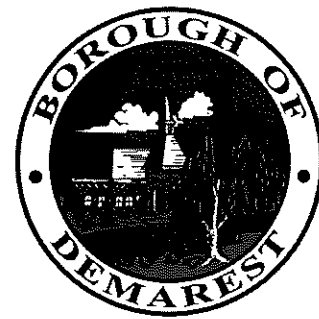


BOROUGH OF DEMAREST
PLANNING BOARD
SPECIAL MEETING AGENDA
Thursday, February 27, 2025 @ 7:30 PM
118 Serpentine Road, Demarest, NJ 0762



1. CALL TO ORDER
2. PUBLIC ANNOUNCEMENT OF MEETING

Sunshine Law Statement: The notice requirements of the Open Public Meetings Act of the State of New Jersey, P.L. 1975, Chapter 231, have been satisfied by special notice of the date, time and place of this Special meeting in in the Record and Star Ledger on February 24, 2025, notice posted at Borough Hall, on the Borough website was filed in the office of the Borough Clerk.

3. FLAG SALUTE
4. ROLL CALL

- | | |
|---|--|
| <input type="checkbox"/> Ted Alevrontas | <input type="checkbox"/> Mayor Brian Bernstein |
| <input type="checkbox"/> Jodi Brenner | <input type="checkbox"/> Kiran Chin |
| <input type="checkbox"/> Blake Chroman | <input type="checkbox"/> Camille DiSclafani |
| <input type="checkbox"/> Councilwoman Daryl Fox | <input type="checkbox"/> Fatemah Mamdani |
| <input type="checkbox"/> James Tabacchi | <input type="checkbox"/> Mary Lynn Hamilton |

1. **BOARD PROFESSIONAL APPOINTMENTS:**

Resolution PB-004-25 – Appoint Planning Board Attorney _____

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mr. Alevrontas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Bernstein	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kiran Chin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blake Chroman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Camille Disclafani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilwoman Fox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chair Tabacchi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Hamilton Alt #1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. APPROVAL OF MINUTES:
3. RESOLUTIONS:
4. NEW/CONTINUING APPLICATIONS:
5. DISCUSSION ON BOARD MATTERS – NEW/OLD BUSINESS
ORDINANCE COMMITTEE REPORT ON THE JOINT PLANNING BOARD ORDINANCE
6. PUBLIC COMMENT PERIOD
7. ADJOURNMENT

NEXT REGULAR MEETING – WEDNESDAY, MARCH 5, 2025

RESOLUTION OF THE DEMAREST PLANNING BOARD

RESOLUTION NO. PB-004-25

FEBRUARY 27, 2025

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mr. Alevrontas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Bernstein	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Brenner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Chin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Chroman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilwoman Fox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Tabacchi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APPOINTMENT OF THE 2025 PLANNING BOARD ATTORNEY

WHEREAS, the Borough of Demarest Planning Board (Board) is in need of professional legal services to serve as the attorney to the Board; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 *et seq.*) authorizes the award of a professional services contract for such services without competitive bidding by reason that such services constitute "professional services" which are services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship; and

WHEREAS, the Board finds that it would be in the best interests of the Borough of Demarest Planning Board to appoint _____ pursuant to N.J.S.A. 19:44A-20.5 as a "Fair and Open" contract as defined therein; and

WHEREAS, the aforesaid contract shall be subject to adequate funds therefore pursuant to the 2025 Temporary Budget and 2025 Budget of the Borough of Demarest as approved by the governing body;

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Demarest _____

_____ be retained to provide professional legal services for the Borough of Demarest Planning Board for a term expiring on December 31, 2025, or until a successor is appointed, and that the Board Chairperson is hereby authorized to execute, and the Board Secretary to attest, an Agreement to carry out the foregoing, a copy of which is on file in the Office of the Board Secretary and Borough Clerk and is available for public inspection, subject to the approval thereof by the Mayor and Council of the Borough of Demarest; and

BE IT FURTHER RESOLVED, that _____
_____ be required to
comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27; and

BE IT FURTHER RESOLVED that the Board Secretary is hereby authorized and directed to cause a notice to be published in the manner provided by law setting forth the nature, duration, service and amount of the Agreement and that the resolution and Agreement are on file in the Office of the Board Secretary and Borough Clerk and are available for public inspection.

Dated: _____

James Tabacchi, Planning Board Chair

Attest: Michael Greco, Board Secretary

To: Mayor & Council

From: Ordinance Committee¹

Date: February 18, 2025

Re: **Proposed Land Use Board Consolidation**

I. Background

At its 12/23/24 meeting, the Council voted to table proposed Ord. 1152-24 and commit it to the Ordinance Committee (the “Committee”) for review. The ordinance would have consolidated the borough’s land use boards under N.J.S.A. 40:55D-25(c)(1) by granting the powers of the Zoning Board of Adjustment (“ZB”) to the Planning Board (“PB”) and terminating the ZB, leaving a newly-empowered PB as the single land use board in the borough.

II. Committee Review Process

The Committee reviewed proposed Ord. 1152-24 along with relevant provisions of the New Jersey Municipal Land Use Law (“MLUL”) and Chapter 27 of the Demarest Code (covering the establishment, powers, regulations and procedures of the PB and ZB). In addition, the Committee reviewed all agendas and minutes of both the PB and ZB over the past 48 months, and solicited and obtained input as follows:

- Mayor Bernstein, Borough Administrator Falkenstern and Borough Attorney Rosendahl discussed concerns with the current two-board structure and the factors considered when deciding to propose a single board in Demarest
- Six present and past officers of the PB and the ZB discussed past experiences and their perspectives on consolidation in Demarest (group meeting with the full Committee)
- Borough Engineer and Borough Planner related their experience with separate and consolidated boards and their perspectives on consolidation in Demarest
- Land use personnel in other Bergen County municipalities with a current or prior single consolidated land use board provided input about their experiences working with one board.

III. Committee Recommendations

There are advantages and disadvantages to consolidation, but the majority of the Committee believes that the advantages outweigh the disadvantages and thus recommends consolidating.

The Committee Chair and Council Land Use Liaison dissents because the boards face a significant increase in workload during the next year or two (due to anticipated affordable housing and downtown redevelopment applications and the need for a major overhaul of the Zoning Ordinance) so it is the wrong time to reduce the number of board members shouldering the additional work. Also, the most significant advantage of consolidation (consistency) can be obtained with both boards in place if the PB appoints the ZB attorney as its attorney as well.

¹ Committee Chair and Land Use Liaison: Councilwoman Daryl Fox; Committee Members: Councilmen Jonathan Reiss and David Jiang

IV. Advantages and Disadvantages of a Consolidated Land Use Board

The following advantages and disadvantages of a two-board vs. single consolidated board land use structure were reported in the communications described above. Based on the available facts pertaining to each factor below, we have classified each factor along the following scale: Favorable (toward a consolidated board), Neutral, or Unfavorable (toward a consolidated board).

A. Consistency

The most frequently mentioned advantage of a single land use board is that it would ensure “consistency.”

The PB and the ZB have different but complementary functions. The PB has a significant policy-making role in that it reviews and recommends updates and revisions to the Master Plan and the Zoning Ordinance (“ZO”); it also handles applications for approval of subdivisions and site plans that generally *comply* with borough ordinances.² On the other hand, the ZB has no policy-making authority³; it hears variance applications *to allow one specific property NOT to comply* with the ZO⁴ – i.e., its purpose is to grant relief from consistent enforcement of the ordinance. In fact, “the granting of a variance to one property owner does not create precedent for the granting of a variance to other property owners” because “each variance must stand on its own peculiar factual circumstances.”⁵

However, to grant a variance, N.J.S.A. 40:55D-70 requires the ZB to find that doing so “will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” Therefore, the members of the ZB must be knowledgeable about the Master Plan and the ZO. It was opined by one professional that since the Master Plan and ZO originate from the PB, the PB is “more knowledgeable” about their provisions than the ZB, and that having the PB hear variances would ensure that the provisions of the Master Plan and ZO are interpreted as the PB intended.⁶ Further, it was stated that having one attorney advising on all land use decisions would ensure “legal consistency.”

Nonetheless, another professional noted that it is possible to ensure consistency even with two boards, especially if there are shared resources. In Demarest, there is currently a single Council Land Use Liaison and a single Land Use Secretary for both boards; the boards have the same engineer and the planner; the ZB sends the PB an annual report of ZB applications and recommendations for ZO revisions; and each board’s minutes and resolutions are available to the other board. However, some discussions revealed anecdotal evidence that insufficient communication between the boards has occasionally resulted in potential inconsistencies;

² N.J.S.A. 40:55D-25.

³ However, the ZB does provide an annual report to the PB with recommendations for ZO revisions based on the kinds of variances requested during the year.

⁴ N.J.S.A. 40:55D-70.

⁵ Cox, William M. and Stuart R. Koenig, *New Jersey Zoning & Land Use Administration* (Gann Law 2024), §28-3. This is considered by New Jersey land use practitioners to be the authoritative text on the MLUL.

⁶ Despite their different roles, the volunteer members of both boards are required to attend the same mandatory MLUL training. Many current ZB members are of long standing (20+ years) and have extensive experience applying the ZO and MLUL variance requirements to properties in the borough, whereas the current PB members have little experience with variances.

therefore, maintenance of separate boards may require improvements. We understand that there is a nomination pending to appoint the current ZB attorney as the PB attorney as well, which would ensure “legal consistency” between the two boards.⁷

In summary, consistency in interpreting the zoning ordinance is very important and it would be ensured with a single land use board, but it is not necessarily a deciding factor in favor of a single board because the same level of consistency can be achieved with two cooperating boards.

CLASSIFICATION: Favorable to Neutral.

B. Cost Savings and Efficiency

Many persons reported anticipated cost savings as an advantage of consolidation, most frequently mentioning reduced meeting fees for board professionals⁸ because there would presumably be only one meeting each month instead of two. Also mentioned was one less use of the borough facilities each month. However, Cox observes that although “alleged cost-cutting is put forth as the reason for the consolidation” in many municipalities, “there appears to be very little evidence of any real savings effected through board consolidation.”⁹

It was reported by several current and former board members that cost savings were posited as an advantage when consolidation was considered in the past. Yet research conducted at the time established that there would be no meaningful savings. Consideration of consolidation was accordingly abandoned, but the factors leading to that conclusion remain valid. For example, when there are no matters scheduled for a particular month, the meeting is cancelled and no meeting fees are paid. In addition, with one board handling the current work of both boards, a single monthly meeting would necessarily be longer (and there could be special meetings in the event of overflow) so meeting fees would tend to increase.¹⁰ In addition, board professionals are also paid for application review and board attorneys prepare resolutions and development agreements, so the same total number of applications would require the same work (and fees) regardless of the board from which they originated.

Cox warns that, since a consolidated board may be required to meet more often than a single PB, a municipality “should undertake a study of the number of applications being made to both boards” before it proceeds to vest the powers of the ZB in the PB.¹¹ For this purpose, the Committee reviewed all PB and ZB agendas and minutes for the 48 months ending December 2024. During this period:

- There were 41 ZB meetings at which the board handled 37 applications. A number of hearings for multiple and/or substantial variances stretched over several meetings to allow for board review of additional information and applicant plan revisions (generally intended to

⁷ In addition, a *future* consolidation would proceed much more smoothly if the boards had the same attorney.

⁸ “Board professionals” include the board attorney, board engineer and board planner; however, the board planner does not attend ZB meetings in Demarest.

⁹ Cox at §3-9.

¹⁰ Cox observes that “in many municipalities where consolidation takes place, it is found that the members of the planning board are required to meet much more often in order to hear all of the applications formerly presented to both boards” (Cox at §3-9).

¹¹ *Id.*

require fewer and/or less extensive variances than initially requested). The ZB must hold a public hearing before approving or denying a variance, and the rationale for the board's decision must be recited in a formal resolution (approved by the ZB) detailing the testimony that fulfilled the conditions in N.J.S.A. 40:55SD-70. The board often heard testimony on more than one application at a single meeting. Further, ZB members spend a considerable amount of non-meeting time reviewing applicant submissions and visiting properties.

- The PB held 33 regular and special meetings at which the board held multi-meeting public hearings on two subdivision applications (Duck Pond Road and Meadow Street) and two site plan reviews and revisions for townhouse projects (Duane Lane and County Road); reviewed and approved proposed construction at CRS, the new gymnasium at DMS, and multi-unit affordable housing on Hardenburgh Avenue; conducted the required review, report and update of the borough's Master Plan (including several meetings with the board planner and a public hearing); reviewed and recommended the Economic Development Committee's proposed ordinance to designate the downtown of the borough as an "Area in Need of Redevelopment" (also including meetings with the planner and a public hearing); and reviewed the ZB's annual report and recommendation of ZO revisions (which were followed up by daytime sub-committee meetings about ZO improvements among the planner, Council Land Use Liaison, Borough Administrator and several PB and ZB officers).¹² There were also daytime meetings of a PB sub-committee formed to review and update the sign ordinance.

See also section C below regarding an anticipated unusual surge in the boards' workload over the next year or two.

Efficiency in administering only one board was also mentioned as an advantage of consolidation. For example, there is only one agenda and one set of minutes to prepare (even though each may be longer than for a single board). On the other hand, one board professional mentioned as a disadvantage that it can sometimes be complicated to schedule a single board's hearings. An example offered was a municipality in which the consolidated board hears subdivision and site plan applications first, after which the mayor and councilperson leave because members of the governing body do not want to vote on an individual resident's single-family addition, pool, etc. However, resident discontent can result from making homeowners sit through complex subdivision and site plan matters before their single-family residential house variances are heard.

With two boards, residents with single-family home applications do not need to attend the same hearing as full subdivision or site plan applications. There is no debate about which type of application should go first, and the separate meetings are shorter in any event.

An additional concern was expressed about the need to reduce the fees incurred by board member consultations with board professionals. Land use boards are autonomous, independent,

¹² *Major* work is required on the Demarest Zoning Ordinance as a result of these various reviews and input from borough administration, residents and this Committee. Attention to this task has been delayed because of the planner's involvement in Affordable Housing Round 4, but efforts will recommence shortly and will require a great deal of board sub-committee time and effort outside of regular PB meetings.

quasi-judicial entities, and courts have held that they have the sole right to select their counsel.¹³ Nonetheless, there are currently spending restraints in Chapter 27 of the Demarest Code which provide that board expenses “shall not, however, exceed...the amount appropriated by the governing body for its use.”¹⁴ Accordingly, a consolidated board would face the same (and no greater) restraint on spending.

In summary, whether consolidation would save costs and/or increase efficiency is unclear; it may save some costs in some municipalities – but if it fails to do so, or instead increases costs and/or impairs efficiency, or causes resident discontent, see section E below regarding the difficulty of reversing a consolidation.

CLASSIFICATION: Neutral.

C. Fewer Board Members

The board consolidation statute in the MLUL was originally designed “for the small municipality where it is difficult to obtain a sufficient number of persons to sit on two separate and distinct boards”; subsequent amendments widened the opportunity for consolidation to more municipalities, but this “has resulted in a significant number of municipalities opting for the single board for reasons having nothing to do with the intent of the original legislation,” including a mistaken belief that consolidation would produce cost savings.¹⁵

In addition to the aforesaid “normal” workload of the boards and the required major overhaul of the ZO (*see n.12*), the Council should keep in mind that *the PB and ZB workload will likely increase significantly over the next year or two* because of Affordable Housing Round 4 requiring additional housing (including non-conforming, multi-family accommodations) and the “Area in Need of Development” designation (which is expected to attract developers). These will bring more applications, and more complex applications, than the boards have seen in recent years.

It was suggested by one board professional that an alternative to overburdening resident volunteers on a single consolidated board with major work to be done on the ZO and a significantly greater number of complex applications may be to retain the two boards at least until the surge is over – and then revisit consolidation if desired when the boards are back to their “normal” workload. One person felt this would be “kicking the can down the road,” but another said it would be an appropriately cautious approach to an unusual situation.

Is it difficult to find ZB and PB board members in Demarest? It certainly seems that at least those currently serving are willing to continue doing so; and for new board members, a mayoral appointment may be considered an honor. The more relevant question is whether it may be difficult to find residents to serve on a consolidated PB – which will require, at a minimum, a broader skill set (to handle variance applications for single-family residences as well as subdivision and site plan applications), additional pre-meeting preparation (to review more

¹³ Cox at §3.5-3, *citing, Monroe Tp. Bd. of Adjustment v. Mayor, etc.*, 211 N.J. Super. 174 (App. Div. 1986).

¹⁴ Demarest Code §§27-6 and 27-15.

¹⁵ Cox at §3-9.

applications and visit more properties) and longer meetings or extra meetings (to handle the work previously done by two boards as well as the unusual additional work anticipated).

In summary, a single board would require fewer members than two boards (if that is a problem in Demarest), but it may be more difficult to find single consolidated board members willing and qualified to do more (and more complex) work than if they served on one of two boards. Further, unusual circumstances facing Demarest in the next year or two will significantly increase the burden on the boards and their members.

CLASSIFICATION: Neutral in theory but Unfavorable at this time due to unusual circumstances.

D. Impact on the Council's Authority Over Land Use

Appointments to the PB are made solely by the mayor, and the PB includes two elected officials as members (the mayor and one councilperson). On the other hand, mayoral appointments to the ZB require the consent of the governing body, and there are only residents (no elected officials) on the board.

Concern was expressed that if all land use decisions were made by a consolidated PB, a single person (the mayor) would have the unilateral power to appoint all persons deciding all land use matters in the borough. Cox notes that “[s]ometimes the single board option has been adopted solely to give the mayor more authority,” which was not the intent of the legislation.¹⁶ The concern about consolidation adversely impacting the Council's authority over land use matters would be mitigated if Chapter 27 were amended to require the consent of the full governing body for mayoral appointments to the PB (like ZB appointments) or to provide that the full governing body is the mayor's “designee” to make PB appointments.

Nonetheless, keeping the ZB is the only way to ensure that decisions about residents' single-family homes are made only by fellow residents with no reason to consider the potential impact of a decision on political favor or disfavor. Further, under the two-board structure, the residents-only ZB importantly has autonomy over “(d) variances” which involve a more significant level of ZO non-compliance.¹⁷

In summary, weighing this factor involves balancing mayoral and Council authority, and deciding whether elected officials should vote on individual residents' single-family home variances. Concerns about mayoral authority over all appointments can be resolved through an amendment to the Demarest Code.

CLASSIFICATION: Neutral.

¹⁶ Id.

¹⁷ Variances under N.J.S.A. 40:55D-70(d) are commonly referred to as “(d) variances” or “use variances.” In most cases, the ZB may grant a variance by a simple majority vote, but applications for “(d) variances” seek allowance for a use not otherwise permitted in a zone (such as a restaurant in a residential zone), an expansion of a pre-existing non-conforming use, relief from application of certain standards pertaining to a conditional use, floor area or density greater than that permitted, or a building height more than 10% higher than permitted.

E. Difficulty in Reversing a Consolidation

An important potential disadvantage of consolidation is that, if a single land use board structure fails to work out as expected for any reason, it is difficult and costly to undo – because a public referendum would be required under N.J.S.A. 40:55D-25(e). This was reportedly done in one local municipality – which went back to a single board years later under a different mayor – but no one could recall how the reversal was accomplished (years ago).

In summary, this is clearly a disadvantage, but it is a remote disadvantage.

CLASIFICATION: Unfavorable to Neutral.

V. Next Steps

A copy of this report will be provided to the Mayor and Council and to PB and ZB members. Discussion of this report should be placed on a Mayor and Council agenda for a thorough discussion of the pro's and con's of consolidation, including solicitation of questions and comments from the public. Considering all input, the Council should openly debate and vote either to retain the current two-board land use structure at least for the short term, or consider consolidating land use decisions into a single board at this time. The reasons for the decision should be clearly stated in the record.