

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO: ZB 24-001

IN THE MATTER OF THE APPLICATION OF:

CHAD AND REBECCA CUTLER FOR VARIANCES
RELATING TO BLOCK 84.05; LOT 7 COMMONLY
KNOWN AS 74 PINE TERRACE, 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	Sought
Lot Area	30,000 sf	23,949 sf	23,949 sf
Rear Yard Width	150'	129.93'	129.93'

- Previously requested variances for accessory structures in yard areas were withdrawn during the course of the Public Hearing.
- During the Application, the Board determined that the Applicants did not require a variance as to Front Yard Setback based upon Ordinance review and A-5.
- Ordinance 175-18(A) does not serve to “grandfather” the subject lot and provides: “Any lot existing heretofore as a legal, separate parcel and not complying with the minimum frontage width at the time of passage of this chapter may, notwithstanding such fact, be improved with a building, provided that the other regulations of its zone are adhered to and provided that the owner owns no other adjacent land which may be included as part of the lot in question.” Said Ordinance does not serve to “grandfather” the Property in question.

APPLICABLE LAW

An Applicant upon an “isolated undersized lot” (that is not “grandfathered”) must seek a variance based upon NJSA 40:55D-70(c)(1) and must meet both the positive and negative criteria required for the grant of any such variance. *Nash v. Board of Adjustment of Morris Tp.*, 96 N.J. 97, 101, 107, 109 (1984). During review, the Board must be aware that if the underlying request for a hardship variance is not granted, the property will be zoned into inutility. See, *Davis Enterprises v. Karpf*, 105 N.J. 476, 481 (1987) and *Commons v. Westwood Zoning Board of Adjustment*, 81 N.J. 597, 607 (1980). In *Dallmeyer v. Lacey Tp. Bd. of Adj.*, 219 N.J. Super. 134, 146 (Law Div. 1987), specified the obligations of the Applicant, the Applicant must: Carry their burden of proof as to positive and negative criteria; Demonstrate that efforts were made to bring the property into compliance with lot area requirements; Submit detailed plans; Attempt to demonstrate compliance with setback requirements; Demonstrate that the proposal does not violate the purposes of zoning.

The foregoing represents the legal framework for the Board’s consideration of the within Application.

DOCUMENTARY EVIDENCE PRESENTED

A Public Hearing was held on April 16, 2024, in the Council Chambers of the Demarest Borough Hall. The Application was presented by the Applicants through counsel, Carmine R. Alampi, Esq., (“Alampi”). Alampi, presented the matter and provided an overview and background of the Application and marked all relevant Exhibits into evidence. The Board Engineer’s Report was similarly accepted into evidence. Accordingly, the Board considered the following Exhibits in their review of the matter:

A-1 Architectural Plans (6 sheets), prepared by Daniel D’Agostino, AIA, of Plan Architecture, dated January 12, 2024.

A-2 Documentation of efforts to obtain additional property.

A-3 Site Plans, prepared by Robert L. Costa, PE, of Costa Engineering Corporation, dated August 10, 2023, revised March 22, 2024.

A-4 Colorized Presentation Plan, prepared by Robert L. Costa, PE.

A-5 Front Yard Setback Study and Calculation, prepared by Robert L. Costa, PE.

A-6 Area Photo Study, prepared by David Spatz, PP.

B-1 Report of Colliers Engineering and Design, prepared by Nick Chelius, PE, dated March 6, 2024, revised April 1, 2024.

TESTIMONY PRESENTED

The following witnesses appeared and offered sworn testimony on behalf of the Applicants:

1. Daniel D'Agostino, AIA ("D'Agostino")
 2. Robert L. Costa, PE ("Costa")
 3. David Spatz, PP ("Spatz")
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1. Alampi provided the Board with an overview of the Application and the legal issues and underlying law as it relates to the subject isolated, undersized lot. He advised, as was confirmed by **B-1**, that the subject property is in the Residence BB Zone within the municipality. The address of the Property is 74 Pine Terrace and is also designated as Block 84.05; Lot 7 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property").
 2. D'Agostino testified as to all matters of architectural concern. He presented **A-1** and testified that the proposed home included 6 bedrooms and was composed of "traditional materials with a modern aesthetic". He testified that the Property was undersized and irregularly shaped and that the home is sized and placed in such a manner as to require no setback or dimensional variances despite the undersized nature of the Property.
 3. Costa testified as to engineering matters and introduced **A-3** into evidence. Costa emphasized that the Application was "a no variance build". He testified as to the undersized Lot Area and deficient Rear Yard Width. He also testified as to the issues related to the Front Yard setback as well as the calculation of same as relates to the adjoining homes. See, **A-5** He testified that retaining walls that required a variance – previously proposed in setback areas – would not be constructed. Notwithstanding this, retaining walls which were proposed to be constructed less than 2' in height (and are therefore, not considered "structures") were still proposed.
 4. Costa further testified as to drainage and agreed to comply with all drainage requirements of the Board Engineer.

5. Spatz testified that the undersized lot clearly presented the Applicant with a self-evident hardship. He testified that this establishes the affirmative criteria of NJSA 40:55D-70(c)(1).
6. Spatz also testified to the statutory negative criteria. With reference to A-6, he testified as to his examination of lot sizes in the area and concluded that only one lot in the area conformed to the Lot Size requirements and that there was a pattern of undersized lots that has been established in the area. He noted that the Applicants were not seeking variances for the construction of the home and that the home had been appropriately scaled down to assure that it was accommodated by the undersized lot. He made clear that the Application was not contrary to the purposes to zoning and concluded that the Applicants had satisfied the requirements of the statute as to the negative criteria.
7. Spatz further testified that the proposed home was an appropriate addition to the streetscape. Specifically, he noted that the home had been designed to meet the “scale” of the area.

CONCLUSIONS OF LAW; RESOLUTION

The Application before the Board is for Lot Area and Lot Width on an existing, isolated and undersized lot. The Applicants have attempted to remedy this condition and obtain additional Property to no avail (See, A-2) The Applicants have submitted detailed plans (See, A-1 and A-3) and have submitted extensive testimony with regard to the matter. The Applicants have provided proofs and satisfied both the “positive” and “negative” criteria of NJSA 40:55D-70(c)(1). The Applicants have demonstrated complete compliance with municipal setback requirements despite the undersized lot.

Based upon the foregoing, the Board has evaluated the testimony and made specific findings of fact and law. The Board finds that the Applicants have satisfied the requirements of NJSA 40:55D-70(c)(1). The Board finds in its review that the variances requested are justified and should be granted for the reasons set forth herein. The Board found that the requested variances can 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 granting of the within approval is subject to the following:

1. The Applicants shall obtain any necessary approvals from all municipal, county and state agencies.
2. The Applicants shall comply with all comments contained in B-1 and other directives from the Board Engineer.
3. The Applicants shall coordinate all drainage proposals with the Board Engineer and shall amend and revise same to his satisfaction.


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

Roll Call to Approve:

	YES	NO	ABSENT	OTHER
Vice Chair Woods				<i>Not Eligible</i> ✓
Mr. Davis	✓			
Mr. Corrado	✓			
Mr. McLain	✓			
Mr. Park			✓	
Mr. Adelman			✓	
Chair Hayden	✓			
Mr. Hirsch A#1				<i>Not Eligible</i> ✓
Ms. Pavlova A#2				<i>Not Eligible</i> ✓

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


 Attest: Michael Greco, Board Secretary


 Chair Dorothy Hayden