

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST
RESOLUTION #24-006**

FILE NO. ZB-24-006

IN THE MATTER OF THE APPLICATION OF:

CARLY WILLIAMS FOR VARIANCES RELATING
TO BLOCK 10; LOT 648 ALSO KNOWN AS
22 DRURY LANE, DEMAREST, NEW JERSEY
(HEREINAFTER, "THE PROPERTY")

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
Building Coverage	20%	19.70%	23.42%
Max. Livable Floor Area (LFA)	30%	17.18%	44.07%
Improved Coverage	30%	36.1%	36.1%
Max Building and Driveway Coverage	25%	35.7%	36%
Front Yard Setback	25%	Conforming	23.71'

***The Property includes pre-existing non-conformities as to Lot Frontage, Lot Area, and Lot Width.**

FINDINGS OF FACT

A Public Hearing was held on November 19, 2024, at the Demarest Municipal Building. The Application was presented by the Applicant, through counsel, Matthew Capizzi, Esq. ("Capizzi").

The Applicant marked the following documents into evidence for consideration by the Board:

- A-1 Site plans consisting of four (4) sheets, prepared and signed by Michael Dipple, PE, of L2A Land Design, LLC, dated June 4, 2024, last revised August 20, 2024;
- A-2 Colorized Site Plan, prepared by L2A Land Design, LLC, dated November 19, 2024;
- A-3 Elevation Photographic Rendering, prepared by Peter J. Dito, RA, depicting the proposed home – as completed – in the context of surrounding homes;
- A-4 Architectural Plans prepared and signed by Peter J. Dito, RA, dated May 30, 2024;
- A-5 Colorized Floor Plans prepared and signed by Peter J. Dito, RA, dated May 30, 2024;
- A-6 Blow-up Elevation Composite Board, prepared and signed by Peter J. Dito, RA;
- A-7 Five Page Photo Exhibit, prepared by Michael J. Pessolano, PP, and dated November 19, 2024.
- B-1 Engineering Review Letter, prepared by Nick Chelius, P.E., of Colliers Engineering and Design, dated October 23, 2024, last revised November 13, 2024.

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

1. Michael Dipple, PE ("Dipple")
2. Peter Ditto, AIA ("Ditto")
3. Michael J. Pessolano, PP, ("Pessolano")
4. Nick Chelius, P.E. ("Chelius")

The subject property is located in the Residence Zone D within the municipality. The address of the Property is 22 Drury Lane and is also designated as Block 10; Lot 648 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property")

The Applicant, through its witnesses and counsel, presented its' case and provided an overview of the Property and the area. It was explained that the Property is an existing, approximately rectangular, undersized lot (6,730 square feet) containing an existing one-story, frame dwelling. It was testified by both Dipple and Pessolano that the Property is "the smallest lot in the Block and in the area". All witnesses testified that the Property includes pre-existing non-conformities as to Lot Frontage, Lot Area, and Lot Width. The Applicant is proposing to renovate the existing dwelling, construct a limited addition to the first floor (approximately, 228 square feet) of the existing home and add a second-floor addition over the newly configured first floor with limited "overhangs".

Dipple was duly sworn and offered testimony that the Application provided for a slight extension and "squaring off" the first floor at the right, rear, corner of the existing first floor which resulted

in a "slight increase" in the square footage of the first floor and building footprint. The left, rear, corner would be the location of an "open deck". Thereafter, a second-floor addition would be placed over the newly configured first floor. The new second floor included an "awning" or small cantilevered, projection across, approximately, one-half of the front of the home (including, above the front steps) as well as two similar, smaller projections above the area at the rear of the steps to the open deck and above the patio door. As a result, the second floor is slightly larger than the first floor.

Dipple testified that, as a result of the proposed addition, the Building Coverage increases to 23.42% and a variance is required for exceeding 20%. Additionally, taking into account all additions to the structure and site, Improved Lot Coverage was increased to 36%, where 30% is permitted and 35.7% is existing. He further testified that the projecting front "awning" resulted in a Front Yard Setback of 23.71', where 25' is required. It should be noted that Chelius testified that the correct calculation of the proposed Front Yard Setback was 21.21' and not 23.71' as indicated by the Applicant. Dipple also testified that Max. Residential & Parking Coverage was increased from 29% to 31.73%, where 25% is permitted.

Finally, Dipple testified to the increase in the Livable Floor Area ("LFA") which is defined in Borough Ordinance as:

The aggregate area of all floors included within the outer walls of a building, excluding basements, garages and other unheated areas, and including only such floor area under a sloping ceiling for which the headroom is not less than five feet six inches, and then only if at least 75% of such floor area has a ceiling height of not less than seven feet six inches and if any such floor that is situated above another story has access to the floor below by a permanent built-in stairway and has a permanent, complete floor and a means of heating to 70° F. at all times.

Dipple testified that an LFA of 30% is permitted and 44.07 is proposed. He noted that the Property is approximately 32.1% undersized and that the overage in LFA is approximately 14 percentage points in excess of what is permitted. He testified that virtually the entire increase in the LFA was the result of the addition of the proposed second floor. Dipple also testified that the Applicant proposed the addition of a proper drainage system – where none presently exists as well as the inclusion of landscaping.

Ditto testified as to the Elevations and Floor Plans. He testified that the current LFA was 1,155 square feet and that the garage measured approximately 192 square feet and was – and would remain – a small garage. With reference to A-3, he testified that the addition of a second floor on the existing, single story, brick, home would "normalize" the streetscape and much more closely match the size and mass of each of the adjoining homes. He testified that subsequent to construction, the home would contain approximately 2,965 square feet and would be a 3-4 bedroom home.

Pessolano testified as a licensed professional planner and made reference to all Exhibits and specific reference to A-7. He noted that Drury Lane varies in width along its length and that the Property is

located at a narrow point in the street. He confirmed the Property is the smallest lot on Drury Lane.

Pessolano testified that all requested variances – but for the LFA variance – are to be reviewed under NJSA 40:55D-70(c):

(1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship;

Pessolano further testified that the LFA variance is the equivalent of a “Floor Area Ratio” (“FAR”) variance and is to be reviewed pursuant to NJSA 40:55D-70(d)(4):

In particular cases for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of this act to permit:...(4) an increase in the permitted floor area ratio as defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4)..., A variance under this subsection shall be granted only by affirmative vote of at least five members, in the case of a municipal board, or two-thirds of the full authorized membership...

In addition to the aforesaid “affirmative proofs”, any variance requires a demonstration of the “negative criteria” which provides:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance...

Pessolano testified that the leading case on the proofs necessary to obtain a variance for LFA is *Randolph Town Center v. Township of Randolph*, 324 N.J. Super. 412 (App. Div. 1999). Pessolano testified that the standard of proof was less akin to a standard statutory interpretation of “special reasons” and closer to the standard of proof promulgated by *Coventry Square v. Westwood Bd. of Adj.*, 138 N.J. 285 (1994) and that – given that the use is a permitted one – the proper proofs for an LFA or FAR variance require that the Applicant must demonstrate that the site will accommodate the problems associated with a proposed use with larger floor area than otherwise permitted by ordinance. Pessolano testified that the real question to be examined is whether the “intensity” of the increased

LFA could be accommodated by the Property.

In response to this question of "intensity", Pessolano noted that despite the size of the Property, the Applicant largely meets setback requirements, parking, and residential facilities and that "it all comes together and the site can accommodate the increased LFA". He noted that the second-floor projection at the front of the property is visually appealing and safer in its coverage of the front entry. He testified the same was true for the rear projections. He testified that – while the applicable standard is one of intensity and not "special reasons" that the Application did meet the special reasons standard, and the Property is particularly well suited for the proposed LFA. He also noted that the enhanced LFA was not detrimental to the intent and purpose of the Zoning Ordinance and Zone Plan and that a two story home is "visually conforming and what is expected in the streetscape". Additionally, he testified as to the (c) variances and provided the proofs necessary for the granting of these variances.

CONCLUSIONS OF LAW; RESOLUTION

The Application before the Board is for several Bulk Variances as well as a variance for Livable Floor Area. Board finds that the LFA variance is almost entirely related to the addition of a second floor to the existing single-story home. The Board finds that the increase in the LFA serves to create a home that is an appropriate intensity and use of the Property and maintains the single-family use of the Property. The additional LFA does not serve to alter the intensity of the use and the additional LFA serves to make the Property more consistent with the area and more consistent with homes in Demarest. The Board finds that the requested variance can be approved based on the facts known to the Board and the evidence presented. The Property is an existing undersized lot that has an existing home thereon. There is no change to the intensity of the use of the Property.

The Board finds in light of the lot size, the design proposed, and the maintenance of all setbacks the requested variances are reasonable and appropriate.

The Board finds that the Applicant has satisfied the proofs required for a variance pursuant to NJSA 40:55D-70(c)(1) or (c)(2). The proofs indicate that the Applicant both has a hardship as to the undersized property, as well as the exceptional conditions resulting from the existing structure. Additionally, the proposed development uniquely satisfies the purposes of zoning and revitalizes an older home with improvements by enhancing the living area.

The within approval is conditioned on the Applicant complying with all recommendations of Board Professionals contained in review letters or such direction as may arise during construction.

Motion was made by: Mr. Adelman

Motion was seconded by: Mr. Corrado

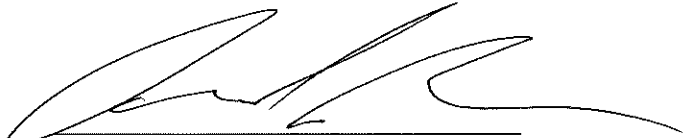
Roll Call to Approve:

Yes: Vice Chair Woods, Mr. Davis, Mr. Corrado, Mr. Adelman, Chair Hayden

No: —

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

A handwritten signature in black ink, appearing to read 'Michael Grecco', written over a horizontal line.

Michael Grecco, Board Secretary