

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO. 771-17

IN THE MATTER OF THE APPLICATION OF:

JINHO KIM, FOR VARIANCES RELATING
TO BLOCK 158; LOT 40 ALSO KNOWN
AS 2 LOIS AVENUE, 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:

Minimum Lot Area: the ordinance requires a minimum lot area of 10,000 Sq. Ft. The Lot Area is 6,579 Sq. Ft. (existing non-conformance).

Minimum Lot Width: the ordinance requires a minimum lot width of 100 Ft. The lot width is 60 Ft. (existing non-conformance).

Minimum Front Yard Setback: the ordinance requires a minimum setback of 25Ft.

A retaining wall over 2 feet in height is proposed in the setback.

Maximum Improved Lot Coverage: the ordinance requires a lot coverage of 30%. The Applicant is proposing a lot coverage of 33.75%.

Maximum Livable Floor Area (FAR): the ordinance requires a FAR of 30%. The Applicant is proposing a FAR of 35.8%

FINDINGS OF FACT

Public hearing was held on November 20, 2018 in the Council Chambers of the Demarest Municipal Building. The Application was presented by Matthew Capizzi, Esq.

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

Site Plan, consisting of one (1) sheet, titled "Site Plan, Forma Tutti, Block 158, Lot 40, 2 Lois Avenue, Borough of Demarest, Bergen County, New Jersey", prepared by McNally, Doolittle Engineer, LLC., signed and sealed by Matthew Greco, P.E., dated December 26, 2017 and **revised November 6, 2018**;

Architectural Plan, consisting of six (6) sheets, titled "DM House, 2 Lois Avenue, Demarest, NJ 179 Columbus Rd., Demarest", prepared by JX2 Architects, dated June 14, 2018;

Architectural Plans consisting ten (10) sheets, titles "DM House, 2 Lois Ave, Demarest, NJ, prepared by JX2 Architects, dated July 3, 2017;

Architectural Plans consisting of nine (9) sheets, titled "KIM Residence, 2 Lois Ave., Demarest, NJ", prepared by JX2 Architects, dated October 30, 2018

Zoning Board of Adjustment Application;

Zoning Board Denial Letter dated June 21, 2018;

Maser Engineering Review Letter dated, November 16, 2018.

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

1. Applicant, Jinho Kim, AIA (hereinafter, "Kim")
2. Engineer, Douglas Doolittle, PE ("Doolittle")

TESTIMONY

1. The site is currently comprised of a two-story, single family dwelling with a detached garage, asphalt driveway from Rodney Place, slate sidewalks, and a rear covered porch. The subject property is a corner lot and is located on the east side of Lois Avenue and the south side of Rodney Place.
2. The Applicant proposes to remove the existing structures. The Applicant is proposing to construct a new two-story single-family dwelling with an attached two car garage. The Applicant is also proposing to install a rear patio at grade, a second story balcony located at the rear of the property and on the North side of the structure. A seepage pit is proposed to be installed to collect the driveway runoff.
3. The property is located in the Residential D Zone, where a two-story, single-family dwelling is permitted.
4. The property is not located within a floodway according to FEMA flood mapping Panel # 34003C0204G Effective 9/30/2005.

5. The subject property is located in the Residence Zone RD within the municipality. The address of the Property is 2 Lois Avenue and it is also designated as Block 158; Lot 40 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property").
6. The Applicant, through counsel, presented its case. Kim testified as to all matters of architectural concern. He testified to the Zoning Schedule and indicated that the Property was undersize at 5,579sf where 10,000 sf is required. He testified that the Property was a corner lot and as to the design of the home and the revisions since the initial public hearing. Doolittle testified to all matters regarding engineering.
7. The proposed home as two front yard setbacks – including one that is deficient. During the course of testimony about the front yard setbacks, the Applicant addressed the larger question as to what the proper setbacks on the Property were.
8. Kim testified that the prior house (and the Property) bear the address of 2 Lois Avenue, but the new home would face Rodney Place. It was testified that Rodney Place would therefore be the visual (or assumed) frontage, but that Lois Avenue was still the actual address. There was no access from Lois Avenue, except for the garages and that the garages facing Lois Avenue was a preferable condition due to traffic and road widths. Notwithstanding this, Rodney Place would be the "front".
9. As a result of Rodney Place being the "front", the narrow setback opposite Rodney was deemed to be a rear yard – requiring 30' – when only 9.6' was provided. It was testified that if this was a side yard (if Lois Avenue was deemed to be the front) this yard would be a side yard requiring only 10' and being nearly conforming.
10. Similarly, if Rodney Place is the "front" – and there are front yards on both Rodney Place and Lois Avenue– and the yard across from Rodney Place is a 9.6' rear yard, then the remaining yard is a side yard that far exceeds side yard requirements.
11. In short, without actually changing the house in any way, the determination that the "front" was Rodney Place, rather than Lois Avenue, resulted in the need for additional Yard Variances.
12. The Applicant seeks an FAR variance for an FAR of 35.8, rather than 30. The Applicant adduced no planning or other testimony to warrant the granting of the FAR variance.

CONCLUSIONS OF LAW; RESOLUTION

The application before the Board is for the continuation of the following existing variances as to:

Minimum Lot Area: the ordinance requires a minimum lot area of 10,000 Sq. Ft. The Lot Area is 6,579 Sq. Ft. (existing non-conformance).

Minimum Lot Width: the ordinance requires a minimum lot width of 100 Ft. The lot width is 60 Ft. (existing non-conformance).

The application before the Board is for the following new variances as to:

Minimum Front Yard Setback: the ordinance requires a minimum setback of 25Ft.

A retaining wall over 2 feet in height is proposed in the setback.

The application before the Board is for the following new variances as to Coverage and FAR:

Maximum Improved Lot Coverage: the ordinance requires a lot coverage of 30%. The Applicant is proposing a lot coverage of 33.75%.

Maximum Livable Floor Area (FAR): the ordinance requires a FAR of 30%. The Applicant is proposing a FAR of 35.8%

Virtually all of the aforesaid variances require proofs pursuant to N.J.S.A. 40:55D-70(c)(1) or (c)(2).

1. N.J.S.A. 40:55D-70(c)(1) provides that a variance can be granted by reason exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully thereon. The strict application of the ordinance would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the developer of the property.
2. The Board finds that the Applicant has failed to prove entitlement to the variances collectively, or individually, based upon a (c)(1) variance. There has been little, or no, testimony as to the factors which give rise to a (c)(1) variance and no testimony which establishes a nexus between those statutory factors and the need (or hardship) due to the variances sought in this matter. The Property lacks detrimental topographic or physical features or extraordinary and exceptional

situations. There has been no demonstration of peculiar or exceptional practical difficulties or exceptional and undue hardship. The Architect (who was not a Planner) was unable to testify as to any of the affirmative proofs necessary for a (c)(1) variance.

(a) N.J.S.A. 40:55D-70(c) (2) provides that a variance may be granted where the Board finds that the purposes of the Municipal Land Use Law ("MLUL") would be advanced by a deviation from the zoning requirements and that the benefits of the deviation would substantially outweigh any detriment. The Board finds that the Applicant has failed to prove entitlement to the variances collectively, or individually, based upon a (c)(2) variance. There has been little, or no, testimony as to the purposes of the Municipal Land Use Law or the advancement of these purposes by the deviations and variances requested by the Applicant. There has been no effort to weigh the benefits to the variances to the purposes of the Municipal Land Use Law or to weigh the "benefits v. detriments". No planning testimony was adduced by the applicant and there was no testimony as to the Master Plan.

(b) The Applicant requires a variance pursuant to N.J.S.A. 40:55D-70(d) for the requested excessive FAR. The Applicant has failed to adduce testimony required for the granting of a (d) variance.

(c) The Applicant has failed to adduce testimony regarding the "negative criteria" required under the Municipal Land Use Law or to examine this negative criteria in light of the Application and the variances requested. There has been no discussion as to the intent and purpose of the zoning ordinance or zone plan and the impact upon same of the requested variances. No competent planning testimony was adduced by the Applicant and there was no testimony by any who could make reference to the "zone plan".

The Board finds that the Applicant has failed to demonstrate entitlement to the requested variances.

Motion was made by: D. Morrison
Motion was seconded by: R. Corrado

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

Accordingly, a majority of the Board voted to deny 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 August 20, 2019.

Diane Frohlich, Board Secretary