	Mr. Morrison	Aye	Mr. Shur	Aye

I do hereby certify that the foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment at its meeting held on October 17, 2006.

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**CAROL A. KROEPKE**  
Board Secretary