

**PLANNING BOARD
BOROUGH OF DEMAREST**

MINUTES

REGULAR MEETING

March 1, 2023 7:30 PM

Chair Hayden opened the meeting at 7:30 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 are 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 December 23, 2022.

Roll Call

Mr. Alevrontas-Present
Mayor Bernstein-Present
Ms. Brenner-Absent
Councilwoman Fox-Present
Chair Hayden-Present
Vice Chair Keane-Present
Mr. Parlamis-Absent

Mr. Rifkind-Present
Mr. Schooler-Present
Mr. Tabacchi-Present
Mr. Verp-Absent

**Board's Professional Staff Present:
Present:**

Mr. Douglas Bern, Board attorney
Ms. Darlene Green Board Planner
Mr. Nick Chelius, Assistant Engineer

**Applicant's Professional Staff
Present:**

Mr. Mike Hubschman, Engineer
Mr. Antimo Del Vecchio, Attorney

Pledge of Allegiance

**PUBLIC HEARING:
95 County Demarest LLC
Block 145, Lot 5**

Chair Hayden opened the meeting, discussed the procedures of the meeting, and asked the Applicant's new attorney, Mr. Antimo Del Vecchio to introduce himself.

Mr. Del Vecchio stated his name and that he is a member of the firm Padovano Beattie, 200 Market Street, Montvale, NJ. **Mr. Del Vecchio** represents the applicants, on behalf of **Mr. Steinhagen** for the evening. At this time, **Mr. Douglas Bern** swore in **Ms. Darlene Green, Board Planner** – and **Mr. Nick Chelius, Assistant Board Engineer**. **Mr. Mike Hubschman** has previously been sworn, and his credentials have been accepted as an expert in engineering. **Mayor Bernstein** asked **Mr. Del Vecchio** if **Mr. Richard Abrahamsen** was still an active attorney for the 95 County Road Application. **Mr. Del Vecchio** responded that **Mr. Abrahamsen** represents the original owners of the property, **The Avery's**.

Mr. Del Vecchio: In his opening remarks stated the property is 95 County Road, Block 145 –

**PLANNING BOARD
BOROUGH OF DEMAREST**

Lot 5. This property is in a residential multi-family zone, which came about by virtue of a Settlement Agreement that the Municipality reached with the Fair Share Housing Center and the property owners, the Avery's; and ultimately was adopted by the governing body. He stated he did not believe the Planning Board was a signatory to that document. **Ms. Hayden** confirmed that was correct. **Mr. Del Vecchio** stated the application submitted is fully compliant with the Borough's Zoning ordinance and Settlement Agreement. The project is variance and waiver free; this has been confirmed in the review letters of the Planning Board's professionals. A waiver for tree replacement has been resolved by submittal of a set of plans which shows the required number of replacement trees will be planted.

The following copies of the required NJ DEP permits were distributed to the Board: flood hazard area verification, flood hazard individual permit, a freshwater Wetlands, GP number #11, a transition area waiver, and a transition area averaging plan. The purpose of submitting the documents is twofold. One is to establish that the necessary approvals from the DEP have been obtained and that the lines shown on the map have been verified by the approving agency. The NJ DEP determined that the project meets the requirements of the Storm Water Management rules at NJAC -7:8. This document was marked as: A1 3/1/23.

Mr. Bern asked a question relating to the Settlement Agreement and the Conceptual Site Plan (architectural plans) from the firm of Virgona & Virgona. The Settlement Agreement and Conceptual Site Plan illustrates three bedrooms in the market rate units. Under what authority is the bedroom count allowed to vary? **Mr. Del Vecchio** stated he believes Mr. Bern is reading more into the Settlement Agreement than the Settlement Agreement authorizes. He stated that the Settlement Agreement, in its terms, as opposed to its architectural rendering, states that the project needs to be built in a substantially similar style and dimension as the plans prepared by Virgona & Virgona. The Borough was authorized and required to adopt an implementing ordinance, which is silent on the number of bedrooms. **Mr. Del Vecchio** stated the Board does not have the regulatory authority under the municipal land use law, to dictate the number of bedrooms in a building. The bedrooms need to meet building code, proper parking must be provided. The interior layout of a home is outside of this Board's regulatory authority. **Mr. Bern** asked, Even if they are depicted specifically on architectural plans that are part of a Settlement Agreement? **Mr. Del Vecchio** stated the bedrooms were not incorporated as a requirement either verbally or graphically in the Settlement Agreement. Had the Settlement Agreement intended that something other than the style and dimensions were to be controlled by that graphic picture, it would have said so.

Ms. Hayden stated the Conceptual Site Plan is attached to the Settlement Agreement, which is what the Board must rely on. The Board does not have the authority or jurisdiction to approve anything that is not depicted in the original architectural plans. Regarding basements, it appears there are no basements in the front unit. I am not sure the Board has the authority to approve a basement in the front unit because it is not depicted on the architectural plans. Whereas, in the rear building, the basement is depicted. **Mr. Del Vecchio** stated the depicted window wells and the egress basement windows are not in the original plans and the applicant has agreed to conform to the style and dimension shown in the original plans. **Mr. Del Vecchio** added that **Mr. Steinhagen** stated in his letter to the Board that he would remove the basement window wells and egress windows.

Discussion ensued as to what the Board has authority over and does not have authority over. **Mr. Bern** stated that this is not a wish list, there is reference to a specific architectural plan. Purposely stated for style, dimensions, and number of market and affordable units.

**PLANNING BOARD
BOROUGH OF DEMAREST**

Mr. Del Vecchio stated: If there was perceived breach, one would expect the governing body who is a signature to the document to make its position known. He then implied the Municipality's RDP (Realistic Development Potential) and compliance plan may be reviewed and if so, there was potential that more than eight units would be permitted on this property. **Mayor Bernstein** stated that sounded like a threat. **Mr. Del Vecchio** stated it was not meant as a threat. **Ms. Hayden** stated that with the environmental constraints a denser development is unlikely.

Mr. Hubschman, Engineer was asked to address the tree waiver and the Fire chief's letter and other safety concerns.

Mr. Hubschman stated the new submission is sheet #7 of 8. Revision #6 dated 2/25/23. Originally the request was for a waiver of the requirement to add major trees, which would have meant 45 replacement trees. Original proposal was 12 replacement trees because there was not enough area on the building site for the additional 33 trees. The additional trees will now be planted in the transition area. If the planted trees are native trees no DEP approval is required, therefore native trees will be planted in the transition area, satisfying the replacement requirement. **Mr. Del Vecchio** pointed out that doing so would eliminate the last remaining waiver requested as part of this project.

Discussion ensued regarding minor details of the updated landscaping plan, issues with the snow removal plans and details of the stormwater management plans (Dry wells cannot be used to satisfy the stormwater quantity requirement) and that the additional seepage pits be a condition of approval.

Discussion ensued regarding the fence on the transition area averaging line; this fence is required by the DEP and cannot be removed or moved.

Discussion ensued regarding accessibility for fire and emergency vehicles and turn around capabilities. The Demarest Police Chief requested the sight of vision be changed from 400 ft. to 800 feet. (a school is close by and this is a county road) This would require a slight change in proposed tree plantings.

The issues listed on the Fire Chief's letter were addressed: the internal road way is a fire lane and will be marked a such, with no parking allowed at any time, locations of the two fire hydrants, a gate opening in the fence in the back of the rear unit will be needed for access for the Fire Department and other emergency vehicles. The Fire Chief suggested two walkways, one on the west side and one on the east side for additional access. **Mr. Hubschman** stated that he could add both walkways. The RSIS does not require turn around capabilities for this type of development. The internal roadway is classified as a multi-family court as defined in NJ AC5:21, it is a street with a single means of ingress and egress, which serves a multifamily development that does not provide a means for vehicles to turn around. The length of a multi-family court is limited to 300 feet. **Mr. Bern** asked what the length of the road way is: **Mr. Hubschman**, stated it is 260 feet from the curb line of County Road or the right of way line; it is 290 feet from the center of County Road.

At this time, the meeting was opened to the Board for questions:

Ms. Fox asked to discuss the DEP permit: she asked for an explanation of the meaning of items #7 and #8 on page 4. **Mr. Hubschman, Engineer** stated that #7 limits the time frame for the grading excavation or construction permitted within the water course. He also stated they have a soil erosion control permit for the site.

**PLANNING BOARD
BOROUGH OF DEMAREST**

Discussion ensued regarding the increase in the riparian zone, brief discussion regarding ADA compliance, and the basement lay out on the current architectural plans which show egress windows and what would be a 5th bedroom in the basements of the market rate units.

As a condition of approval, the applicant will be required to submit updated architectural plans eliminating the egress windows and the 5th bedroom in the basements.

At this time there were no further questions from the Board.

Motion to Open the meeting to the Public for questions for the Engineer:

Motion: Mayor Bernstein

Second: Ms. Fox

Mr. Pugh – 64 Prospect Street

Asked if there is parking for guests on site of the development. **Mr. Hubschman** stated that there are two guest parking spaces proposed.

Motion to Close the meeting to the Public for questions for the Engineer:

Motion: Ms. Fox

Second: Mr. Keane

Ms. Fox asked a question of **Mr. Del Vecchio**, regarding the three bedrooms and the interpretation of ‘style and dimension’ whether the administrative code supersedes a judicially approved Settlement. **Mr. Del Vecchio** stated this Board does not have the authority under municipal land use law, nor the ordinance, to regulate bedroom count within a residential structure as a part of its assigned functions. Discussion ensued regarding ‘style and dimension.’ It was asked what the purpose of the Settlement Agreement is if the terms do not apply. **Mr. Del Vecchio** stated: Again, you are reading the Settlement Agreement and inferring language into it that does not exist. **Mr. Del Vecchio** stated, if that were the case, restrictions such as the front yard setback, impervious coverage, building height, would have materialized in the form of an ordinance that would have given this Board guidance. It does not exist in the ordinance. And, respectfully, the only thing that this board is entitled to judge this application against is the Municipal Land Use Law, RSIS and the ordinance, those are your guiding documents. It was asked if ordinances typically specify the number of bedrooms. **Mr. Del Vecchio** stated that he has been involved in many Settlements, affordable housing related and otherwise that specifically restrict bedroom counts. **Ms. Hayden** clarified: They restrict bedroom count? **Mr. Del Vecchio** stated that they can specify that they can have only one bedroom, two bedrooms or three bedrooms, etc. **Ms. Fox** stated so the administrative code does not supersede those. **Mr. Del Vecchio** stated that it is not a superseding, it says that COAH can impose it at its will. Discussion ensued regarding the size of the footprint of the original plans by Virgona and Virgona and the design by Uri Rapaport. **Mr. Del Vecchio** stated the applicant would agree to make it a stipulation as a part of a condition of approval that they will submit a comparison calculation to verify that the footprints do not exceed what was attached to the Settlement Agreement. Discussion ensued regarding dimensions of the bedrooms, the interior of the units and the exterior of the units.

Ms. Green was asked to weigh in on the style, and stated the style was meant to be traditional and that on sheet SK2 of the Virgona plan the style of the front building was designed to look like a large single-family home, and that the style was meant to blend into the neighborhood. It was not meant to be a modern design.

**PLANNING BOARD
BOROUGH OF DEMAREST**

Mayor Schooler asked about Mr. Steinhagen’s letter to the Board regarding the phrase the ‘type of people’? What does that refer to? **Mr. Del Vecchio** stated he does not have a comment and that it is not relevant to what we are discussing this evening. Mayor Schooler stated that it was relevant since it was sent to the Board.

Mr. Hubschman stated that earlier, when asked, he had stated that there were two guest parking spaces, and he corrected himself, and stated that there are a total of four guest parking spaces.

Motion to Open the meeting to the public for Comments:

Motion: Mayor Bernstein

Second: Ms. Fox

Laura Santos: 9 Carlotta Way.

Is this project overall decreasing the amount of impervious coverage and increasing the amount of water running off onto neighboring properties, that are already overwhelmed with storm water? **Mr. Hubschman** We are adding more impervious, but we are decreasing the rate of run off. Ms. Santos stated that she was not asking about rate, she was asking about the amount.

Motion to Close the Meeting to the Public for Questions:

Motion: Mayor Bernstein (Withdrew Motion to Close)

The Meeting remained open to the Public:

Mr. David McLain: 9 Isabella Way

Regarding substantially similar in style and dimensions, as stated by the applicants attorney: Dimensions include interior dimensions, which depicts three bedrooms and walls, those are interior dimensions. Why are these dimensions not being considered? **Mr. Del Vecchio** stated that the Board does not have the authority to regulate how the interior volume of the multifamily residence is carved up. Dimensions when we talk in the Land use world, are dimensions of the exterior, a footprint or the other improvements that may be on the property, whether it’s an accessory structure, or an accessory garage. Dimensions are never referred to in the interior of the home. That is an architectural area that was not intended to be covered by a Land Use approval. It is always the exterior dimensions that are referenced.

Eileen Lewis: 32 Brook Way

Why would the Virgona & Virgona plans include interior dimensions if they were not supposed to be adhered to in the Settlement? **Mr. Del Vecchio** stated there are a thousand reasons that are possible, I cannot tell which one is accurate. Discussion ensued about complying with the exterior vs. interior plans.

Mr. Del Vecchio the Planning Board is not a signatory to the Settlement Agreement. Therefore, they are bound by the ordinance. You are not a party to the agreement. **Ms. Hayden** stated that is the reason we why we cannot approve a change that does not strictly comply with the Settlement Agreement and Conceptual Site Plan.

Mr. McLain: 9 Isabella Way

If a judge approved this document with the attached plans, how is it irrelevant now? **Mr. Del Vecchio** answered that the document has an ordinance attached to it. At the Fairness hearing and the compliance hearing the judge looks at the ordinance to ensure that the ordinance provides the

**PLANNING BOARD
BOROUGH OF DEMAREST**

mechanism that the Settlement agrees to. **Mayor Bernstein** asked what the effect would be if Demarest breached the agreement. **Mr. Del Vecchio** stated that the property owner would have all the full rights and remedies under the agreement and law. Including going back and revising the agreement. **Mayor Bernstein** commented, the agreement is enforceable, but we cannot look to the agreement for any of its terms even though it was court approved with respect to this development.

Bill Lewis – 32 Brookway

Mr. Lewis commented about the basin and the flow rate, the number of severe storms have increased in number dramatically. He asked when are we going to get serious and do something about this situation.

It was stated that the Cresskill Brook has completely erode and mitigation work should be done.

Mr. McLain – 9 Isabella Way

Mr. McLain - Thanked the Board for their time and dedication to this matter.

Motion to close the meeting for Comments from the public:

Motion: Mr. Keane

Second: Ms. Fox

Closing Statement: Mr. Del Vecchio

Mr. Del Vecchio again stated regulation by the Board of the number of bedrooms in the market rate units is not permitted. The Ordinance is detailed and even states how the garages can be used. If regulating the number of bedrooms were permitted, the ordinance would have stated so. The ordinance is silent on that. It would have been stated very explicitly in the document. You as a Board cannot deny an application which meets the ordinance. The ordinance is the only document that you are legally entitled to compare this application to and hold this applicant to. When an applicant presents an application, which is variance and waiver free, the Board has an obligation to approve. The application is legally entitled to an approval. At this time, I ask you to follow the law, and the law says that this Board shall approve a project which is fully compliant. We ask you to do just that, this evening to approve this project as it complies with the ordinance. Thank you.

The Chair stated the Board has a lot of information to weigh, and asked for motion to vote on the application. **Ms. Fox** stated that she would prefer to hear some instructions from **Mr. Bern**, for some standards for our considerations. **Mayor Bernstein** stated he would like go into a closed session. **Ms. Fox** stated that she was not sure that was permitted. **Mr. Bern** stated that under the Open Public Meetings Act, we could go into closed session, because there has been litigation, and there could be potential future litigation. Any other consideration should be aired in public, and the deliberations of the Board should be public. **Mr. Bern** asked **Mr. Del Vecchio** if he had objections to a closed session. **Mr. Del Vecchio** stated: I do, and explained this is a pending application if the Board is going to be instructed by Council on legal standards or what the application is or is not, it must be done in a public setting. That is the whole intention of the Open Meeting Act: Not to deliberate behind closed doors and come out with a predestined decision, to the extent that my objection is overridden, I specifically request that the closed session be taped, and that those recordings are preserved so that appropriate relief can be sought elsewhere to determine whether I am correct. **Mr. Bern** stated: Deliberations should be aired publicly. If there are questions about the prior litigation, or potential litigation, a closed session is

**PLANNING BOARD
BOROUGH OF DEMAREST**

appropriate.

Mr. Keane asked **Mr. Bern** is the Settlement Agreement not relevant? **Mr. Bern** stated that the ordinance is the key in this case. **Mayor Bernstein** stated to **Mr. Del Vecchio** that your predecessor treaded heavily on binding us to the agreement, and so did our professionals. And now it is being said that the ordinance is the sole document. We have been through multiple hearings and **Mr. Abrahamsen**, agreed to concessions, stipulations, and conditions of approval. **Ms. Fox** asked if **Mr. Del Vecchio** exchanged a list of conditions with **Mr. Abrahamsen**, which **Mr. Abrahamsen** said he would draw up. **Mr. Del Vecchio** stated he does not have a list of conditions of approval. **Ms. Hayden** stated that at the last meeting **Mr. Abrahamsen** consented to three bedrooms in the units, she said he consented to this because he knew that that was the intent of the Settlement Agreement. **Mr. Del Vecchio** expressed doubt that the concession was made, but it was then pointed out that is why **Mr. Steinhagen** was hired and why his letter focused on no limitations regarding the bedroom count in market rate units.

A discussion ensued regarding the date of a special meeting so that a list of conditions of approval can be properly drawn up and given to the Board for review. **Mr. Bern** suggested a two-week extension of the time to prepare a Resolution of approval. At that time, the Board will vote on approving or denying the application and the Resolution that embodies it. For the record, **Mr. Del Vecchio** stated that the Special Meeting for 95 County Road will be on March 22, 2023.

Motion to Vote to authorize Mr. Bern to prepare a draft of the Resolution with all the conditions:

Motion: Mr. Keane

Second: Mr. Tabacchi

Councilwoman Fox	YES
Vice Chair Keane	YES
Mr. Tabacchi	YES
Mayor Bernstein	YES
Mr. Rifkind	YES
Mr. Alevrontas	YES
Mayor Schooler	YES
Chair Hayden	YES

The Proposal was Approved.

Motion to Adjourn the Meeting:

Motion: Mayor Schooler

Second: Mr. Tabacchi

Respectively submitted,
Teresa Ferrentino
Teresa Ferrentino
Planning Board Secretary