

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

RESOLUTION NO: ZB-006-25

FILE NO: ZB-24-009

IN THE MATTER OF THE APPLICATION OF:

MIA RAPAPORT FOR VARIANCES RELATING
TO BLOCK 84.07; LOT 12 COMMONLY KNOWN
AS 20 PINE HILL 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, 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	28,000 sf	28,000 sf
Retaining Wall Height	< 2'	N/A	3'

- The Applicant seeks to construct a new home on the Property.
- The requested deviation for Retaining Wall Height was withdrawn and the Board did not consider, or grant, this variance.
- 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 January 21, 2025, in the Council Chambers, Borough Hall, Serpentine Road, Demarest. The Application was presented by the Applicant, Pro Se. The Applicant 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** Site Plans, prepared by McClellan Engineering, dated April 11, 2024.
- A-2** Architectural Plans, prepared by Uri Rappaport, AIA, of Rapaport & Associates Architects, dated May 19, 2024.
- A-3** Tax Map Sheet of Area of the Property.

B-1 Report of Colliers Engineering and Design, prepared by Nick Chelius, PE, dated December 5, 2024.

TESTIMONY PRESENTED

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

1. Uri Rapaport, AIA (“Rapaport”)
2. Mia Rapaport (“Applicant”)

1. The Applicant provided the Board with an overview of the Application and Board Counsel provided the Board with the legal issues and underlying law as it relates to the subject isolated, undersized lot. Rapaport 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 as first set forth above and is also designated as Block 84.07; Lot 12 on the Borough’s Tax Assessment Map of the Borough (hereinafter, “the Property”).
2. Rapaport testified as to **A-1** and **A-2**. He testified as to his understanding of the Site Plan and the drainage system as well as the placement of the home on the Property. He also testified as to the design of the home and the fact that the home did not result in any yard or setback variances. He testified that the design of the home takes into account the undersized nature of the Property and was sensitive and designed to assure there were no variances required to build the home on the Property. In other words, the home was “scaled” to fit the Property.
3. 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.
4. Rapaport provided **A-3** and testified that the majority of the lots in the area were undersized and there was no opportunity to acquire additional property to enhance the Lot Area.

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. Applicant shall obtain any necessary approvals from all municipal, county and state agencies.
2. 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: *Vice Chair McLain*
 Motion was seconded by: *Mr. Corrado*

Roll Call to Approve:

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	N/E
Vice Chair McLain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Adelman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Corrado	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Feinstein	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ms. Pavlova	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Chair Woods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

Dated: 2/18/25

[Signature]
 Timothy Woods, Zoning Board of Adjustment Chair

[Signature]
 Attest: Michael Greco, Board Secretary