

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO: ZB 2024-003

IN THE MATTER OF THE APPLICATION OF:

RRF PROPERTIES, LLC FOR VARIANCES
RELATING TO BLOCK 84.04; LOT 2 COMMONLY
KNOWN AS 12 IRENE COURT, 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	24,000 sf	24,000 sf
Front Yard Setback	50'	49.7'**	50**

- The Applicant seeks to construct a new home and eliminate the existing, minor, Front Yard Setback deviation.
- 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 both the Applicant and the Board:

As to the Applicant:

1. Carry their burden of proof as to positive and negative criteria.
2. Demonstrate that efforts were made to bring the property into compliance with lot area requirements.
3. Submit detailed plans.
4. Attempt to demonstrate compliance with setback requirements.
5. Demonstrate that the proposal does not violate the purposes of zoning

As to the Board:

1. Evaluate testimony and seek more as necessary.
2. Make specific findings in the resolution.
3. Consider whether in lieu of denial, reasonable conditions are appropriate.
4. Remember that an outright denial may amount to confiscation thus requiring condemnation and payment by the municipality.

This above represents the legal framework for the within Application.

DOCUMENTARY EVIDENCE PRESENTED

A Public Hearing was held on July 16, 2024, in the Council Chambers, Borough Hall, Serpentine Road, Demarest. The Application was presented by the Applicant through counsel, Matthew G. Capizzi, Esq., ("Capizzi"). The Applicant, through counsel, Capizzi, presented the matter and provided an overview and background of the Application and marked all relevant Exhibits into evidence.

The Board considered the following Exhibits in their review of the matter:

- A-1** Architectural Plans (11 sheets), prepared by Peter Ditto, AIA, of FDS Architects, dated January 24, 2024.
- A-2** Site Plans, prepared by Azzolina & Feury Engineering, Inc., dated April 11, 2024.
- A-3** Survey, prepared by Azzolina & Feury Engineering, Inc., dated August 11, 2023.
- A-4** Property Deed.
- A-5** Colorized Presentation Plan.
- B-1** Report of Colliers Engineering and Design, prepared by Nick Chelius, PE, dated June 21, 2024.

TESTIMONY PRESENTED

The following witnesses appeared and offered, or were available, to offer sworn testimony on behalf of the Applicants:

1. Peter Ditto, AIA (“Ditto”)
2. Perry Frenzel, PE (“Frenzel”)

Capizzi 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 12 Irene Court and is also designated as Block 84.04; Lot 2 on the Borough’s Tax Assessment Map of the Borough (hereinafter, “the Property”).

Ditto did not testify – but was available for questions from the Board. **A-2** was submitted with the Application documents and reviewed by Board members.

Frenzel testified as to engineering matters and introduced **A-2** and **A-3** into evidence. Frenzel emphasized that the Application was “a no variance build” which was also confirmed by **B-1**. He testified as to the undersized Lot Area and the fact that the demolition of the existing home eliminates a small Front Yard Setback variance. He further testified that despite the undersized nature of the Lot – and the inability of the Applicant to change that condition – no variances were required for the construction of the home and that the “hardship” of a deficient Lot Area was accommodated during the design process. He emphasized that the Applicant was not using the condition – and the related hardship - as the basis to seek variances.

Frenzel further testified as to drainage issues and agreed to comply with all drainage requirements of the Board Engineer.

CONCLUSIONS OF LAW; RESOLUTION

The Application before the Board is for a Lot Area deficiency on an existing, isolated and undersized lot. The Applicant has attempted to remedy this condition to no avail. The Applicant has submitted detailed plans (See, **A-1** and **A-2**) and has submitted extensive testimony with regard to the matter. The Applicant has provided proofs and satisfied both the “positive” and “negative” criteria of NJSA 40:55D-70(c)(1). The Applicant has demonstrated complete compliance with municipal setback and coverage 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 Applicant has satisfied the requirements of NJSA 40:55D-70(c)(1). The Board finds in its review that the variance requested is justified and should be granted for the reasons set forth herein. The Board found that the requested variance 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. This is amply demonstrated by the Applicant sizing the house in a manner that it was appropriate for the lot and could be constructed

without coverage or setback variances.

The granting of the within approval is subject to the following:

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


Motion was made by: Ms. Pavlova
Motion was seconded by: Mr. McLain

Roll Call to Approve:

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

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


Dorothy Hayden, Board Chair


Michael Greco, Board Secretary