

**MINUTES**  
**REGULAR MEETING**  
**ZONING BOARD OF ADJUSTMENT**

**December 21, 2021**

Ms. Hayden opened the meeting at 7:30 pm with the following announcement: The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time, and place of this regular meeting in the annual schedule and notice of regular meetings of this Board. Such annual schedule and notice of regular meetings are posted at Borough Hall, were mailed to the Star Ledger and The Record, and have been filed with the Borough Clerk of Demarest on January 28, 2021.

Join Zoom Meeting

<https://us02web.zoom.us/j/7318183076?pwd=cGY3R3JlOQnlmSGE1V0pQMkp1NG9RZz09>

Meeting ID: 731 818 3076

Passcode: 271918

1. Roll Call
2. Flag Salute
3. Matters to Address
4. Appointment of Nominating Committee Mr. Press and Mr. Corrado will form the nominating committee to appoint Attorney, Engineer, Chair and Vice Chair
5. Administrative Matters

<b>BOARD ROLL CALL:</b>	<b>PRESENT</b>	<b>ABSENT</b>
Mr. Woods, Vice-Chair	X	
Mr. Davis		X
Mr. Corrado	X	
Mr. Morrison	X	
Mr. Park	X	
Mr. Press	X	
Ms. Hayden, Chairwoman	X	
Alternate #1 Mr. McLain		X
Alternate #2 Mr. Adelman	X*	
<b>Present:</b>		
Marti Francis, Board Secretary	X	
Mark Madaio, Board Attorney	X	
Craig Zimmerman, Board Engineer	X	

\*joined during first hearing

**The following was announced: Variance Application 806.20 **APPLICANT REQUESTS TO BE CARRIED TO 2/15/22 meeting****

Relief sought: N.J.S.A. §40:55D-70(C) and Chapter 175 §175-27 for Improved lot coverage

40 Lincoln Street  
 Block 65 Lot 40  
 Mr. and Mrs. Lavin  
 D District

**Hearing History:** March 16 rescheduled due to improper notice; applicant requested carry to August, then October and December meetings.

GENERAL ZONING	REQUIRED	EXISTING	PROPOSED
Lot Area	10,000 sf	15,000 sf	No Change
Frontage	100 ft	100.00 ft	No Change
Lot Depth	100 ft	150.00 ft	No Change
Min. Front Yard	25 ft	32.5 ft	No Change
Min. Side	10 ft	12.5/17.5 ft	No Change
Min. Rear Yard	30 ft	57.9 ft	No Change
Bldg. Height	30 ft	---	No Change
Building Coverage	20%	3196 sf/21.3% (ENC)	No Change
Impervious Coverage	30%	4870 sf/32.5%*	4792 sf/31.9
FAR	30%	---	---

(\*) Variance Required

ENC - Existing Non-Conforming

Motion:

Second:

Roll Call to Approve:	YES	NO	ABSTAIN
Mr. Woods, Vice-Chair			
Mr. Davis			
Mr. Corrado			
Mr. Morrison			
Mr. Park			
Mr. Press			
Ms. Hayden, Chairwoman			
Alternate #1 Mr. McLain			
Alternate #2 Mr. Adelman			

**The following was announced: Variance Application 809.21 APPLICATION WITHDRAWN**  
 Relief sought: N.J.S.A. §40:55D-70(c) and Chapter 175 §175-27 Improved lot coverage & §175-19(B)(7) accessory structures (wall) and pool in a side yard

151 County Road  
 Block 144 Lot 1  
 Thomas Van De Ven  
 C District

**Hearing History:** 8/17/21 hearing, requested carried to 10/19/21 then 12/21/21

GENERAL ZONING	REQUIRED	EXISTING	PROPOSED
Lot Area	15,000 sf	16,798 sf	No Change
Principal Building Height	30 ft	31.5 ft	No Change (ENC)
Frontage	100 ft	259.69 ft	No Change
Lot Depth (County)	100 ft	104.57 ft	No Change
Lot Depth (Eric)	100 ft	154.98 ft	No Change
Min. Front Yard	35 ft	39.8 ft	No Change
Min. Side (northwest/Eric)	35 ft	31.1 ft	No Change (ENC)
Min. Side (southeast/Lot 7)	15 ft	52.4 ft	No Change
Min. Rear Yard (southwest/lot 2)	30 ft	28.4 ft	No Change (ENC)
ACCESSORY STRUCTURE:			
Height	12 ft	9 ft	11.9 ft
Side yard (SE/lot 7)	15 ft	1.5 ft	18.9 ft
Rear yard (SW/Lot 2)	10 ft	-0.5 ft	10.9 ft.
Building Coverage	20%	19.35%	15.56
Improved Coverage: principal residence, vehicle access & parking	25% /4200 sf.		16.56%/2781 sf.
Total Improved Coverage	30%/5093 sf.	32.37%/5437 sf.	35.96%/6041 sf.*
Retaining wall	2 ft.	N/A	3 ft.*
POOL:			
Distance to building			15.9
Side yard left (SE/Lot 7)	15 ft	-	18.1 ft
Rear yard (SW/lot 2)	10 ft	-	22.9 ft
Location	Rear yard	Side yard	Variance *

(\* ) Variance Required  
 ENC - Existing Non-Conforming

**Variance Application 817.21**

Relief sought N.J.S.A. §40:55D-70(c); and Chapter 175 §175-16 & §175-27 for building coverage and improved lot coverage

38 Rodney Place  
 Block 68 Lot 119  
 Joshua Jagid  
 D District

**Hearing History:** Carried from 9/2/21 and 11/16/21 meetings

<b>GENERAL ZONING</b>	<b>REQUIRED</b>	<b>EXISTING</b>	<b>PROPOSED</b>
Lot Area	10,000 sf	17,128.2 sf	No Change
Frontage	100 ft	115.71	No Change
Lot Depth	100 ft	145 ft	No Change
Min. Front Yard (Rodney)	25 ft	40.30 ft	No Change
Min Front Yard (Demarest)	25 ft	28 ft	No Change
Min. Side	10 ft	22 ft	No Change
Min. Rear Yard	30 ft	44.2 ft	No Change
Bldg. Height	30 ft	≤30	No Change
Max. Livable Floor Area (FAR)	30%	Approx. 30	Approx. 30
Building Coverage	3,426 sq ft (20%)	3,482 sq ft (20.33%)	20.33% *
Max % Improved coverage: principal residence, vehicle access and parking	4,282 sq ft (25%)	5,079 sq ft (29.65%)	4,975.3 (29.05%) *
Total Improved Lot Coverage	5,138.4 sq ft (30%)	6,023 sq ft (35.16%)	6,023 sq ft (35.16%) *

\*Existing Non-conforming requiring variances

Matthew Capizzi represented the applicant and stated this is a unique application as the applicant is not seeking to make any new improvements. Mr. and Mrs. Jagid purchased the property in 2017 and while making plans for a pool and patio a survey was prepared by Mike Dipple (L2 Engineering) and they came to the realization that the property as purchased in 2017 was non-conforming in regard to improved coverage. The applicant has not done any construction at the property since taking ownership. Mr. Capizzi stated they will present as built from Mr. Dipple's office of the existing conditions and the 2015 Indigo Architectural plans and noted the existing conditions deviate from the Indigo plans and this deviation resulted in the non-conforming condition. Mr. Capizzi's office underwent an extensive investigation to find the source of the deviation requesting files from the Boro and from the Boro's former engineer but could not find evidence of any as built plans by Indigo. The applicant is before the Board seeking a resolution memorializing what is in the field today to avoid issues should they decide to sell. Mr. Woods asked whether the applicant has to comply with today's ordinances. Mr. Madaio responded that as the current improved lot ordinance did not exist in 2017 a variance could be triggered. The Board Engineer commented that the driveway encroaches onto the right of way by 1.4 ft. Mr. Capizzi entered the Indigo approved plan of 6/25/15 as A1, the approved master building permit of 6/25/15 as A2 (cover sheet), the CO (certificate of occupancy) dated 11/23/16 A3, the CA (certificate of approval)

dated 1/25/17 A4 signed by Ed Rossi the Construction Official at the time, and Ordinance 1025-15 adopted on 6/22/15 A5 changing impervious coverage to improved coverage. There was a discussion regarding the relevance of a CO to zoning. Ms. Hayden said COs deal with construction codes not zoning. Mr. Madaio noted that most people assume a CO indicates everything is in compliance when they purchase a home. Mr. Capizzi stated that since the permit application was received by the building department before the change from impervious coverage to improved coverage the terms of the ordinance do not apply. Mr. Woods stated that the plans and the construction do not match. Mike Dipple (engineer for the applicant) was sworn in and entered the survey of existing conditions by Lakeland (11/4/21), marked as A6. He stated that the driveway encroaches onto Demarest Avenue, an unpaved road, by 1.4 feet at the widest point. He also shared his opinion that perhaps the Construction Official at the time did not consider the pavers in the calculations. The Indigo plan and the as built existing conditions are architecturally significantly different. The current coverage is 5.16% over. The biggest deviations are in the driveway, sidewalks, and patio. Joshua Jagid (applicant) was sworn in and testified that he and his wife purchased the house from the developer when the house was about 80% complete. They chose the paint colors and other details but made no improvements except landscaping. At that time, they had hoped to put in a pool. The Board engineer pointed out that plants are in the right of way and therefore the borough could dig these up if necessary. Mr. Woods said he did not want to trade off coverage for a pool in the future. Mr. Capizzi said there was no subsequent plans for an application for a pool and should the Board approve this application there would not be a possibility to trade off the excess coverage. He said if he were to do otherwise two things would happen 1) there would be no credit for the new coverage, no horse trading 2) the new application would start from the 30% threshold. Ms. Hayden stated that she did not want to approve this application and then see the applicant come back asking to install a pool as part of the approved coverage. Mr. Capizzi stated that there are no plans to file a variance request, but they could not be forever precluded from coming back. Mr. Madaio stated that the Board cannot preclude the applicant from applying but can limit the possibility by saying that the approval would be for the current design and not for other coverage. David Spatz (planner) was sworn in and accepted. He stated that some towns require that a driveway connect to an improved street and that this could possibly have been a factor in the changed design resulting in the long driveway design exiting on Rodney vs. the Indigo plans with the driveway exiting on the Demarest Avenue side.

Mr. Corrado moved to open the meeting to the public, second Mr. Park. All in favor. Carried.  
 Mr. Corrado moved to close the meeting to the public, second Mr. Morrison. All in favor. Carried.

Move: Mr. Woods made a motion to approve the application with the stipulation that this is for pavers only. He commended the applicant for coming forward and believes the home was purchased in its current state as he sees the property often.

Second: Mr. Morrison

***All members are eligible to vote as this application was not heard at the previous meetings***

<b>Roll Call to Approve:</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>
Mr. Woods, Vice-Chair	x		
Mr. Davis			Absent
Mr. Corrado	X		
Mr. Morrison	X		
Mr. Park	X		
Mr. Press	X		
Ms. Hayden, Chairwoman	X		

Alternate #1 Mr. McLain			Absent
Alternate #2 Mr. Adelman			No vote*

\*missed part of hearing

**Variance Application 816.21**

Relief sought: N.J.S.A. §40:55D-70(c); and Chapter 175 §175-19 A (3) & B (7) side yard setback and accessory structure (pool) in a side yard

159 Donnybrook Drive  
 Block 87.03 Lot 5  
 Joshua Rubach  
 B District

**Hearing History:** 9/21/21 requested carry to 12/21/21 meeting to revise plans

GENERAL ZONING	REQUIRED	EXISTING	PROPOSED
Lot Area	22,500 sf	24,504.19 sf	No Change
Frontage (Donnybrook)	150 ft	154.47 ft	No Change
Frontage (Prospect)	150 ft	145.59 ft (ENC)	No Change
Lot Depth	150 ft	143.22 ft (ENC)	No Change
Min. Front Yard	Existing	46.83 ft	No Change
Min. Side Yard (Lot)	20 ft	20 ft	No Change
Min. Side Yard (Street)	50 ft	48.20 ft (ENC)	No Change
Min. Rear Yard	40 ft	31.20 ft (ENC)	No Change
Building Coverage	15%	12.92%	No Change
Max % Improved Coverage: principal residence, vehicle access and parking	6,126 ft. (25%)		4667 ft. (19.05%)
Total Improved Coverage	7,351 ft. (30%)	6,037 ft. 24.64%	6,807 ft. (27.78%)
Wall Height	2 ft.	NA	2.00 ft
Min Pool Side Yard	20 ft.	NA	15 ft.*
Min Pool Rear Yard	10 ft.	NA	10.50 ft.

ENC – existing non-conforming condition \*Variance needed

Matthew Capizzi represented the applicant and stated that originally three variances were needed – side yard, rear yard, and pool in a side yard. The new plans (revision 3 -11/18/21) require a side yard variance. Previous side yard setback was 9 ft, now it is 15 ft., the pool is still in the side yard. Other revised site plan modifications include moving the pool in an easterly direction away from the neighbor and adding drainage and low landscaping. Bob Mueller from Mike Hubschman’s office was sworn in and accepted. In the new plans, the pool was moved further east away from the neighbor’s property line, closer to the house and part of the patio has been removed. The low landscaping will also aid drainage. Mr. Capizzi stated that the coping of the pool was reduced. The fence will be aesthetic

aluminum. The pool equipment will be near the generator and air conditioner. Ms. Hayden asked about the easement on the property. Mr. Capizzi stated that the pipe is on the neighboring property and if needed the applicant is willing to move what is built on the easement. The Board engineer said the Borough is aware of flooding issues in the area and are trying to correct that and install a new pipe. He also stated that if the applicant builds over the easement and it becomes necessary to remove the improvements the Borough has a right to remove to do so in order to remove the existing pipe and install a new pipe. He said they anticipate removing a lot of landscaping. Construction is likely to happen in Q2 or Q3 of 2022. Mr. Spatz (planner) remained sworn in and stated that the residence is at an angle toward the intersection, leaving a relatively small space for a back yard. Moving the pool from the property lines mitigates the issues.

Move: Mr. Corrado moved to approve the variance application and that the change in position makes the application more amenable.

Second: Mr. Press

<b>Roll Call to Approve:</b>	<b>Eligible to Vote</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>
Mr. Woods, Vice-Chair		X		
Mr. Davis	Pending confirmation listened to 11/21 recording			Absent
Mr. Corrado		X		
Mr. Morrison		X		
Mr. Park		X		
Mr. Press		X		
Ms. Hayden, Chairwoman		X		
Alternate #1 Mr. McLain	Pending confirmation listened to 11/21 recording			Absent
Alternate #2 Mr. Adelman		X		

**Approval of Minutes of November 16, 2021, Meeting - only those present at prior months' meeting are eligible to vote (Mr. Woods, Mr. Morrison, Mr. Park, Mr. Press, Mr. Adelman, and Ms. Hayden)**

<b>Roll Call to Approve:</b>	<b>YES</b>	<b>NO</b>
Mr. Woods, Vice-Chair	X	
Mr. Davis	---	Absent
Mr. Corrado	X	
Mr. Morrison	X	
Mr. Park	X	
Mr. Press	X	
Ms. Hayden, Chairwoman	X	
Alternate #1 Mr. McLain	---	Absent
Alternate #2 Mr. Adelman	X	

Motion: Mr. Morrison

Second: Mr. Corrado

**Motion to Close the Meeting:**

Motion: Mr. Morrison

Second: Mr. Press All in favor. Meeting adjourned at 9:40 pm.

<b>Roll Call to Approve:</b>	<b>YES</b>	<b>NO</b>
Mr. Woods, Vice-Chair		

Mr. Davis		
Mr. Corrado		
Mr. Morrison		
Mr. Park		
Mr. Press		
Ms. Hayden, Chairwoman		
Alternate #1 Mr. McLain		
Alternate #2 Mr. Adelman		

***Next Meeting January 18, 2022, at 7:30 p.m. via Zoom conference***