

PLANNING BOARD

AGENDA

REGULAR MEETING

October 6, 2021 7:30 pm

Public Announcement of Meeting: 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 public hearing meeting in the annual schedule and notice of regular meetings of this Board. Such annual schedule and notice of regular meetings is posted at the Borough Hall, was mailed to The Newark Star-Ledger and The Record and was filed with the Borough Clerk of Demarest on January 27, 2021.

- 1. Roll Call**
- 2. Salute to the Flag**

NEW BUSINESS:

- 3. Motion to approve the resolution for the subdivision of Block 120.01, Lots 2 and 3.**
- 4. Motion to approve the minutes of July 7, 2021.**
- 5. Adjournment**

**Borough of Demarest
Planning Board
Resolution of Memorialization
as to Minor Subdivision and Variances**

**In the Matter of the Application of
Jane Majeski and Thornton Lockwood for a
Minor Subdivision and Variances
Block 120.01, Lots 2 and 3**

Whereas, on July 6, 2021, Jane Majeski and Thornton Lockwood (“Applicants”) filed a development application with the Demarest Planning Board (“Board”) seeking approval of a minor subdivision and related variances for the property known as Block 120.01, Lots 2 and 3; and

Whereas, the Applicants also filed a minor subdivision plat, dated June 28, 2021, prepared by Michael J. Hubschman, P.E., P.P. and Robert J. Mueller, P.L.S., of Hubschman Engineering, P.A., consisting of one sheet (“the Plan”); and

Whereas, on August 25, 2021, Carl P. O’Brien, P.E., P.P., C.M.E., C.P.W.M. of Colliers Engineering and Design, filed with the Board a letter reviewing the application, the Plan, and all supporting documents (“Review Letter”); and

Whereas, after notice was published and provided pursuant to the Municipal Land Use Law and the Borough’s ordinances, a public hearing was held on September 1, 2021; and

Whereas, at the hearing, Richard W. LeBlancq, Esq., of Harwood Lloyd, LLC, 130 Main Street, Hackensack, N.J., appeared as the attorney for the Applicants; Michael J. Hubschman,

P.E., P.A. and Paul Majeski (“Majeski”), testified on behalf of the Applicants; and no residents of the neighborhood or other members of the public attended the hearing; and

Whereas, the following exhibits were presented as evidence at the hearing:

A-1 The Plan.

A-2 Letter from David L. Rutherford, Esq; and

Whereas, at the conclusion of the hearing the Board, by voice vote, adopted a resolution approving the application, and, pursuant to the provisions of N.J.S.A. 40:55D-10(g), the Board adopts this memorializing resolution.

Now, therefore, be it resolved, on this 6th day of October, 2021 by the Board that, in consideration of the testimony, exhibits, and comments presented at the public hearing and otherwise in the record before the Board, the Board makes the following findings of fact and conclusions in regard to the application:

1. The application concerns two residential lots on the Borough’s tax map. Both are used as residential premises. These properties are in the A residential zoning district.
2. The property known as Block 120.10, Lot 2, has a street address of 15 Duck Pond Road. (“Lot 2”). Lot 2 is improved with a two and one half-story residential dwelling and an easement permits access to a detached garage on the adjacent lot. Lot 2 is an irregularly shaped. It is on the corner of Duck Pond Road and Deerhill Road. It is owned by Jane Majeski, and would be Lot 2.01 as proposed (“Lot 2.01”).
3. The property known as Block 120.10, Lot 3, has a street address of 17 Duck Pond Road. (“Lot 3”). Lot 3 is improved with a two-story residential dwelling and the detached brick garage that is used by the occupants of Lot 2. Lot 3 is an irregularly shaped lot. It is owned by Thornton & Lenora Lockwood, and would be Lot 3.01 as proposed (“Lot 3.01”).

4. The Applicants submitted a letter from David L. Rutherford, Esq., stating that he was the attorney representing Thornton and Lenora Lockwood, who own Lot 3. He also stated that his clients consented to Mr. LeBlancq's presentation of the application before the Board. The letter represents that the Lockwoods "have entered into a contract to sell" Lot 3, that the contract is contingent on the Board's approval of the subdivision. The buyer "intends to demolish the existing home on 17 Duck Pond Rd., and construct a new home."

5. Majeski testified that he has lived in Demarest since 1993. He explained the unusual configuration of the garage and driveway, which appear to be on his Lot 2, but are instead on the adjacent Lot 3. He also testified to the historical uses of the lots as parts of a larger parcel that was used as a farm. The garage originally was used as a stable.

6. The Applicants propose to relocate the line between the two lots so that the driveway and garage will be located on the reconfigured Lot 2.01. This will eliminate the need for a driveway easement on Lot 3. It also will restrict access to Lot 3.01 from Duck Pond Road.

7. The proposed new Lot 3.01 would be irregular in shape but the new Lot 2.01 will be more rectangular in shape. The proposed subdivision also will create new rear yard and side yard dimensional variances for the garage, which is an accessory structure. These variances are:

	<u>Required</u>	<u>Provided</u>
Maximum Building Height	12 feet	14.5 feet (existing)
Minimum Side Yard	25 feet	5 feet
Minimum Rear Yard	10 feet	6.40 feet
Minimum Front Yard	50 feet	41.40 feet
Permitted in Rear Yard	Yes	No

In addition, a new variance is proposed on Lot 2.01, as the proposed rear yard width would be 177.05 feet, instead of the required 200 feet. An existing minimum frontage variance on Deerhill

Road will continue, 163.24 feet instead of 200 feet. On Lot 3.01, an existing condition will continue, providing a 33.30 foot rear yard, instead of the minimum required 50 feet.

8. Hubschman testified that the proposed more regular lot lines shown on the Plan advance better planning alternatives than the two irregularly shaped lots that would result if the Board were to make the garage on the new proposed Lot 2.01 conforming as to the rear yard and side yard setbacks. Hubschman also testified that, on the whole, the Applicant's proposal will result in a more aesthetically pleasing lot configuration.

9. Based upon the Board's consideration of all of the evidence in the record, including Hubschman's expert testimony, the Board approves the proposed subdivision and the variances and waivers referred to above. The Board also finds that the subdivision is properly classified on a minor subdivision.

10. The Board concludes that the Applicants are entitled to the variances pursuant to N.J.S.A. 40:55D-70(c) (2), which requires that the Applicants demonstrate that the "purposes of [the Municipal Land Use Law] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment [.]". N.J.S.A. 40:55D-70(c) (2). As in the case of a (c) (1) variance, "no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property." See, Kaufmann v. Planning Board of Warren, 110 N.J. 551, 562 (1988). The provisions of N.J.S.A. 40:55D-70 (c) (2) apply to a very limited class of nonhardship variances:

Obviously, the Legislature contemplated that deviations from zoning requirements without "hardship" could advance the purposes of zoning, else it would not have enacted the c(2) provision. By rooting the c(2) variance into purposes of the MLUL, the Legislature has confined the discretion of the boards;

they cannot rewrite ordinances to suit the owner or their own idea of what municipal development regulations should be.
Id. at 564.

Instead, the Board must seek “to effectuate the goals of the community as expressed through its zoning and planning ordinances.” Ibid. The Board must also recognize the principle that “planning, and not ad hoc decision making, is the cornerstone of sound governmental policy in this area. [citation omitted].” Id. at 557.

11. When these principles are applied here, it is clear that the Applicants demonstrated that the minor deviations, on balance, would substantially outweigh the detriment. The proposed reconfiguration of Lots 2 and 3 would advance several purposes of the MLUL. The more regular lot shapes and lot lines advance better planning alternatives than the irregularly shaped lots that currently exist. The elimination of the driveway easement and the location of the brick garage on the new lot 2.01 also advances better planning and use alternatives for the properties. Although new variances are required for the garage setbacks, the proposal would provide for “adequate light; air and open space,” and promotes a “desirable visual environment[.]” N.J.S.A. 40:55D-2(c) and (i). The Board also agrees with Hubschman’s testimony that, on the whole, the Applicants’ proposal will result in a more aesthetically pleasing lot configuration. Accordingly, the benefits of the variances outweigh the detriments.

12. These same facts form the basis for the Board’s conclusion that the Applicants satisfied their burden as to the negative criteria. The Applicants demonstrated that the minor variance relief sought “can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” N.J.S.A. 40:55D-70(d).

13. The Board also finds, however, that this relief may be granted only on the condition that the Applicants obtain and submit proof of the Borough of Demarest Mayor and Council's written consent to the continued existence of the stone walls shown on the Plan in the Duck Pond Road right of way, or that the stone walls be removed. The Applicants agreed on the record to this condition. The Applicants also must provide written confirmation that vehicle access to Lot 3.01 will continue from Duck Pond Road, even though it is expected that the existing residential dwelling will be demolished and replaced with new construction.

And be it further resolved by the Board that the Applicants' application for minor subdivision approval and the variances referred to herein is granted subject to the following conditions:

1. The Applicants will prepare and submit for approval by the Board attorney and engineer documents confirming the release of the driveway easement on Lot 2.01, to be recorded in the Bergen County Clerk's office, as a provision in the subdivision deed or plat;

2. The Applicants will provide confirmation that the Demarest Mayor and Council consents to the continued location of the stone walls in the Duck Pond Road right of way, or the walls have been removed;

3. The Applicants will provide written confirmation that vehicle access to Lot 3.01 will continue from Duck Pond Road, for the review and approval by the Board's attorney and engineer;

4. The Applicants will make the corrections to the Plan noted in the Review Letter;

5. The Applicants will provide the deed or revised plat to be recorded to the Board attorney for the review and approval by the Board's attorney and engineer before recording of same;

6. The corner markers for all lots will be set as required by the Board engineer before the Applicants record the subdivision plat and/or deeds;
7. The Applicants will deposit with the Borough all necessary escrow fees for the Board's professional legal and engineering services undertaken and to be undertaken on behalf of the Board and the Borough as it relates to this approval;
8. The Applicants will comply with all Federal, State, and local laws with respect the application, and will obtain any necessary approvals, including but not limited to Bergen County Planning Board approval or an exemption. The Applicants will pay all fees and costs associated with this application;
9. Any and all future development of Lots 2.01 and 3.01 will conform to all municipal ordinances, including construction code requirements, or be subject to further Board approval;
10. The Applicants will obtain all necessary permits from the Borough Construction Code Official;
11. All plans, surveys, and deeds must be reviewed by the Board Attorney, Municipal Construction Code official, and/or the Borough engineer, to confirm compliance with all municipal ordinances;
12. If after review by any administrative or governmental agencies, any changes or amendments are proposed to be made to the Plan, the Board retains jurisdiction over this application, and further Board review may be necessary if the Board's attorney and engineer determine that the proposed changes or amendments are material;
13. All representations made or agreed to by or on behalf of the Applicants are conditions of this resolution, as if set forth at length;

14. The conditions enumerated in this resolution will run with the land to protect the interest of successors in title and interest and the Borough; and

15. The Applicants will record this resolution contemporaneously with the subdivision deeds and or subdivision plat.

And be it further resolved, that notice of this decision will be published in the official newspaper of the Borough of Demarest.

I hereby certify that this resolution of memorialization was duly adopted by a majority vote of the members of the Board who voted in favor of the Board's decision, with a quorum of the membership being present, at the Board's official public meeting that was held on the 6th day of October 2021.

Brian T. Keane, Chairperson

Vote for the Motion

Board Member	Motion	Second	Yes	No	Abstain	Absent
Mayor Schooler						
Alevrontas						
Fox						
Hayden						
Keane						
Paster						
Rifkind						
Tabacchi						
Parlamis alternate 1						
Fulin alternate 2						

Vote for Memorialization

Board Member	Motion	Second	Yes	No	Abstain	Absent
Mayor Schooler						
Alevrontis						
Fox						
Hayden						
Keane						
Paster						
Rifkind						
Tabacchi						
Parlamis alternate 1						
Fulin alternate 2						

Certification

The undersigned, recording secretary for the Demarest Planning Board certifies that the foregoing is a true copy of a resolution of the Board adopted at a regular meeting of the Demarest Planning Board held on October 6, 2021.

Dated: October 6, 2021

Susan Crosman, Recording Secretary

PLANNING BOARD

MINUTES

REGULAR MEETING

July 7, 2021, 7:30 pm

Chairman Keane opened the meeting at 7:35 pm with the following announcement: Public Announcement of Meeting: 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 public hearing meeting in the annual schedule and notice of regular meetings of this Board. Such annual schedule and notice of regular meetings is posted at the Borough Hall, was mailed to The Newark Star-Ledger and The Record and was filed with the Borough Clerk of Demarest on January 27, 2021.

Roll Call

Mayor Schooler-present	Mr. Rifkind-present
Mr. Alevrontas-present	Mrs. Paster-present
Mrs. Fox-present	Ms. Hayden-present
Mr. Tabacchi-present	Mr. Parlamis-present at 7:40 pm
Mr. Verp-present	Mr. Fulin-absent
Chairman Keane-present	

Also present: Planning Board Secretary, Planning Board Attorney Andrew Fede

Salute to the Flag

Mayor Schooler moved to approve the minutes of November 12, 2020, second Mr. Tabacchi. All in favor. Carried.

Mayor Schooler moved to approve the minutes of December 2, 2020, second Mr. Tabacchi. All in favor. Carried.

Mayor Schooler moved to approve the minutes of January 6, 2021, second Mr. Tabacchi. All in favor. Carried.

Mayor Schooler moved to approve the minutes of February 3, 2021, second Mrs. Paster. All in favor. Mr. Tabacchi abstain. Carried

Mayor Schooler moved to approve the minutes of March 3, 2021, second Mr. Alevrontas. All in favor. Mr. Tabacchi abstain. Carried.

The Planning Board Secretary explained that the limiting schedule incorporates the ordinances through the beginning of 2021. Discussion. Mrs. Fox moved to approve the Limiting Schedule, second Mr. Tabacchi.

Mayor Schooler-yes	Mr. Rifkind-yes
Mr. Alevrontas-yes	Mrs. Paster-yes
Mrs. Fox-yes	Ms. Hayden-yes
Mr. Tabacchi-yes	Mr. Parlamis-yes
Mr. Verp-yes	Chairman Keane-yes

Carried.

NEW BUSINESS:

An un-numbered ordinance regarding revisions to the Downtown Redevelopment Plan dated 6/23/21 was discussed by the Board. Mrs. Fox explained the minor adjustment to the original plan. Mayor Schooler moved to adopt the plan, second Mrs. Fox.

Mayor Schooler-yes	Mr. Rifkind-yes
Mr. Alevrontas-yes	Mrs. Paster-yes
Mrs. Fox-yes	Ms. Hayden-yes
Mr. Tabacchi-yes	Mr. Parlamis-yes
Mr. Verp-yes	Chairman Keane-yes

Carried.

Chairman Keane recommended creating a committee for communication. The committee will be Mr. Verp and Mr. Rifkind. Chairman Keane stated that he would like to utilize the large screen in the Council Chambers. Mr. Verp volunteered to work this out with the Planning Board Secretary.

Discussion regarding the update to the Master Plan. Darlene Green (Borough Planner) wrote two memos dated April 29, 2021 (attached). The first memo was entitled Review of Ch. 175: Zoning. The second memo was Goals to Guide Master Plan.

The first memo contained recommendations for the Land Use Regulation review and new technologies. The Board accepted all of the recommendations in Part I except for suggestions regarding landscaping, regulation of trash & recycling enclosures & loading areas which the Board will seek more information about from the planner. The Board also sought additional information regarding permitted accessory uses (it would be good to have a list of permitted accessory items, such as those mentioned in the new ordinance concerning the 25% maximum house coverage and 30% maximum overall coverage), and professional and business practices in Residential Districts A – D. Other items of note in the first memo include: 1) References to Limiting Schedule Conditional use shall be eliminated as it does not exist; 2) The Board is seeking more clarification from the Planner

in the following Definitions Section 175-27: a) height of buildings, b) need to define certain business uses in CB-1 district, c) need to define parks and open spaces, d) need to define professional or business practice, e) need to define retail business, f) enhancement of sign ordinances. As to Part II: New Technologies, the Board sought suggestions from the Planner on items outlined in the memo. The Board agreed that Cannabis sales or production are not permitted and no short-term residential leasing should be permitted. Mrs. Fox, as the member of the Town Council in charge of Zoning Ordinances, agreed to discuss all of the above with Darlene Green. The second memo: Goals to Guide the Master Plan (attached) was discussed by the Board and the recommendations set forth in Section III were accepted. The attorney explained that the Planning Board will approve the Master Plan Reexamination once the suggested changes are made and the Planner meets with the Planning Board. Then it will go to the Mayor and Council for a public hearing. The attorney and Planning Board Secretary will discuss the notice requirements.

Mayor Schooler moved for Adjournment, second Mr. Tabacchi. All in favor. Meeting adjourned at 9:02 pm.

Respectfully submitted,

Susan Crosman
Planning Board Secretary