

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO. ZB 23-006

IN THE MATTER OF THE APPLICATION OF:

SPENCER SPIELBERG FOR VARIANCES RELATING
TO BLOCK 53; LOT 4.01 ALSO KNOWN AS
38 SUNSET 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, 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
Max. Building Coverage	20% (2,871 sf)	20% (2,871 sf)	22.7% (3,250 sf)
Total Imp. Lot Coverage	30% (4,293 sf)	30% (4,293 sf)	33.7% (4,823 sf)
Min. Side Yard to Wall	10'	5.9'*	5.9'

*Noted as "Existing" but variance required as constructed without benefit of permit or approval.

FINDINGS OF FACT

Public hearing was held on December 19, 2023; February 20, 2024; and March 19, 2024, (the "Public Hearing" or "Hearing") in the Council Chambers of the Demarest Borough Hall.

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

1. A-1 Pool Plan, Soil Erosion, Sediment Control Plan, Notes & Details for Spielberg, consisting of 3 Pages, prepared and signed by Paul Gdanski, PE, PLLC, dated August 31, 2023, and revised through February 22, 2024;
2. A-2, Conceptual Landscape Plan, prepared by Kim Kline, dated January 30, 2024;
3. A-3, Conceptual Photographs of Proposed Conditions (3), prepared by Kim Kline;
4. A-4, Pergola Elevation Detail, prepared by Kim Kline.

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

1. Paul Gdanski, PE, PLLC, ("Gdanski")
2. Spencer Spielberg ("Spielberg" or the "Applicant")
3. Kim Kline, Landscape ("Kline")

TESTIMONY AND EVIDENCE PRESENTED

1. The address of the Property is 38 Sunset Road and is also designated as Block 53; Lot 4.01 on the Borough's Tax Assessment Map (hereinafter, "the Property"). The Applicant was Pro Se during a portion of the Hearing, but was ultimately represented by Matthew Capizzi, Esq., (hereinafter "Capizzi") during the final two meetings of the Board. The Property is located in the Residence Zone D within the municipality.
2. At the December 19, 2023, meeting, Spielberg testified that he purchased the Property in May, 2022, and that he obtained Building Permit(s) for various work which includes, but was not limited to, the subject of the Application. During the course of this construction, it appears that work on the Property was undertaken which may have exceeded the scope of the Building Permit(s) or which was mislocated in a manner, or of a dimension, that it violated Borough Code. As a result of this activity, a "Stop Work Order" was issued by the Borough and an Application to the Board was filed based on a Letter of Denial dated September 13, 2023. Gdanski testified as to A-1 and set forth the improvements on the Property and the requested variances. During the course of the evening the Applicant agreed that plan revisions were required, and that the Application would be better through counsel. No other relevant testimony was adduced at the December 19, 2023, meeting and the matter was carried to the February meeting.

3. At the February 20, 2024 meeting, Capizzi appeared on behalf of the Applicant and set forth existing conditions – which were noted to include both approved and non-approved improvements which the Board opined could not be fairly described as “existing” because they were never lawfully approved as well as the Applicant’s original requests for relief and the current request for relief. Gdanski testified that the following variances were originally required:

- Building Coverage – 20% Max. v. 22.7% Proposed.
- Improved Coverage – 30% Max v. 42.9% Proposed.
- Retaining Wall Location requiring Setback Variances.
- Pool Equipment Location intruding into the Side and Rear Yard Setbacks.

4. Gdanski testified that, upon revision, the following variances were required:

- Building Coverage – 20% Max. v. 22.7% Proposed (379 SF related to the Pergola).
- Improved Coverage – 30% Max v. 34.8%/4,980 Proposed (690 SF of New Coverage which was 1154 SF less than previously requested).
- Retaining Wall Location – 10’ Req. v. 5.9’ Proposed.

5. Gdanski testified that the Applicant had eliminated the request for variances as to the pool equipment location and that the pool equipment would be placed in a conforming location. He further testified that Retaining Wall Location, while requiring a variance, would be buffered from the adjacent property. He also noted that the retaining wall deviation lessened as you measured along the length of the wall and became more conforming. During this Board Members noted that the plans presented (A-1) did not clearly delineate what improvements were lawful and existing; what improvements were not lawful and existing for which approval was sought; and, significantly, what improvements would be removed and were not the subject of the Application. Board Members noted that this was an important component of A-1 to assure that the non-permitted improvements would be removed during the Permit and construction process.
6. At the final meeting, A-1 was presented to the Board which provided for a pergola that was not attached to the principal structure (A-4) and measured 16’ x 23.7’ (379 sf). Gdanski testified that this was the sole increase in Building Coverage proposed by the Applicant and accounted for the entirety of the requested variance for Building Coverage. Gdanski testified

that the proposed Total Improved Lot Coverage was 33.7%, where 30% is required. As a result the Applicant seeks a variance for Total Improved Lot Coverage of 4823 sf, where 4293 sf is permitted or an overage of 530 sf. Gdanski also testified that, despite the reduction of Total Improved Lot Coverage, site drainage which was originally designed for 43% Total Improved Lot Coverage, was not reduced and was therefore greater than what was required.

7. Kline testified that plantings would be generous and in accordance with A-2.
8. 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.
9. 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.
10. No members of the public sought to comment on the Application.

CONCLUSIONS OF LAW; RESOLUTION

1. The Application before the Board seeks the following variances:
 - a. Building Coverage – 20% Max. v. 22.7% Proposed (379 sf related to the Pergola)

- b. Total Improved Lot Coverage – 30% Max v. 34.8%/4,980 Proposed (690 sf of New Coverage)
 - c. Retaining Wall Location – 10’ Req. v. 5.9’ Proposed
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, assures that the benefits of the deviations outweigh any detriments. The Board notes that the open, non-sided, pergola specifically assures light, air and open space and any effort to enclose the pergola in any manner would not serve the purposes of zoning and would eliminate the basis for the granting of the variance.
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.
4. The within approval is specifically conditioned on the following:
- a. Pool equipment shall be relocated to a conforming location.
 - 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 location of all improvement and the deviations permitted herein and demonstrate no additional variances are required and that the variances granted have not been exceeded.
 - d. A “trench” originally proposed and/or constructed between the patio and the pool will be removed.
 - e. All “cul-tec” chambers or similar water detention shall drain into the water table and must be 15’ from the property line and constructed in the manner proscribed by the Borough Engineer.
 - f. The pergola structure shall remain open on all sides and may not be screened, walled, or blocked in any manner including “knee-walls” or other partial height walls or structures of any kind.

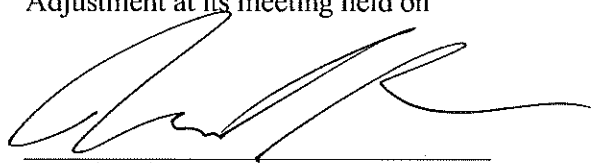
Motion was made by: Mr. Corrado
 Motion was seconded by: Mr. McLain

Roll Call to Approve:

	YES	NO	ABSTAIN	ABSENT	NOT ELIGIBLE
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


 Michael Greco, Board Secretary