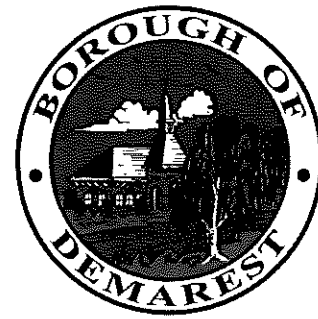


BOROUGH OF DEMAREST
JOINT PLANNING BOARD
REGULAR MEETING AGENDA
Wednesday, May 7, 2025 @ 7:30 PM
118 Serpentine Road, Demarest, NJ 0762



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 the publication of the date, time and place of this Regular meeting in in the Record and Star Ledger on January 12, 2025, notice posted at Borough Hall, on the Borough website was filed in the office of the Borough Clerk.

3. FLAG SALUTE

4. SWEARING IN OF NEW MEMBERS

Mayor Bernstein provides the Oath of Office for Todd Adelman.

5. ROLL CALL

- | | |
|--|---|
| <input type="checkbox"/> Todd Adelman | <input type="checkbox"/> Camille DiSclafani |
| <input type="checkbox"/> Ted Alevrontas | <input type="checkbox"/> Councilwoman Daryl Fox |
| <input type="checkbox"/> Mayor Brian Bernstein | <input type="checkbox"/> Fatemah Mamdani |
| <input type="checkbox"/> Jodi Brenner | <input type="checkbox"/> Timothy Woods |
| <input type="checkbox"/> Kiran Chin | <input type="checkbox"/> Mary Lynn Hamilton |

6. RESOLUTION(S)

1) **Resolution PB-005-25** Interpretation of Borough of Demarest Zoning Code

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	N/E
Mr. Adelman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Alevrontas	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Woods	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>

2) **Resolution PB-006-25** Interpretation of Borough of Demarest Zoning Code

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	N/E
Mr. Adelman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Alevrontas	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Woods	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>

7. NEW/CONTINUING APPLICATIONS

JPB-25-003 – 17 Laurel Road – Ilan Cohen

Seeking Variances related to the construction of a New Single-Family Home.

APPROVE DENY CARRY DATE:

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	N/E
Mr. Adelman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Alevrontas	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Woods	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>

1) **JPB-25-004 – 17 Duck Pond Road – Tomer Edry**

Seeking an Appeal of the Zoning Officer’s Decision

APPROVE DENY CARRY DATE:

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	N/E
Mr. Adelman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Alevrontas	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Woods	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>

8. DISCUSSION ON BOARD MATTERS – NEW/OLD BUSINESS

1) Discussion on Board By-Laws – Kiran Chin

9. APPROVAL OF MINUTES:

Motion to approve the minutes of the Regular Meeting; April 2, 2025

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	N/E
Mr. Adelman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Alevrontas	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Woods	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>

Motion to approve the minutes of the Zoning Board Special Meeting; March 25, 2025

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	N/E
Mr. Adelman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Alevrontas	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Woods	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>

10. PUBLIC COMMENT PERIOD

11. ADJOURNMENT

*NEXT REGULAR MEETING – WEDNESDAY, JUNE 4, 2025
SPECIAL MEETING WITH MAYOR AND COUNCIL – THURSDAY, JUNE 5, 2025*

JOINT PLANNING BOARD OF THE
BOROUGH OF DEMAREST

RESOLUTION JPB-005-25

REQUEST FOR INTERPRETATION
N.J.S.A. 40:55d-70(b)

In the Matter of the Zoning Officer Request for Interpretation
Air Conditioning Units and Generators

WHEREAS, on or about March 25, 2025, Mr. Michael Greco, Zoning Officer of the Borough of Demarest (the "Zoning Officer"), filed a Request for Interpretation with the Joint Planning Board of the Borough of Demarest (the "Board") arising from reoccurring issues withing the Borough Zoning Ordinance that has resulted in inconsistent interpretations and enforcement in the Borough of Demarest (the "Borough") concerning the classification of air conditioner units and generators as accessory structures and their placement in the side yards of residence districts; and

WHEREAS, the Board is empowered pursuant to N.J.S.A. 40:55D-70(b) to "[h]ear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;" and

WHEREAS, the Zoning Officer requested the Board interpret the following questions: a) Was the omission of air conditioner units and generators from the Accessory Structure examples in

the Borough Code intentional, thereby permitting their placement in side yards? b) Or should these items be consistently regulated as Accessory Structures and, therefore, prohibited from side and front yards?; and

WHEREAS, such determination must be based upon the facts presented, credibility findings which the Board is entrusted to make and legal determinations which the Board is statutorily obligated to make; and

WHEREAS, the Board conducted a public hearing on April 2, 2025 in accordance with the Municipal Land Use Law ("MLUL") and the Open Public Meetings Act; and

WHEREAS, at the public hearing the Zoning Officer appeared and presented testimony that the Borough Code is silent regarding whether air conditioning units and generators are Accessory Structures and provided evidence regarding various and inconsistent interpretations and enforcement in the Borough regarding the installation of air conditioning units and generators in the side yards of residence districts and the Board took testimony and evidence into the record as set forth herein; and

WHEREAS, at the public hearing the following was also considered:

- A. Correspondence submitted by the Zoning Officer dated March 25, 2025, which presented a history of inconsistent interpretations of the Borough Code

regarding whether air conditioning units and generators qualify as accessory structures and are, therefore, prohibited in the side yard; and

- B. Testimony of the Board Planner, which can be summarized as follows: there are inconsistencies in the Borough Ordinance; many municipalities separate air conditioner units and generators out and regulate them separately under their code, whether they are in residence or commercial districts, but the Borough Code does not do this; an interpretation of air conditioning units and generators is needed so that there is a uniform and consistent application of the Borough Code regarding these items; and

Whereas, the Board, during the course of the hearing, considered the definition of Structure in Section 175-27B. of the Borough Code, which is:

A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land; and

Whereas, the Board, during the course of the hearing, also considered the definition of Accessory Structure in Section 175-27B. of the Borough Code, which is:

A building, structure or use detached from the principal use, building or structure which is located on the same zoning lot and customarily

incidental and subordinate to the principal use, building or structure.

(1) Examples.

(a) Use: Tennis, volleyball, full or half basketball courts, etc.

(b) Building: Shed, gazebo, garage, etc.

(c) Structure: Swimming pool (aboveground or in-ground), playground equipment, arbor, pergola, deck, antennae, patio, retaining wall, etc.

(2) The examples for use, building and structure set forth above are mentioned as examples only and are not meant to be, nor will they be interpreted as an exclusive list; and

Whereas, the definition of Accessory Structure in the Borough Code has led to contradictory and inconsistent applications and confusion in the Borough regarding whether air conditioning units and generators should be included in the definition of Accessory Structure and is open to interpretation; and

Whereas, the Board, having heard and considered the testimony, arguments and documents referenced above, makes the following findings of fact:

1. The Board has elected to exercise its jurisdiction under N.J.S.A. 40:55D-70(b); and
2. A Borough resident offered public comment in support of air conditioning units and generators not being

considered Accessory Structures and in support of these items being permitted in the side yard provided they meet the setback requirements.

CONCLUSIONS AND DETERMINATIONS

NOW, THEREFORE, BE IT RESOLVED that the Board of the Borough of Demarest makes the following conclusion of law with respect to the within Request for Interpretation:

3. The Above "**WHEREFORE**" clauses are incorporated herein as if set forth at length;
4. The Board finds that air conditioning units and generators are not Structures, as they are not for occupancy, use or ornamentation and, therefore, are not Accessory Structures;
5. The Board finds that air conditioning units and generators are ancillary support equipment and are improvements and, as such, the Board finds that air conditioning units and generators are permitted in the side yard in residence districts;
6. The Board finds that air conditioning units and generators shall comply with all setback requirements; and
7. The Board further finds that air conditioning units and generators shall comply with all impervious coverage requirements; and

8. The Board finds that air conditioning units and generators are distinguishable from other mechanical equipment, such as pool heaters and pool equipment, which the Board finds are Accessory Structures and shall not be permitted in the side yard.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Joint Planning Board of the Borough of Demarest upon a roll call vote at its regular meeting held on April 2, 2025.

A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:

SO APPROVED:

MICHAEL GRECO, Secretary

TIMOTHY WOODS, Chairman

BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTING

<u>BOARD MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>	<u>NOT ELIGIBLE</u>
Mr. Theodore Alevrontas							
Mayor Brian Bernstein							
Vice Chair Jodi Brenner							
Ms. Kiran Chin							
Ms. Camille DiSclafani							
Councilwoman Daryl Fox							
Ms. Fatemah Mamdani							X
Ms. Mary Hamilton							X
Mr. Timothy Woods							

Date of Adoption: May 7, 2025

**JOINT PLANNING BOARD OF THE
BOROUGH OF DEMAREST**

RESOLUTION JPB-006-25

**REQUEST FOR INTERPRETATION
N.J.S.A. 40:55d-70(b)**

In the Matter of the Zoning Officer Request for Interpretation
Livable Floor Area

WHEREAS, on or about March 25, 2025, Mr. Michael Greco, Zoning Officer of the Borough of Demarest (the "Zoning Officer"), filed a Request for Interpretation with the Joint Planning Board of the Borough of Demarest (the "Board") arising from reoccurring issues withing the Borough Zoning Ordinance that has resulted in inconsistent interpretations and enforcement in the Borough of Demarest (the "Borough") concerning Livable Floor Area; and

WHEREAS, the Board is empowered pursuant to N.J.S.A. 40:55D-70(b) to "[h]ear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;" and

WHEREAS, the Zoning Officer requested the Board interpret the following questions: a) Should garages should be included in Livable Floor Area? Does it depend on whether they are heated or finished?; b) Should basements be included in Livable Floor Area calculations? If finished or heated, does that change their

status?; and c) Should substantially above-grade basements be treated differently? Should we establish a threshold (i.e., percentage above grade) to define whether a basement qualifies for inclusion?; and

WHEREAS, such determination must be based upon the facts presented, credibility findings which the Board is entrusted to make and legal determinations which the Board is statutorily obligated to make; and

WHEREAS, the Board conducted a public hearing on April 2, 2025 in accordance with the Municipal Land Use Law ("MLUL") and the Open Public Meetings Act; and

WHEREAS, at the public hearing the Zoning Officer appeared and presented testimony and evidence regarding various and inconsistent interpretations and enforcement in the Borough regarding Livable Floor Area and the Board took testimony and evidence into the record as set forth herein; and

WHEREAS, at the public hearing the following was also considered:

A. Correspondence submitted by the Zoning Officer dated March 25, 2025, which presented a history of inconsistent interpretations of Livable Floor Area; and

B. Planning Memorandum from Darlene Green, PP, AICP, the Board's Planning Consultant (the "Board Planner"),

dated March 31, 2025 and consisting of one (1) sheet;
and

- C. Testimony of the Board Planner regarding the history of Floor Area Ratio ordinances, the intent of Floor Area Ratio ordinances to regulate the scale and massing of development and the contradiction in the Borough Code between Floor Area Ratio and Livable Floor Area Ratio; and

Whereas, the Board, during the course of the hearing, considered the definition of Livable Floor Area in Section 175-27B. of the Borough Code, which is:

The aggregate area of all floors included within the outer walls of a building, excluding basements, garages, and other unheated areas, and including only such floor area under a sloping ceiling for which the headroom is not less than five feet six inches, and then only if at least 75% of such floor area has a ceiling height of not less than seven feet six inches and if any such floor that is situated above another story has access to the floor below by a permanent built-in stairway and has a permanent, complete floor and a means of heating to 70° F. at all times; and

Whereas, the Board, during the course of the hearing, also considered the definition of Floor Area in Section 175-27B. of the Borough Code, which is:

The aggregate area of all floors within the outer surface of a building's exterior walls, excluding attics, garages and basements or cellars that

are at least 70% below average grade;
and

Whereas, the definition of Livable Floor Area in the Borough Code has led to contradictory and inconsistent applications and confusion in the Borough regarding whether heated and unheated garages and basements should be included in the definition and is open to interpretation; and

Whereas, the Board, having heard and considered the testimony, arguments and documents referenced above, makes the following findings of fact:

1. The Board has elected to exercise its jurisdiction under N.J.S.A. 40:55D-70(b); and
2. The public was invited to speak after testimony was given and no members of the public wished to be heard or ask questions.

CONCLUSIONS AND DETERMINATIONS

NOW, THEREFORE, BE IT RESOLVED that the Board of the Borough of Demarest makes the following conclusion of law with respect to the within Request for Interpretation:

3. The Above "**WHEREFORE**" clauses are incorporated herein as if set forth at length;
4. The Board finds that the definition of Livable Floor Area in the Borough Code does not include basements that are at least 70% below average grade whether heated or unheated;

5. The Board finds that the definition of Livable Floor Area in the Borough Code does not include garage spaces whether heated or unheated; and
6. The Board finds that the definition of Livable Floor Area in the Borough Code does not include any other part of a principal or accessory structure that is not heated and not livable.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Joint Planning Board of the Borough of Demarest upon a roll call vote at its regular meeting held on April 2, 2025.

A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:

SO APPROVED:

MICHAEL GRECO, Secretary

TIMOTHY WOODS, Chairman

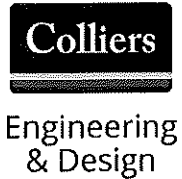
BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTING

<u>BOARD MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>	<u>NOT ELIGIBLE</u>
Mr. Theodore Alevrontas							
Mayor Brian Bernstein							
Vice Chair Jodi Brenner							
Ms. Kiran Chin							
Ms. Camille DiSclafani							
Councilwoman Daryl Fox							
Ms. Fatemah Mamdani							X
Ms. Mary Hamilton							X
Mr. Timothy Woods							

Date of Adoption: May 7, 2025

400 Valley Road Suite 304
Mt. Arlington, NJ 07856
Main: 877 627 3772



April 28, 2025

Michael Greco, Board Secretary
Zoning Board of Adjustment
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

17 Laurel Road
Block 1.02, Lot 20
Borough of Demarest, Bergen County, NJ
Joint Land Use Board Application - Engineering Review
Colliers Engineering & Design Project No. DEZ0051

Dear Mr. Greco:

Pursuant to your request, our office has reviewed the following plans and other documents filed by the Applicant in support of a Variance Application. The Applicant is proposing to demolish the existing dwelling and related improvements to construct a new 2 story dwelling, driveway, rear patio, pool, walkways, drainage improvements and other related improvements.

- a) Site plans consisting of one (1) sheet, prepared and signed by Sean P. McClellan, PE, of McClellan Engineering, dated February 11, 2024, last revised April 9, 2025;
- b) Architectural Plans consisting of four (4) sheets, prepared and signed by Uri Rapaport AIA, dated December 30, 2024, last revised April 9, 2025;
- c) Property Survey consisting of one (1) sheet, prepared and signed by Christopher J. Lantelme, PE, LS, dated December 18, 2024;
- d) Zoning officer denial letter, prepared and signed by Michael Greco, dated April 2, 2025;
- e) Variance Application for the subject property and attachments; signed and dated April 14, 2025;

The Property Owner/Applicant is:

Ilan Cohen
c/o Matthew Capizzi, Esq
205 Fairview Avenue
Westwood, NJ 07675

The Applicant/Owner shall notify the Borough of Demarest Zoning Board of Adjustment of any changes to the above information.

Engineering Review

I. Project Description & Location

According to the property survey, the site is currently occupied by a 1.5-story single-family dwelling with associated driveway, walkways, patio, shed, and other related improvements

which are to be demolished. The Applicant is proposing to construct a new 2 story dwelling, driveway, rear patio, pool, walkways, drainage improvements and other related improvements.

The property is mostly rectangular shaped parcel consisting of 9,914 SF. The property is a corner lot, with frontage on Prescott Street to the west and Laurel Road to the south. The dwelling front faces Prescott Street and driveway access is provided on Laurel Road. The property is located in the residential D Zone according to the Borough Zoning Map.

The property is located in Zone X (area determined to be outside the 0.2% annual chance floodplain) as shown on the Flood Insurance Rate Map (FIRM) for the Borough of Demarest dated August 2019.

II. Zoning Requirements & List of Variances / Waivers Requested

A. Bulk Zoning Requirements:

Zone: D

Use: Single Family Residential

Description	Required	Existing	Proposed	Complies
Lot area**	10,000 sf.	9,914 sf.	9,914 sf.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Lot Frontage	100 ft.	100 ft.	100.00 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Lot depth	100 ft.	100 ft.	100.00 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Front yard setback (Laurel)	27.6 ft.	27.3 ft.	27.8 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Front yard setback (Prescott)	27.2 ft.	41.6 ft.	27.2 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Side yard setback	10 ft.	32.0 ft.	11.3 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Rear yard setback	30 ft.	17.9 ft.	30.0 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Building Height	30 ft.	-	27.3 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Max Building Coverage	20 %	9.1%	19.9 %	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Bldg./ Drive Coverage	25 %	15.5%	23.4 %	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Impervious Coverage*	30 %	19.2%	31.4 %	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
FAR	30%	-	30.0%	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

N/A = not applicable
 * = variance required
 ** = pre-existing non-conformance

B. The Following Variances Appear to be Required:

1. Minimum Lot Area – There is a pre-existing non-conformance for lot area of 9,914 SF where a minimum of 10,000 SF is required. The Applicant does not propose to bring lot area into conformance by acquiring additional land.
A variance is required for this condition.
2. Impervious Coverage – The Applicant is proposing a max impervious coverage of 3,116 SF(31.4%) where the maximum is 2,974.2 SF (30%) is permitted.
A variance is required for this condition.

C. Additional Considerations:

1. It is the responsibility of the Joint Land Use Board to designate the front and rear yard areas for corner lot properties. The Applicant has assumed that the yard fronting Prescott Street will be considered the front yard, and the area along the eastern property boundary will be considered the rear yard. Should the Board designate the front/rear to be the northern and southern areas of the property, additional variances would be needed for the patio, pool, and pool equipment.
2. The Applicant should be prepared to provide testimony to the setback to the window wells in the northern side-yard area. 175-19 – Encroachment Into Yards states that window wells are permitted to encroach no more than three (3) feet into the setback.
3. The Borough of Demarest Limiting Schedule indicates a minimum setback of 25 feet for this zone. Footnote B indicates that an alternative setback is required and is established by the average setback on the same side of the street established by three or more houses. The Applicant has provided the average setback on Laurel to be 27.6 feet and on Prescott to be 27.2 feet. The Applicant complies with both the minimum and the alternative setbacks.
4. Front yard setback – There is a pre-existing non-conformance for front yard setback of 27.3 ft, where a minimum of 27.6ft is required. The Applicant is proposing a front yard setback of 27.8 ft eliminating this non-conformance for front yard setback.

III. Engineering Review

- B. The Applicant is proposing to increase improved lot coverage from 1900 SF (19.2%) to 3,116 SF (31.4%) with a net increase in coverage of 1,216 SF.
- C. The Applicant is proposing two (2) precast concrete drywells in the front yard area to collect and store stormwater runoff from what appears to be the roof area of the proposed dwelling. We offer the following comments related to the drainage design:

1. The Applicant has provided design calculations which indicate approximately 1,972 SF of area being collected and conveyed to the proposed drywells. The Applicant has provided adequate storage for this drainage area. We take no exception to the calculations provided.
 2. The Applicant should provide testimony indicating where the drywells are proposed to overflow.
 3. A soil test shall be provided prior to the installation of the proposed seepage pits. Soil test shall include information regarding the location of the seasonal high-water table (SHWT) and percolation rate of the soil.
 4. The Applicant has provided an at-grade 6-inch PVC observation port cap for future maintenance in the seepage pit detail.
 5. The Borough Engineer shall be notified to inspect the seepage pits prior to backfilling.
- D. The Applicant is proposing a pool in the rear yard area but has not provided a fence enclosure or self-locking gate as required by code. The plans should be revised to include this information and a detail of the same.
- E. The Applicant proposes to remove five (5) trees to construct the proposed improvements. We note that no replacement schedule or proposed landscaping plan has been provided. The Applicant should confirm in testimony if there are any additional trees that may be impacted by the proposed construction. We defer to the Shade Tree Commission for final comment and approval of the proposed removal and replacement of trees.
- F. The Applicant is proposing a retaining wall on the eastern side of the driveway. The Applicant should provide a retaining wall detail on plans.
- G. The Applicant shall provide testimony regarding the re-use of existing and or installation of proposed utilities on site.
- H. The Applicant has depicted existing and proposed contours on the property. We offer the following comments related to grading:
1. Under existing conditions, the site drains from east to west. The highest point of the property is in the southwestern side where elevations are approximately 104 and the lowest point of the property is in the southeastern corner, where elevations are approximately 96.
 2. Under proposed conditions, the high and low points are generally maintained, and drainage patterns should not be substantially impacted. Grading changes do not appear to exceed more than one (1) foot in most locations.
- I. The Applicant has indicated a total cut of 407 CY, a total fill of 117 CY and a net export of 505 CY of soil is anticipated to complete the proposed improvements. The Applicant should be aware that any soil movement quantity in excess of 250 CY will require Mayor and Council approval pursuant to Chapter 147 of Borough Ordinance



Engineering
& Design

- J. Should the Board act favorably upon this application, the Applicant is hereby made aware that drainage issues may arise during or after the proposed construction. It will be the Applicant's responsibility to remedy any drainage issues caused by the proposed improvements. In addition, water runoff directed to neighboring properties is prohibited. If runoff water does enter neighboring properties as a result of the proposed improvements, the Applicant will be responsible to remedy the situation at no cost to the Borough.

Should you have any questions, you may contact me at (201) 775-1283.

Sincerely,

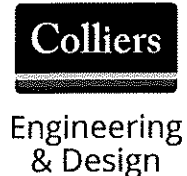
Colliers Engineering & Design

A handwritten signature in black ink, appearing to read "N. Chelius", written over a horizontal line.

Nick Chelius, P.E.
Joint Land Use Board Engineer

cc: Board Members (via Zoning Board Secretary)
Matthew Capizzi, Applicant's Attorney (via email)

400 Valley Road Suite 304
Mt. Arlington, NJ 07856
Main: 877 627 3772



May 2, 2025

Michael Greco
Joint Planning Board
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

17 Duck Pond Road
Block 120.01, Lot 3.01
Borough of Demarest, Bergen County, NJ
Joint Planning Board Application - Engineering Review
Colliers Engineering & Design Project No. DEZ0043

Dear Mr. Greco:

Pursuant to your request, our office has reviewed the following plans and other documents filed by the Applicant in support of an appeal to the Zoning Officer Denial letter referenced below. The Applicant is proposing to construct a new dwelling with associated driveway, walkways, patio, retaining walls, pool, sport court, and other related improvements.

- a) Site Plans consisting of one (1) sheet, prepared and signed by Michael J. Hubschman, PE, PP, and Robert J Mueller, PLS, of Hubschman Engineering, dated June 17, 2024, last revised April 15, 2025;
- b) Joint Planning Board Application for the subject property and related attachments;
- c) Zoning Department Denial of Application letter, dated April 16, 2025;
- d) Notice of appeal, prepared and signed by Matthew G. Capizzi, Esq., dated April 16, 2025.

The Property Owner/Applicant is:

Zmanny LLC / Tomer Edry
220 East 65th Street, Apt 21L
New York, NY 10065

The Applicant/Owner shall notify the Borough of Demarest Joint Planning Board of any changes to the above information.

Engineering Review

I. Project Description & Location

According to the site plans, the site was previously an empty lot. The Applicant is proposing to construct a new single-family dwelling, driveway, walkways, patio, retaining walls, sport court, pool, drainage improvements and other related improvements. The Board should note that a soil movement permit was already issued for the construction of the dwelling only and construction is currently underway. The remainder of the proposed site improvements are still subject to review and approval and any necessary state approval(s).

The property is an irregular shaped parcel consisting of 107,360.23 SF. The northern portion of the property fronts Duck Pond Road and the southwestern portion of the property fronts Academy Lane. As such, it appears the property has two front yard areas. The property is located in the residence A Zone according to the Borough Zoning Map.

The property is located in an unshaded Zone X (area determined to be outside the 0.2% annual chance floodplain) as shown on the Flood Insurance Rate Map (FIRM) for the Borough of Demarest dated August 2019.

II. Zoning Requirements & List of Variances / Waivers Requested

A. Bulk Zoning Requirements:

Zone: R-A

Use: Single Family Residential

Description	Required	Existing	Proposed	Complies
Lot area	40,000 sf.	107,360 sf.	107,360 sf.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Lot Frontage (Duck Pond Rd)	200 ft.	201.83 ft.	201.83 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Lot Frontage (Academy Lane)	200 ft.	282.38 ft.	282.38 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Lot depth	200 ft.	322.10 ft.	322.10 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Front yard setback (Duck Pond Rd – Avg)	54.10 ft.	169.66 ft.	169.66 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Front yard setback (Academy Lane)	50 ft.	135.31 ft.	135.31 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Side yard setback	25 ft.		75.15 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Rear yard setback	50 ft.		50.19 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Rear Yard Width	200 ft.	372.61 ft.	372.61 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Maximum Building Height	33 ft.		33 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Max Building Coverage	15 %		7.09 %	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Max. Improved Coverage	30 %		23.66 %	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Max. Residential & Parking Coverage	25 %		13.18 %	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Livable Floor Area	22.5%		8.74 %	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

N/A = not applicable
 * = variance required
 ** = pre-existing non-conformance

We note the following:

- The division of the side and rear yards is not clearly defined in the ordinance and is subject to the interpretation of the Board. Borough Ordinance 175-27 defines yards as the following:
 - Yard, Front: A yard extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the "front yard" shall be between the front line of the building and the street line.
 - Yard, Rear: A yard extending the full width of the lot and situated between the rear line of the building and the rear line of the lot.
 - Yard, Side: A yard situated between the building and the side line of the lot and extending from the front yard to the rear yard.
- The interpretation of the location of the side, rear, and front yards will impact if certain variances are applicable to this application. For example, if the portion of the yard fronting Academy Lane is designated as a front yard, portions of the proposed sport court would be located in a front yard area.

B. The Following Variances Appear to be Required:

1. Accessory Structure Location (Sport Court) – There is a 55 ft x 110 ft (6,050 SF) sport court in the side and/or front yard areas. Per Borough Ordinance, accessory structures are only permitted in the rear yard area.

A variance may be required for this condition.

2. Accessory Structure Location (Pool and Patio) – Due to the frontage along Academy Lane, the pool and portions of the patio are located in what could be considered a front yard. Accessory structures are only permitted in the rear yard area.

A variance may be required for condition.

3. Accessory Structure Location (Retaining Wall) – The Applicant is proposing what appears to be a 5-foot-high retaining wall enclosing the cobblestone parking area in the front of the property. Based on the definitions in Borough Ordinance, retaining walls two feet in height or greater are considered accessory structures and are only permitted in the rear yard area.

A variance appears to be required for this condition.

C. General Discussion

1. We note the following relevant sections and definitions provided in Demarest Ordinance related to this application:



- 175-19(B) - All districts. Accessory buildings, uses and structures and improvements shall be permitted only in a rear yard, subject to the following regulations, which shall apply to the entire rear yard, not just the required minimum depth:
 - 175-19(B)6 - "An accessory use, building or structure in any residence district on a lot between two parallel streets shall comply with the locational regulations and restrictions for an accessory building or improvement as applicable to each abutting street, including all front, rear and side yard requirements for each street, notwithstanding upon which street the principal building fronts."
 - 175-19(B)7 - "Swimming pools. No swimming pools shall be located within any front yard and no swimming pool shall be located in any side yard."
- 175-24 Fences
 - 175-24(C) - "No fence shall be erected in a front yard of any lot in a residential district unless the fence is less than 50% solid and is not more than four feet in height."
 - Note that the Board should consider whether portions of the fence enclosing the proposed sport court are located in a front yard. If so, the fence would exceed the maximum height of four feet.
- 175-27 Definitions
 - Retaining Wall - "A structure forming a change of grade with or without footing that is two feet or greater in height from the lowest adjacent grade elevation."
 - Accessory Use (Building, Structure) 1c Examples: "Swimming pool (aboveground or in-ground), playground equipment, arbor, pergola, deck, antennae, patio, retaining wall, etc."

III. Engineering Review

A. Coverages and applicability to Major Development Stormwater Regulations

1. The plans indicate a total improved coverage of 25,403 SF (23.66%). Existing coverages are assumed to be 0. As such, the net increase in coverage proposed is 25,403 SF. Per N.J.A.C. 7:8, the definition of a "Major Development" is a project which includes either a disturbance area larger than 1 Acre (43,560 SF) or ¼ Acre (10,890 SF) or more of increase in impervious area. Based on N.J.A.C. 7:8 this development would be considered a "Major Development" and subject to additional stormwater management regulations. The total limit of disturbance is noted as 1.52 acres and the increase in impervious coverage is 25,403 SF.

2. The Applicant has provided building height calculations for both the principal structure (the dwelling) and accessory building (the storage shed).
 - The principal structure is calculated at the maximum allowable height of 33 feet based on the measurement from average natural grade to the mid-roof height of the dwelling. Measurement to the midpoint of the roof is described in footnote D of the Limiting Schedule, District. We note that architectural plans have not been provided as part of this application.
 - The accessory building height is calculated at the maximum allowable height of 12 feet based on the measurement from average natural grade to the mid-roof height of the shed.

B. Grading & Drainage

1. The Applicant is proposing a raingarden and fourteen (14) seepage pits to manage stormwater on site. We note that a drainage report has not been provided for review. Should the Board act favorably upon this application, CED will require additional information in order to conduct a comprehensive review of the stormwater design. We recommend requiring the applicant to perform soil testing in the location of the proposed drainage improvements prior to any submission of stormwater design calculations to confirm the design is feasible.
2. The Applicant is proposing minor regrading as part of this project. Natural grades slope downward toward the western side of the property. The proposed grading includes several retaining walls and appear to maintain existing drainage patterns. Should the Board act favorably upon this application, detailed cut and fill calculations should be provided with the submission of any soil movement application.
3. The plans indicate that the overflow for the drainage system will discharge to existing drainage infrastructure within Academy Lane. The outlet pipe crosses an existing maintenance easement along Academy Lane.
4. Please note an in-depth drainage review has not been performed at this time. Should the Board approve this application, CED will perform an in-depth drainage review during the soil moving permit review process.

C. Fencing

1. As per 175-24(N) All pools are required to be enclosed by a fence no less than 48" in height and pool code compliant self-latching and self-closing gates shall be provided.
2. A detail has been provided of the proposed fence on sheet 4021.1-3 of the site plans. The detail shows a 45" & 69" high aluminum split rail fence.
3. The proposed sport court area is enclosed by a 6-foot-high fence. It is unclear what type of fence is proposed in this location. The Applicant should provide testimony.

4. The Applicant should provide testimony on the locations of the different fence heights. Note that fence in a front yard area is permitted to be a maximum of four feet in height and must be 50% open.

D. Environmental Restrictions

1. The plans depict a 150-foot setback from the top of bank of Cresskill Brook along the northern frontage of the property (near Duck Pond Road). Improvements proposed within this area include portions of the driveway.
2. The plans depict a 300-foot riparian zone setback from the top of bank of Cresskill Brook along the northern portion of the property. Improvements proposed within this area include the driveway, minor regrading, covered driveway area, seepage pits, and the front portion of the dwelling.
3. The Applicant should provide testimony as to the nature of permits anticipated and any other environmental restrictions on-site.

E. Tree Removal and Replacement

1. Sheet 4021.1-4 of the site plans indicate a total of 33 trees to be removed. A replacement schedule has been provided indicated 34 trees to be replaced. We defer to the shade tree commission for final comment on the adequacy of the replacement trees proposed.
2. The Applicant should provide testimony as to the locations of the proposed tree removal as it has not been provided on the site plans. Testimony should be provided on whether trees within the 150' top of bank buffer and the 300' riparian buffer will be impacted.

F. Lighting

1. The Applicant has provided a lighting plan on sheet 4021.1-7 of the site plans.
2. Proposed lighting includes four (4) twenty-foot-high light poles with 300-Watt LED luminaires.
3. Photometrics for the proposed lighting has been provided indicating a maximum lighting intensity of 26.3 footcandles in the sport court area. We note there is some spillover lighting beyond the property boundaries in the Academy Lane area. Lighting intensities beyond the property lines are as high as 1.8 footcandles. The Board should consider whether spillover lighting is acceptable in these locations.

- G. Should the Board be inclined to grant the requested variance(s), the Applicant shall be aware that prior to issuance of a building permit, a soil moving permit application shall be provided to the Borough in accordance with Chapter 147 (§147-1) of the Borough Ordinance. Earthwork calculations will need to be provided for the proposed work.

- H. The Applicant is hereby made aware that drainage issues may arise during or after the proposed construction. It will be the Applicant's responsibility to remedy any drainage issues caused by the proposed improvements. In addition, water runoff directed to neighboring properties is prohibited. If runoff water does enter neighboring properties as a result of the proposed improvements, the Applicant will be responsible to remedy the situation at no cost to the Borough.
- I. If in the event the Board grants this variance the Borough Engineer shall be notified to inspect and approve all drainage measures, including seepage pits with at least seventy-two (72) hours notice. The Applicant shall not backfill the drainage appurtenances without such approval.

Should you have any questions, you may contact me at (201) 775-1283.

Sincerely,

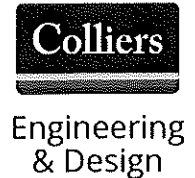
Colliers Engineering & Design



Nick Chelius, P.E., C.M.E.
Joint Land Use Board Engineer

cc: Board Members (via Board Secretary)
Tim Woods, Chairman (timwoods12@gmail.com)
Michael Greco, Board Secretary (mgreco@demarestnj.gov)
Michael J Hubschman, Applicant's Engineer (mike@hubschmanengineering.com)
Matthew G Capizzi, Applicant's Attorney (matthew@capizzilaw.com)

Shelbourne at Hunterdon
53 Frontage Road, Suite 110
Hampton, New Jersey 08827
Main: 877 627 3772



May 2, 2025

PLANNING REPORT

Joint Planning Board
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

RE: Tomer Edry

17 Duck Pond Road
Block 120.01, Lot 3.01
Review Letter #1
Project No. DEP-0228

Dear Board Members,

Thomer Edry, the Applicant, is in the process of constructing a new single-family dwelling on the subject property. Other site improvements include an in-ground pool and surrounding patio, a lower patio, a 6,050 square-foot sports court, 180 square-foot storage building, a pool equipment area, driveway, grading, stormwater management facilities, and retaining walls and fences are shown on the Site Plan. It should be noted that the Applicant has received a soil movement permit for the dwelling only and construction has commenced as shown by the aerial on page 2). The Applicant received a Denial of Application letter from the Borough Zoning Officer for the proposed in-ground pool, patio, and sports court due to their encroachment into the side yard, which is not permitted.

According to the Variance Application, the Applicant is appealing the Zoning Officer's Denial of Application letter. And, according to Mr. Capizzi's letter of April 16, 2025, in the alternative, seeking variance relief to construct the pool, patio and sports court. Section B discusses the appeal/interpretation, while Section C details the applicable variances.

The following documents, which were submitted in support of the Application, have been reviewed:

1. Plans entitled "Proposed Dwelling", prepared by Robert J. Mueller, PLS and Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated July 24, 2024, revised through April 15, 2025, consisting of 5 sheets.
2. Variance Application, no date.
3. Application Contact Sheet, no date.
4. Deed, dated December 21, 2023, recorded on January 18, 2024.

5. Denial of Application, prepared by the Borough Zoning Officer, dated April 16, 2025, consisting of 2 pages.
6. Letter entitled "Notice of Appeal", prepared by Matthew G. Capizzi, Esq. of Capizzi Law Offices, dated April 16, 2025, consisting of 1 page.

A. Existing Zoning and Surrounding Land Use

The subject property is in the Residential R-A District along the south side of Duck Pond Road and north side of Academy Lane. The property is surrounded by single-family dwellings to the north, east, and west, and the Academy of the Holy Angels to the south. See the image below for the approximate location of the subject property shown in red.¹



Yard and bulk requirements in the R-A District are:

- Minimum Lot Frontage – 200 feet
- Minimum Lot Depth – 200 feet
- Minimum Lot Area – 40,000 square feet
- Minimum Front Yard Setback – 50 feet²
- Minimum Side Yard Setback (abutting a street) – 50 feet
- Minimum Side Yard Setback (abutting a lot) – 25 feet
- Minimum Rear Yard Setback – 50 feet³
- Maximum Number of Families per Building – 1
- Maximum Building Coverage – 15%

Maximum Building Height – 33 feet⁴
Maximum Livable Floor Area – 22.5%⁵
Maximum Improved Lot Coverage – 30%⁶
Maximum Residential and Parking Coverage – 25%

B. Appeal / Zoning Interpretation

The Applicant is appealing the Zoning Officer's decision that the proposed in-ground pool, patio, and sports court encroach into the side yard pursuant to NJSA 40:55D-70a. Additionally, the Accessory Structure Zoning Notes information on Sheet 4021.1-1 of the Site Plans indicates the Applicant is requesting a zoning interpretation because the "Zoning Ordinance does not address thru lots" (NJSA 40:55-D-70b). The Board should note the Ordinance provides the following definitions relating to front, side, and rear yard property lines and yards:

- Lot Line, Rear - Any lot line which is opposite and/or does not intersect a front lot line, except in the case of a triangular corner lot or otherwise irregularly shaped lots.
- Lot Line, Side - Any lot line not a front lot line or a rear lot line.
- Lot, Corner - A lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street, forming an interior angle of less than 135°. The minimum frontage is to be maintained on all streets. The approving authority is to designate the front of the building, and then the yard opposite the designated front of the building shall meet rear yard minimum requirements.
- Yard - The space on a lot extending along a lot line between such lot line and a principal building or buildings or a nonbuilding use occupying such lot.
- Yard, Front - A yard extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the "front yard" shall be between the front line of the building and the street line.
- Yard, Rear - A yard extending the full width of the lot and situated between the rear line of the building and the rear line of the lot.
- Yard, Side - A yard situated between the building and the side line of the lot and extending from the front yard to the rear yard.

It should be noted that the Ordinance does not define a "front lot line".

Additionally, the Ordinance does not provide a definition for the situation of the subject property, a lot that abuts two non-intersecting streets. However, the definition of "Lot, Corner" does indicate the approving authority designates the front of the building and the opposite yard of the designation would be the rear yard.

It should be noted that no survey was submitted with the Application and the Site Plan does not note if Academy Lane is a right-of-way, easement, etc. It is unclear if Academy Lane is situated on a block and lot. **Testimony** shall be provided to clarify.

Based on the above definitions and that the Site Plan indicates the property is a through lot (meaning it fronts two streets), the subject property would have two front yards, one between the Duck Pond Road street line and the future dwelling and a second between the Academy Lane street line and the future dwelling. The property also appears to have two side yards, along the eastern property line and along the western property line. However, it should be noted that the definitions do not clearly translate to the subject property as the Ordinance does not contain a definition of front lot line, which guides the side and rear lot line definitions.

The depth of the Duck Pond Road front yard is 169.66 feet, while the depth of the Academy Lane front yard is 135.31 feet. The depth of the eastern side yard is 50.48 feet, while the depth of the western side yard is 75.19 feet. Based on these dimensions, we offer the following:

- The proposed in-ground pool is 106.25 feet from the eastern side lot line, 124.63 feet from the Academy Lane street line, and approximately 150 feet from the western side lot line. Based on these setbacks, the proposed in-ground pool **does not** encroach into the side yard. However, the pool **does** encroach into the Academy Street front yard.
- The proposed pool patio is approximately 77 feet from the eastern side lot line, the lower patio is approximately 107 feet from the Academy Lane street line, and the pool patio is approximately 128 feet from the western side lot line. Based on these setbacks, the proposed patio **does not** encroach into the side yard. However, the patio **does** encroach into the Academy Street front yard.
- The proposed sports court is 140.38 feet from the eastern side lot line, ten feet from the Academy Lane street line, and 25 feet from the western side lot line. Based on these setbacks, the sports court **does** encroach into the western side yard. Additionally, the sports court **does** encroach into the Academy Street front yard.
- Additionally, the proposed 180 square foot storage building and pool equipment area, which are not mentioned in the Denial of Application letter or the Variance Application, **do not** encroach into either side yard but **do** encroach into the Academy Lane front yard.

Based on the information above, an appeal as to the Zoning Officer's denial of the in-ground pool and patio as side yard encroachments could be made. The proposed sports court is within the western side yard area. However, these proposed improvements do encroach into the Academy Lane front yard, which is not permitted under Section 175-19A.(2)(b).

However, the Applicant has requested a zoning interpretation for the applicable setbacks on the subject property as the Ordinance does not address "thru lots". Due to the limited information provided by the Applicant regarding the interpretation, it is unclear what the Applicant is seeking the Board to interpret. The Applicant shall provide testimony regarding the requested zoning interpretation.

C. Variances

Based on the information provided, the Application requires the following variances. However, it should be noted that depending on the Applicant's clarification of the zoning interpretation request and decision made by the Board, these variances may change.

1. Section 175-19A.(2)(b) – Variance for front yard encroachment. The Ordinance does not permit accessory uses, buildings, and structures to encroach into the front yard.

The Applicant proposes an in-ground pool, patio, sports court, storage building, and pool equipment area within the Academy Lane front yard. **The Site Plan does not list this variance.**

2. Section 175-19A.(3)(b) – Variance for side yard encroachment. The Ordinance does not permit accessory uses, buildings, and structures to encroach into the side yard.

The Applicant proposes a sports court that encroaches into the western side yard. **The Site Plan does not list this variance.**

3. Section 175-19B.(6) – Variance for accessory structure location. The Ordinance requires accessory uses, buildings, or structures on lots between two parallel streets to comply with the locational regulations and restrictions relating to each street, including all front, side, and rear yard requirements for each street.

The subject property abuts two streets (based on the information on the Site Plan), Duck Pond Road to the north and Academy Lane to the south. The Applicant proposes an in-ground pool, patio, sports court, storage building, and pool equipment area within the Academy Lane front yard area. **The Site Plan does not list this variance.**

4. Section 175-19B.(7) – Variance for pool location. The Ordinance does not permit pools within any front yard.

The Applicant proposes an in-ground pool that extends into the Academy Lane front yard. **The Site Plan does not list this variance.**

5. Section 175-24Q. – Variance for fence height. The Ordinance requires fences within 25 feet of any street to be no more than four feet and at least 50% open.

The Applicant proposes the sport court perimeter fence at either six or ten feet tall. The fence is within 25 feet of the Academy Lane street line. **The Site Plan does not list this variance.**

D. Variance Proofs

"C" Variances

NJSA 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property, or exceptional

topographic conditions or physical features uniquely affecting a specific piece of property, or extraordinary and exceptional situation uniquely affecting a specific piece of property.

The second criteria involves the C(2) or flexible "C" variance where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

E. Waivers/Exceptions

The Application does not require any waivers/exceptions based on the information provided.

F. Comments

Based on our review of the above-referenced materials, we offer the following comments. Updates to previously issued comments and new comments are in italics.

General

1. The Applicant's professionals must provide testimony regarding the appeal of the Zoning Officer's Denial of Application letter and the interpretation request to the Board. Additionally, testimony shall be provided to support the grant of the "C" variance required by the Application, if the Applicant seeks variance relief. Testimony must address both the negative and positive criteria requirements of the MLUL.
2. Based on our review of the submitted Plans and documents, we have identified multiple variances that not been requested or identified by the Applicant. The site Plans shall be revised to list all required relief or amended to comply with the Ordinance. It should be noted that depending on the testimony provided regarding the appeal and zoning interpretation, variances may be modified and/or eliminated.
3. Sheet 4021.1-4 indicates the Applicant proposes to remove 33 existing trees. However, no tree removal application has been submitted. The Applicant shall submit a tree removal application.
4. Section 163-19C provide the mitigation requirements for removed trees. According to the Site Plans, the Applicant proposes to remove 33 trees, 24 of which require replacement. According to the replacement calculation, 26 replacement trees are required and 34 are proposed. However, the Applicant appears to have calculated the tree replacement requirement utilizing outdated standards. The Borough recently amended Chapter 163 in its entirety via Ordinance No. 1121-23 on June 26, 2023. This Ordinance modified exemptions to tree replacement as well as the tree replacement calculation. The Applicant shall revise the Tree Removal for Development and Replacement Schedule information in accordance with Ordinance No. 1121-23. Until this information is provided, it is unclear if the Applicant provides the required number of replacement trees.
5. Sheet 4021.1-4 does not illustrate the existing trees to be removed. Additionally, the Site Plans do not illustrate any proposed trees. The Applicant shall revise the Site Plans to

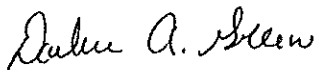
include this information, which is necessary to confirm compliance with the Borough's tree removal and replacement requirements.

6. Section 175-21 requires any exterior lighting to be "arranged and shielded to reflect the light downward and away from all adjoining properties and structures so that the lights and glare from lights will not become a nuisance to adjoining properties." The footcandles of the proposed sports court lighting reach a maximum of 1.8 footcandles within the Academy Lane right-of-way. Testimony shall be provided regarding the proposed lighting and compliance with the Ordinance.
7. We defer to the Board Engineer regarding the light fixture height, type of lighting, lumens, temperature, etc. for the proposed sports court lighting.
8. The Site Plans illustrate a four-foot-tall fence along Duck Pond Road and the northeast corner of the property and six-foot-tall fences extending from the east and west sides of the dwelling to the property lines. Sheet 4021.1-3 provides a Decorative Aluminum Fence detail, which has noted heights of 45 inches plus a three-inch gap (48 inches) and 69 inches plus a three-inch gap (72 inches). Testimony shall be provided to clarify if this detail applies to all proposed fencing.
9. The Site Plans indicate the proposed perimeter fence for the sports court is six feet tall. However, the Fence Detail for Sports Court indicates the height of the fence is ten feet. Testimony shall be provided to clarify the height of the fence around the sports court.
10. The Site plans illustrate a gate and piers at the front of the driveway. However, details of these improvements have not been provided. This information shall be submitted unless it was submitted with the building permits for the house.

Should you have any questions concerning the above comments, please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Sincerely,

Colliers Engineering & Design



Darlene A. Green, PP, AICP
Borough Planner

cc: Tim Woods, Board Chair (via email timwoods12@gmail.com)
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Michael J. Hubschman, Applicant's Engineer (via email mike@hubschmanengineering.com)
David Spatz, Applicant's Planner (via email davidspatz@optonline.net)

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- ¹ Image courtesy of <https://www.nearmap.com/us/en>, dated March 19, 2025.
- ² On all streets other than Knickerbocker Road, Hardenburgh Avenue, County Road, Anderson Avenue, Piermont Road, and Lenox Avenue, an alternate setback will be required, conforming to the established average setback on the street on which the lot fronts, within the same district and within 300 feet on each side of the lot along the same side of the street, but not beyond any intersecting streets, established by three or more houses.
- ³ For other than rectangular lots, a rear yard width is required that is equal to the frontage requirement in the district, such width to be measured between points on each side line which are distant from the frontage line the number of feet specified as the minimum lot depth requirement in the district, such side line points to be measured at right angles to the frontage line. This requirement applies to all residence districts.
- ⁴ Measured from the average natural grade around the perimeter of the proposed structure. No more than 50% of the roof area shall exceed the specified average height. Flat roofs above 30 feet in height are expressly prohibited in all zones.
- ⁵ Maximum livable floor area (as defined in §175-27) is calculated as a square foot percentage of the total square footage of the lot to be developed.
- ⁶ The part of the site that is covered by buildings or accessory buildings; impervious or pervious tennis courts, basketball courts, decks, swimming pool decks, patios, firepits, hot tubs, or other recreational structures or improvements; impervious or pervious parking areas, driveways, walls, walkways, pavers, or similar improvements; and any other structures or impervious surfaces. Total improved lot coverage shall not exceed 30% of the lot area. The percentage of the lot to be used for the principal residential use and all vehicle access and parking areas shall not be greater than 25%.

**BY LAWS
OF
JOINT PLANNING BOARD
OF THE
BOROUGH OF DEMAREST,
NEW JERSEY**

(Adopted _____, _____)

DRAFT

PREAMBLE 3

THE JOINT PLANNING BOARD OF THE BOROUGH OF DEMAREST (THE “BOARD”) FULFILLS THE RESPONSIBILITIES OF BOTH A PLANNING BOARD AND A ZONING BOARD OF ADJUSTMENT. IT CONSISTS OF VOLUNTEERS APPOINTED BY THE MAYOR WHO ARE RESPONSIBLE FOR REVIEWING ZONING ORDINANCES REFERRED TO THEM BY THE MAYOR AND COUNCIL AND REVIEWING APPLICATIONS BEFORE THEM ON A CASE-BY-CASE BASIS IN ACCORDANCE WITH THE BOROUGH’S MASTER PLAN, THE BOROUGH OF DEMAREST ZONING ORDINANCE (THE “ORDINANCE”) AND NEW JERSEY’S MUNICIPAL LAND USE LAW, N.J.S.A. 40:1 ET SEQ. (THE “MLUL”),..... 3

INDIVIDUALS HAVE A CHOICE OF EITHER PRESENTING THEIR OWN APPLICATION BEFORE THE BOARD OR BEING REPRESENTED BY AN ATTORNEY. ALL LIMITED LIABILITY COMPANIES AND/OR CORPORATIONS MUST BE REPRESENTED BY AN ATTORNEY. 3

ALL ARE WELCOME TO ATTEND THE PUBLIC MEETINGS OF THE BOARD AND ARE INVITED TO ASK QUESTIONS REGARDING ANY APPLICATION WHICH MAY APPEAR ON THE AGENDA..... 3

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PREAMBLE

The Joint Planning Board of the Borough of Demarest (the "Board") fulfills the responsibilities of both a planning board and a zoning board of adjustment. It consists of volunteers appointed by the Mayor who are responsible for reviewing zoning ordinances referred to them by the Mayor and Council and reviewing applications before them on a case-by-case basis in accordance with the Borough's Master Plan, the Borough of Demarest Zoning Ordinance (the "Ordinance") and New Jersey's Municipal Land Use Law, N.J.S.A. 40:1 et seq. (the "MLUL").

The Board when hearing applications is a quasi-judicial body, and its procedures are similar to those used in a courtroom. The Chairperson conducts the meeting as a judge might and the Board is comparable to a jury that votes to make a final decision.

Individuals have a choice of either presenting their own application before the Board or being represented by an attorney. All limited liability companies and/or corporations must be represented by an attorney.

The Board reviews applications for variances and is permitted to grant such exceptions from the Ordinance in cases where the literal and rigid interpretation and enforcement of the Ordinance would result in a hardship or injustice. However, because variances may infringe on the rights of neighbors, an applicant is not entitled to a variance. An applicant must meet specific criteria contained in MLUL by satisfying specific legal standards of proof. This burden of proof is placed upon the applicant to demonstrate the requested relief is justified without impinging upon the rights of neighbors. Some items to consider when requesting a variance are special reasons, benefits, negative criteria, and hardship.

The Board is assisted in their deliberations by an attorney and the Board Planner and the Board Engineer, whose opinions are considered by the Board in its deliberations.

All are welcome to attend the public meetings of the board and are invited to ask questions regarding any application which may appear on the agenda.

The following By-Laws of the Planning Board are intended to supplement, but not substitute or otherwise contradict Applicable Laws (as defined herein). Wherever a conflict occurs between the following By-Laws of the Planning Board and Applicable Laws, the Applicable Laws shall take priority and control.

ARTICLE 1 – DEFINITIONS

- 1.1 **Ordinance.** The term "Ordinance" as used herein shall refer to Chapter 175 (Zoning) and Chapter 27 (Land Use Procedures) of the Code of the Borough of Demarest,, as it may be amended from time to time. The "Ordinance" shall be deemed to include any ordinance setting forth fees or escrow deposits if not contained therein.
- 1.2 **Applicable Laws.** The provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall be applicable to proceedings before this Board and the Board may exercise all of the powers conferred by said act.
- The Board shall be governed by the New Jersey Municipal Land Use Law of the State of New Jersey, N.J.S.A. 40:1 et seq. (the "MLUL"). Additionally, the Board is governed by the Open Public Meetings Act, N.J.S.A 10:4-6, et seq. and the Ordinance, as amended from time to time.
- 1.3 **Board.** The term "Board" as used herein shall refer to the Land Use Board of the Borough of Demarest, New Jersey.
- 1.4 **Person; Interested Person.** Whenever in these rules reference is made to "any person," "any interested person," "any person interested in the action" or the like, such term refers to any "interested party" as defined by law.
- 1.5 **Terms Not Defined.** Terms not expressly defined herein shall have the meanings set forth in the MLUL, if defined therein. Terms not defined therein shall have the meanings set forth in the Ordinance, if defined therein.

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ARTICLE 2 – ORGANIZATION, RESPONSIBILITIES & GENERAL PROVISIONS

- 2.1 Title of the Board
- 2.2 Jurisdiction of the Board
- 2.3 Board Members
- 2.4 Alternates to the Board Members
- 2.5 Election of Officers.
- 2.6 Responsibility of Chairperson
- 2.7 Responsibility of Vice Chairperson
- 2.8 Responsibility of Board Members
- 2.9 Responsibility of Secretary
- 2.10 Responsibility of Attorney
- 2.11 Responsibility of Planner
- 2.12 Responsibility of Engineer
- 2.13 Committees
- 2.14 Removal of Members
- 2.15 Recusal or Conflicts of Interest

2.1 Title of the Board

The Title of the Board shall be: “The Joint Planning Board of the Borough of Demarest, New Jersey” (hereinafter referred to as “Board”)

2.2 Jurisdiction of the Board

Pursuant to N.J.S.A. 40:55D-25(c), the Board shall exercise, to the same extent and subject to the same restriction, all powers of a planning board and zoning board, including but not limited to those powers and duties prescribed by law to a planning board pursuant to N.J.S.A. 40:55D-25 and to a zoning board pursuant to N.J.S.A. 40:55D-70 and N.J.S.A. 40:55D-76, which include the following:

- A. To prepare and, after public hearing, adopt or amend a Master Plan or component parts thereof, to guide the use of lands within the Borough in a manner which protects public health and safety and promotes the general welfare, in accordance with the provisions of N.J.S.A. 40:55D-28;
- B. To administer provisions of all development regulations of the municipality, including subdivision control and site plan review, in accordance with the provisions of said regulations and the MLUL, as amended pursuant to N.J.S.A. 40:55D-37;
- C. To consider and make report and recommendations to the governing body within 35 days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also pass upon other matters specifically referred to the Board by the governing body, pursuant to the provisions of N.J.S.A. 40:55D-26b;
- D. To review site plan, subdivision and conditional use applications and grant variances pursuant to N.J.S.A. 40:55D-25 and N.J.S.A. 40:55D-70.
- E. The Board’s Class I and Class III members shall not participate in the consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55D-70d. (“D Variance”). Removal of the Class I and Class III members reduces a nine-member board to seven voting members, allowing it to function as all other boards of adjustment. This reduction in voting membership

preserves the statutory scheme of N.J.S.A. 40:55D-70 requiring the affirmative vote of five members of the statutory seven-member board to grant a D Variance.

2.3 Board Members

In accordance with State statute, the Board shall consist of nine (9) members and two (2) alternative members named by the Mayor as required by N.J.S.A. 40:55D-23. Membership shall be classified according to the following categories:

- Class I: The Mayor, who shall serve for the duration of his or her elected term, or his or her designee in the absence of the Mayor.
- Class II: A Borough official, other than a member of the Governing Body, appointed by the Mayor, whose term shall be for one (1) year or terminate at the completion of his or her respective term of office or employment with the Borough.
- Class III: A member of the Governing Body to be appointed by it.
- Class IV: 6 other citizens of the Borough, to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position or employment, except that so long as the Board is comprised of nine members, one such member may be a member of the Historic Preservation Commission, and one Class IV member may be a member of the Board of Education. If there be a municipal environmental commission, the member of the environmental commission who is also a member of the Board, as required by section I of P.L.1968, c.245 (C.40:56A-1), shall be a Class IV Board member, unless there be among the Class IV or alternate members of the Board both a member of the historic preservation commission and a member of the board of education, in which case the member common to the Board and Municipal Environmental Commission shall be deemed a Class II member of the Board. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.

2.4 Alternates to the Board Members

1. **Designation.** Alternate members may be appointed to the Board as Class IV members, and such alternate members shall not exceed four. Alternate members shall be appointed by the Mayor for Class IV members and shall meet the qualifications of Class IV members of the nine-member Boards. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3" and "Alternate No.4", and each Alternate shall retain said designation during each term of appointment.
2. **Appointment of Alternate to serve on case.** During the absence or disqualification of any regular member, the Chairperson shall appoint one of the alternate members to serve in the place of said regular member, provided, however, that where the alternate member is designated to serve in place of the regular member, who is disqualified from participating in the hearing of a particular case, the alternate member shall be designated to serve only with respect to such case.
3. **Alternate to serve until final disposition.** An alternate member who has been designated to sit in place of a regular member and who has participated in any hearing or matter coming before the Board shall continue to act in the place of such regular member until the final disposition of said matter by the Board.

4. **Alternate No. 1 to vote.** In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.
5. **Alternate not to serve at adjourned or continued hearing unless present at prior hearings.** When a regular member has been present and has participated in the first hearing on any matter, no alternate member shall be designated to serve during the absence of such regular member during any adjourned or continued hearing or hearings on the same matter unless said alternate member was present at such first hearing or any prior adjourned or continued hearing on such matter.
6. **Rights and privileges.** An alternate member who has been designated to serve in the place of an absent or disqualified regular member shall, during the period of his service, enjoy all the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular members.
7. **Participation in discussions; voting.** Alternate members may participate in discussion of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.
8. **Voting on Resolutions.** Only those members who voted in the affirmative for an action may vote on the form of the resolution memorializing the decision.

2.5 Election of Officers

At the first meeting of the year, the Board shall hold its annual reorganization meeting and shall elect from among its Class IV members a Chairperson and Vice-Chairperson. Nominations for Chairperson and Vice-Chairperson shall be made from the floor and the elections shall follow immediately thereafter. The Board shall also appoint a secretary, who may or may not be a member or alternate member of the Board or a municipal employee. These officers shall serve for the calendar year and until their successors have been duly elected. Should an office become vacant during the year, the office shall be filled as soon as possible by the same election procedure, and the term of such office shall be the unexpired term of the predecessor.

2.6 Responsibility of Chairperson

The Chairperson shall preside at all meetings and hearings of the Board and, unless otherwise directed by a majority of the Board in session at that time, shall decide all points of order and matters of procedure governing said meetings or hearings, subject to these rules, and perform all the duties normally appertaining to this office and as required by law, Ordinance, or these rules of the Board. The Chairperson, with the advice of the Board Attorney, shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board. He or she may demand that any person whose conduct is disruptive to the conduction of business of the Board leave the meeting and upon the refusal of such person to do so, have that person removed. The Chairperson may eliminate any repetitive questions, arguments, testimony or any other tactics deemed by the Chairperson to be unproductive or inconsiderate of the Board's time. The Chairperson may adjourn the meeting at 10:30 p.m. or as may be appropriate and practicable.

2.7 Responsibility of Vice Chairperson

The Vice-Chairperson shall serve in the role of Chairperson for Board meetings and hearings in the absence of or disqualification of the Chairperson.

2.8 Responsibility of Secretary

The Secretary is responsible to the Board and shall be guided by the instructions of the Board. Under the direction of the Chairperson, the Secretary shall generally perform the administrative and secretarial work of the Board including, but not limited to, the following:

1. Provide application forms to applicants and accept completed applications.
2. With the assistance of the Board's professionals, determine the completeness status of applications.
3. Review the completeness of hearing notices submitted by applicants.
4. Take roll call votes and note the yea or nay of each member as he/she votes and will note any abstentions and the reasons therefor.
5. Arrange to make a tape recording as a record of the proceedings of each hearing of the Board in accordance with these rules and keep minutes of the proceedings of each meeting and hearing held by the Board and to enter therein, with other proceedings, such resolutions and orders as are adopted by the Board. As a supplement to tape recording, any other transcribing method may be used.
6. Conduct all official correspondence; compile the required records; keep and maintain in order the necessary files and indices with respect to the operation of the Board; give all notices of regular, adjourned, and special meetings required to be given by the Open Public Meetings Act, the MLUL or any other Applicable Laws or Ordinance.
7. Attend all meetings of the Board; have custody and take care of all records, documents, maps, plans and papers of the Board; provide for the care and custody of items for which no other provision is made by statute. Shall ensure all meeting agendas and approved minutes are posted on the Official Municipal Website.
8. Send to each member of the Board, to the Board Attorney, and to any other of the Board's professionals as applicable, minutes of Board meetings and any other materials received for consideration by the Board.
9. Following consultation with the Chairperson or his/her designee, prepare an agenda and distribute same to the Board and the public.
10. Perform such other duties as usually appertain to this office.

2.9 Responsibility of Attorney

The Board shall annually appoint or reappoint an Attorney-At-Law of the State of New Jersey (the "Board Attorney"). The Board Attorney is responsible for ensuring that meetings are conducted legally and fairly. The Board Attorney advises the applicant or the Board on Applicable Laws, regulations, and procedures related to land use and zoning. The Board Attorney manages the presentation of witnesses, ensuring they are properly sworn and their testimony is relevant and admissible. The attorney ensures that the Board's proceedings adhere to legal standards and that all necessary procedures are followed. The Board Attorney drafts resolutions memorializing the actions taken by the Board in accordance with the MLUL. All resolutions shall be provided to the Board for their review in advance of the public hearing. Additionally, the Board Attorney shall prosecute and defend litigation and appeals on behalf of the Board.

2.10 Responsibility of Planner

The Board shall annually appoint or reappoint a licensed professional planner in the State of New Jersey (the "Board Planner") who shall review and report on the applications and land use matters before the Board, prepare Master Plan and reexamination reports, and attend the meetings of the Board unless otherwise instructed by the Board in the Board's sole and absolute discretion.

The Board Planner shall report to the Board on all applications before the Board involving a D Variance unless otherwise instructed by the Board in the Board's sole and absolute discretion.

All reports from the Board Planner shall be provided to the Board in advance of the public hearing.

2.11 Responsibility of Engineer

The Board shall annually appoint or reappoint a licensed professional engineer in the State of New Jersey (the "Board Engineer") who shall review and report on the applications and other matters pending before the Board at the direction of the Board and who shall attend the meetings of the Board unless otherwise instructed by the Board in the Board's sole and absolute discretion. All reports from the Board Engineer shall be provided to the Board in advance of the public hearing.

2.12 Committees

The Board may establish sub-committees to which will report to the Board on specific matters directed to them for review. All sub-committees established pursuant to this section are authorized to meet as the members deem prudent. No sub-committee shall have any decision-making authority, however. If not established at the annual reorganization meeting, the Board may establish said committees at such other meeting as it deems prudent.

2.13 Removal of Members

If any regular or alternate member of the Board shall accumulate absences of eight (8) consecutive weeks or for three (3) consecutive regular meetings of the Board (whichever shall be of longer duration), without just cause such as being excused for legitimate illness or personal business conflicts, such member of the Board shall be deemed to have vacated said office provided that the Board authorizes the Secretary to notify the Governing Body in writing of such determination. Thereafter, pursuant to N.J.S.A. 40A:9-12.1, the Mayor shall be authorized to appoint a new member to assume the unexpired term of the vacated member.

2.14 Recusal or Conflicts of Interest

Any member of the Board who has any interest, direct or indirect, personal or financial, in a matter before the Board shall not vote thereon and shall remove himself/herself from any meeting or hearing at which said matter is under consideration. A disqualifying conflict of interest shall be deemed to exist.

- a. When the Board member is the spouse of the applicant or is related to the applicant within the third degree of consanguinity or is the husband or wife of someone so related;
- b. When the applicant is the employer, employee or partner of the member, or is a corporation in which the member is a shareholder or has a financial interest;

- c. When the member, or any of those persons identified in sections a and b herein, owns property within 200 feet of the property which is the subject of the application.

In the event that a member is deemed to have a conflict, said member shall be authorized to remain in the meeting room only if that person is an interested party as defined by the MLUL and may be authorized to participate in the meeting as a member of the public, preferably through a representative. That individual member shall not be disruptive of the public hearing or public hearing process.

In the event that a member is deemed to have a conflict and is not an interested party as defined by the MLUL, said member shall not be authorized to stay in the meeting room.

Conflicts of interest are further addressed in Article 11 hereof.

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ARTICLE 3 – SCHEDULING MEETINGS

- 3.1 Annual Meeting
 - 3.2 Annual Meeting Schedule
 - 3.3 Time and Place of Meetings
 - 3.4 Special Meetings
-

3.1 Annual Meeting

The annual meeting of the Board shall be held at the first regularly scheduled meeting of the Board in January of each year and establish the annual meeting schedule for the year. The Board shall also select a Board Attorney and a Board Engineer, all of whom shall serve for one (1) year and until their successors have been appointed. The Board may appoint such other officers or assistants and employ such experts or staff as it may deem necessary.

3.2 Annual Meeting Schedule

The Board shall determine the day(s) of the-month on which the regular meetings of the Board shall be held. The Board shall then approve an annual notice setting forth its meeting schedule.

3.3 Time and Place of Meetings

The regular meetings of the Board shall promptly begin at 7:00pm at Borough Hall located at 118 Serpentine Road, Demarest, New Jersey, on the first Wednesday of every month, and/or at such other time(s) and places as the Board shall determine. If the regular meeting falls on a legal holiday, the meeting shall be held on such other day as the Board may select. Whenever a meeting is canceled because of inclement weather or other unforeseeable circumstance, the Chairperson may re-schedule the meeting by notifying each Board member of the new meeting date, arranging for the posting of notice on the meeting place doors, and publishing a notice of the rescheduled meeting in the official newspaper designated by the Board as well as on the official Municipal website. Applicants and interested members of the public are encouraged to call and confirm such rescheduling. All Board meeting dates and Agendas shall be placed on the official Municipal website.

The Secretary shall annually furnish a copy of the regular meeting dates for the year to the news media designated by the municipal governing body in accordance with the Open Public Meetings Law, N.J.S. 10:4-6 et seq.

3.4 Special Meetings

Special meetings may be called by the Chairperson, or in his absence by the Vice-Chairperson, at any time or upon the written request of two (2) members, provided notice thereof be mailed or given to each member of the Board at least two (2) days prior thereto, and to the public as required by the Open Public Meetings Law, N.J.S.A. 10:-6 et seq.

An applicant may request but shall not be entitled to a special meeting. Special meetings at the request of an Applicant may be scheduled at the pleasure of the Board provided the public interest is fairly and reasonably served. The Applicant shall be responsible for all fees and costs related thereto.

ARTICLE 4 – RULES FOR CONDUCTING PUBLIC MEETINGS

- 4.1 Start and End Time of Meetings
- 4.2 Order of Business
- 4.3 Agenda
- 4.4 Hearing
- 4.5 Meetings Open to Public
- 4.6 Swearing of Witnesses
- 4.7 Public Comment
- 4.8 Quorum
- 4.9 Absence of Quorum or Other Inability to Meet
- 4.10 Motions
- 4.11 Failure of Motion
- 4.12 Resolutions
- 4.13 Voting and Abstention
- 4.14 Order of Voting
- 4.15 Vote on Applications for Development or Zoning Variances
- 4.16 Vote on Other Matters
- 4.17 Minutes
- 4.18 Approval of Minutes
- 4.19 Cancellation of Meeting for Lack of Business

4.1 Start and End Time of Meetings

The start of all meetings shall begin promptly at 7:00pm. No new case will be heard after 10:00 p.m. No testimony will be taken after 10:30 p.m. However, the Board, in its sole discretion, may modify this time limit by voice vote.

4.2 Order of Business

The order of business at all meetings shall be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Open to Public Meetings Notice
4. Roll Call
5. Announcements
6. Approval of minutes of previous meeting
7. Memorialization of Resolutions
8. Applications for adjournment of scheduled cases
9. Calendar of Business (Applications)
10. Payment of bills
11. Other Business
12. Public Comment
13. Adjournment

The order of business may be altered by the Chairperson in his or her discretion.

4.3 Agenda

The agenda for each meeting of the Board shall be at the discretion of the Chairperson subject to any time limitations imposed by Applicable Laws.

4.4 Hearings

- a. At the time of the hearing, the applicant may appear in his own behalf or be represented by his counsel, unless it is a corporation, in which case, it must be represented by an attorney.
- b. All witnesses shall testify under oath.
- c. The applicant or his representative may make an initial statement outlining the nature of his request prior to introducing evidence.
- d. Evidence shall be presented to the Board in the following order:
 - i. Chairperson or Board Attorney may give restatement of case if applicant's or his/her representative's initial statement needs clarification.
 - ii. Applicant presents evidence.
 - iii. Board examines applicant's witnesses.
 - iv. Objectors and public cross-examine applicant's witnesses.
 - v. Objectors and public present evidence.
 - vi. Applicant cross-examines objectors' and public's witnesses.
 - vii. Board examines objectors' and public's witnesses.
 - viii. Rebuttal by objectors and public.
 - ix. Rebuttal by applicant.
 - x. Evidence by Board, if any.
- e. The Board shall not be bound by the strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent, or unduly argumentative repetitious testimony or evidence. Petitions shall not be admitted into the record for any purpose.
- f. The Chairperson, with the advice of the Board Attorney, shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board.

4.5 Meetings Open to Public

All meetings shall be open to the public, except such executive sessions as authorized by N.J.S.A. 40:55D-9b and N.J.S.A. 10:4-1 et seq.

4.6 Swearing of Witnesses

All persons giving testimony at a hearing shall be duly sworn by the Board Attorney before giving any testimony after identifying themselves by first stating their names and addresses for the record.

4.7 Public Comment

The Chairperson shall have the right to cause any interested party appearing before the Board to be first duly sworn and shall do so whenever an interested party will proffer facts on which the Board would be

expected to rely. All rebuttal testimony or evidence shall be considered in such order as the Chairperson shall designate. Only relevant objections shall be considered by the Board. The Board shall not consider unreasonable, repetitive, or disorderly objections. The Chairperson shall have the power to limit objections to those expressed by "interested parties" as that term is defined in the MLUL and as construed by the courts of the State of New Jersey. The Chairperson may impose reasonable limitations as to time and number of witnesses in view of the nature of the application, the extent of testimony and proofs presented, the issues to be considered, the number of persons wishing to testify, and the extent to which the testimony is irrelevant, immaterial, or unduly repetitious.

4.8 Quorum

A "quorum" shall consist of a majority of the full authorized membership of the Board – five (5) members of a 9-member board. In the case of a continued hearing on an application, only those members who have attended all prior hearings on the application, or have certified having listened to the digital files of any proceedings from which they were absent, shall be counted in determining whether a quorum is present. Any member who is disqualified from participation in any application shall not be counted in determining whether a quorum is present.

4.9 Absence of Quorum or Other Inability to Meet

In the absence of a quorum, the members present shall adjourn the meeting or hearing to another date. If the Board is unable to meet as scheduled for lack of a quorum, or because of extenuating circumstances, such as inclement weather, natural disaster, act of God, inoperable digital recording equipment, or other unforeseeable circumstance, the meeting or hearing shall be adjourned to another date. In the event of such an adjournment, extensions granted by Applicants that will expire prior to the rescheduled meeting of the Board shall be automatically extended to such rescheduled meeting.

4.10 Motions

All actions of the Board shall be initiated by motion. All motions shall require a second; a motion which does not obtain a second shall be deemed to be rejected. The Chairperson shall allow discussion on any motion made and duly seconded.

4.11 Failure of Motion

If a motion to approve an application for development or zoning variance does not receive the number of required votes as herein before set forth, such failure shall be deemed an action denying the application or variance.

4.12 Resolutions

For any Board action subject to subsequent adoption of a resolution of memorialization, only the members of the Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. If only one member who voted for the action attends the meeting at which the resolution is presented for adoption, the resolution may be adopted upon the vote of that member.

4.13 Voting and Abstention

Unless a Board member is disqualified from hearing and/or voting on a specific motion, every member shall be expected to cast a yea or nay vote on any motion before the Board. If any member of the Board feels constrained to abstain from casting a vote, the reason for such abstention shall be clearly set forth on the record and the Secretary shall note in the minutes the reasons given for such abstention.

When any hearing before the Board shall carry over two or more meetings, a member of the Board who was absent for one or more of the meetings shall be eligible to vote on the matter upon which the hearing was conducted notwithstanding his or her absence from one or more of the meetings provided, however that such Board member has available to him or her a transcript or recording of the meetings from which he or she was absent, and certifies, in writing, to the Board that he or she has read such transcript or listened to such recording prior to voting on the matter. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

4.14 Vote on Applications for Development or Zoning Variances

All votes on applications for development or zoning variances shall be taken by roll call, and the vote and name of the member casting the vote shall be recorded in the minutes. Voting on these matters shall be made by roll call vote, except that the Mayor shall vote second to last and the Chairperson shall vote last.

4.15 Vote on Other Matters

Votes on procedural matters, adoption of minutes, or the appointment of officers and consultants, may be by voice vote or roll call vote, at the discretion of the Chairperson.

4.16 Minutes

The Secretary shall prepare and the Board shall, insofar as reasonably possible, adopt minutes of the previous meeting at each meeting of the Board. Minutes shall be deemed to be public records and shall be made available to the public in accordance with New Jersey statutes pertaining to public records. After receiving any comment by Board, the Board's adoption of the minutes shall be final. Neither the public nor any party to a proceeding pending before the Board shall have any right of participation or comment in connection with the Board's consideration and adoption of minutes, unless such participation or comment is specifically invited by the Chairperson, or by the Board following favorable vote on a motion so providing.

4.17 Approval of Minutes

Board members who were not present at the meeting for which "approval of minutes" is required, may not vote on the approval of the minutes.

However, in the event no Board members at the meeting were present at the meeting for which the "approval of minutes" is required, the Rule of Necessity would apply, thereby allowing Board members who would otherwise be disqualified from voting to vote on the minutes since there would be no voting members left on the Board for the Board to operate. In such a case the courts have recognized that the public interest is better served by allowing such disqualified members to vote, thus enabling the Board to carry out its functions rather than creating an impasse where no action can be taken and where substantial injury can be done to members of the public.

4.18 Cancellation of Meeting for Lack of Business

Whenever there are no matters to be considered at any regular meeting, other than the annual reorganization meeting, the Chairperson may dispense with such meeting by directing the Secretary to provide notice of cancellation to each member of the Board by reasonable means and as soon as possible in advance of the time set for such meeting and by giving notice in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and by posting the cancellation on the official Borough website for the convenience and interests of the public.

4.19 Decorum

The Chairperson has the right to close the public portion of a hearing if he/she feels that the audience is unruly or is making comments that are not relevant to the application. The Chairperson also has the right to have any member of the audience removed from the hearing room for unruly display of meeting decorum.

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ARTICLE 5 – PROCEDURES FOR CONSIDERATION OF APPLICATIONS

- 5.1 Filing of Application
- 5.2 Application Checklists
- 5.3 Completeness Determination
- 5.4 Assignment of Hearing Date
- 5.5 Order of Proceedings for Hearing the Application at the Board
- 5.6 Filing of Affidavit of Proof of Service
- 5.7 Dismissal of Applications for Development
- 5.8 Withdrawal of Applications for Development
- 5.9 Amendment of Applications
- 5.10 Submission of Plans, Plan Revisions and Other Materials for Consideration by the Board
- 5.11 Professional Review
- 5.12 Payment of Taxes and Assessments
- 5.13 Escrow Deposit
- 5.14 Site Inspections; Personal Knowledge of Board Members
- 5.15 Communication with the Board
- 5.16 Public Comment
- 5.17 Hearing Closure
- 5.18 Board Request for Reports
- 5.19 Continuance to a Date Certain
- 5.20 Record of Applicant Commitments
- 5.21 Burden of Proof
- 5.22 Applicant's Unreadiness to Proceed

5.1 Filing of Application

An application for subdivision, site plan, conditional use approval, zoning variance, or any other matter over which the Board has jurisdiction, shall be commenced by filing an application, plans and other supporting materials as required by the Ordinance, and in accordance with the completion checklist and fee schedule. All applications shall be filed on the forms provided by the Board.

5.2 Application Checklists

The Applicant shall comply with all checklist and Ordinance requirements or request waivers, exceptions, or variances therefrom. A statement explaining the reasons supporting each such request shall be submitted with the checklist. If waivers are requested, no application shall be deemed complete until they are granted or subsequently complied with by the Applicant if the request is denied. Failure to abide by the foregoing may result in a dismissal of the application or a delay in its being heard. All statutory time periods for actions by the Board commence only upon the determination that an application is complete. The Applicant shall also supply any and all other information and data that may be required to assist the Board with respect to the relief sought, whether or not such information is specifically noted on the checklist.

5.3 Completeness Determination

The Secretary, upon receipt of an application, shall distribute it to the Board Professionals for reviews. The Secretary may consult with the Board's Professionals regarding his/her completeness review and shall notify the applicant in writing of his/her completeness determination within forty-five (45) days of the filing of the application in accordance with N.J.S.A. 40:55D-10.3. In the event the application is found to be incomplete by the Secretary, such writing shall set forth the reasons that the application has been found to be incomplete. Upon failure to notify the applicant in

writing, that the application is incomplete, within the forty-five (45) day period, the application shall be deemed to be complete.

5.4 Assignment of Hearing Date

An application shall be assigned a hearing date after the application is deemed complete.

5.5 Appearances

The Applicant and any objectors shall appear in person or through an attorney admitted to practice law in the State of New Jersey. No corporation shall be heard except through counsel.

5.6 Order of Proceedings for Hearing the Application at the Board

The order of proceedings shall be in the discretion of the Chairperson. Unless varied by the Chairperson, the order for each application shall be as follows:

- A. The applicant shall present and identify him/herself and be sworn, then shall indicate the relief being sought. If the applicant is represented by an attorney, the attorney shall identify him/herself and the office which he/she represents, identify his/her client, and then proceed with opening remarks.
- B. The applicant, or his/her attorney, shall then present his/her testimony and the testimony of his/her witnesses. The applicant shall also submit such documentary evidence or exhibits upon which he/she intends to rely in order to establish the right to the relief sought in the application.
- C. At the end of the testimony of each witness in support of the applicant, the Chairperson shall allow members of the public to ask questions relating to the testimony of the witness and shall permit reasonable cross-examination by any attorney representing an objector.
- D. Where a group of interested parties are represented by an attorney, the attorney shall present to the Board Chairperson a list of the persons he/she represents and such persons shall participate in the proceeding only through their attorney.
- E. At the time the applicant has submitted all of his/her evidence in support of his/her application, any objector may then put in his/her case, calling any witnesses and introducing any documentary evidence upon which he/she will rely in his/her objection to the application. Each such witness shall be subject to reasonable cross-examination by the applicant or his/her attorney and the Chairperson shall allow any members of the public to ask questions relating to the testimony of such witnesses.
- F. After all of the evidence has been presented to the Board in support of or in opposition to the relief sought by the applicant, the Chairperson shall then open the meeting to the public to allow any member of the public to testify on the application before the Board. Such member of the public shall be first sworn after identifying him/herself and shall be subject to cross-examination by the applicant or if applicant is represented by an attorney, applicant's counsel.
- G. Rebuttal testimony or evidence shall then be admitted in such order as the Chairperson shall designate.
- H. All witnesses may be cross-examined by any member of the Board, the Board attorney and professionals, or any interested party.

- I. Any member of the Board may place evidence before the Board as to any relevant matter which he/she has personal or official knowledge, strictly for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.
- J. The Board may also take the testimony of any expert witness employed by it and such expert shall be subject to cross-examination by the applicant or its attorney.

5.7 Filing of Affidavit of Proof of Service

If public notice is required the Applicant shall file an affidavit of proof of service by 4:00 p.m. at least three (3) business days prior to the hearing together with a copy of the certified list of the property owners entitled to notice and copies of postal receipts evidencing mailing to each such person. If the Applicant fails to submit an affidavit of proof of service in a timely manner as hereby required, the Board shall, in the reasonable exercise of its discretion, determine whether to hold the public hearing as scheduled or to adjourn it to a new date.

5.8 Dismissal of Applications for Development

The Board, on its own motion, may dismiss any application without prejudice if the Applicant fails to appear at the time set for the hearing. The Board may dismiss, on its own motion, without prejudice, any application for failure to comply with these By-Laws. The Board reserves the power to impose reasonable terms and conditions on the dismissal of any application. Fees submitted by any Applicant whose application is dismissed for failure to appear, or who voluntarily withdraws an application, shall not be refunded the cost of plan review by the Board's or the Borough's professionals.

5.9 Voluntary Withdrawal of Applications for Development

An Applicant may, at any time prior to commencement of the hearing, voluntarily withdraw an application, in which event the application shall be dismissed without prejudice. Following commencement of the hearing, an application may be withdrawn only upon grant by the Board of leave to withdraw, which leave may be with or without prejudice in the Board's discretion.

5.10 Amendment of Applications

An Applicant may, prior to or after the commencement of a hearing, amend his or her application without leave of the Board. The Applicant shall consult with the Board Attorney for a determination with respect to whether new notice will be required.

5.11 Submission of Plans, Plan Revisions and Other Materials for Consideration by the Board

Applicants, objectors, and any other interested parties must file with the Secretary, at least ten (10) days prior to the public hearing, all maps and other documents that they wish to have the Board consider. This shall apply whether the hearing in question is the first hearing on a matter or a continuation of a hearing that commenced at a prior meeting of the Board. Exhibits may be presented at the public hearing. Under no circumstances may flyers, petitions, reports or other materials be presented directly to individual Board members, whether via e-mail, mail or in person at a meeting of the Board. Where a public hearing has been completed but the Board has not rendered its decision, the Board shall not consider such maps and other documents, even if submitted at least ten (10) days prior to the meeting, except where said maps and other documents are limited to providing clarifications of previously submitted evidence or prior testimony.

5.12 Professional Review

Prior to the scheduled hearing of an application, the Board's engineer and planner (on those applications for which the Ordinance provides for payment by applicant for such review) and any other municipal agency or official required to review the application shall submit a written report to the Board with a copy to the applicant setting forth the results of the review conducted and any recommendations regarding the application. Any application submitted to the Board may be referred by the Board to any appropriate person or agency for its report. Any referrals made by the Board shall not extend the time within which the Board is required to act on the application unless an extension is granted by the applicant.

5.13 Payment of Taxes and Assessments

The applicant, at the time of filing the application, shall file with the Board an affidavit that taxes and water and sewer assessments are currently paid and up-to-date. No application for development shall be deemed complete without such affidavit. In the event of an approval, the Board shall condition said approval upon the payment of taxes and/or water and sewer assessments, and such condition shall be set forth in the Board's resolution of approval and shall require that the taxes and/or water and sewer assessments be paid prior to the issuance of a building permit by the Administrative Officer.

5.14 Escrow Deposit

No application for development shall be deemed complete without the Applicant establishing an escrow account in accordance with the Ordinance for the application submitted and having said escrow account established with the appropriate Borough authority. In the event the escrow account is reduced to 50% of the original amount, the Secretary shall notify the Applicant to replenish that account, that which is fully authorized by the Ordinance. All actions taken by the Board shall include a condition to assure that no further actions may be taken by the Applicant including but not limited to Building Permits or other Borough Permits unless the escrow amount is paid in full.

5.15 Site Inspections; Personal Knowledge of Board Members

Viewing the property that is the subject of an application by one or more members of the Board shall be permitted, whether individually or in groups, but in no case shall Board members participating in a site inspection constitute a quorum unless notice is given pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. In the event of a site inspection, or if one or more members of the Board are well acquainted with the subject property and its surroundings, knowledge thereby acquired of any particular fact or facts may be used in making a decision if such member places such personal knowledge or evidence into the record at the time of the hearing. The Applicant, any objector, and any interested member of the public shall have an opportunity to refute such facts.

5.16 Communication with the Board

- 1. Prohibited Contact with Board Members.** Applicants, interested person(s) and their representatives, shall not communicate with any Board Member outside of the hearing, as to the substance of any pending or filed application.
- 2. Prohibited Discussions among Board Members.** Board members shall not communicate with one another outside of the hearing as to the substance of any pending or filed application.

3. **Procedures.** In the event of any such communication, the board member shall immediately discontinue such communication. In the event of any perceived attempt to influence a Board Member the Member shall notify the Chairperson and Attorney to the Board for appropriate action.

5.17 Public Comment

The Chairperson shall have the right to cause any interested party appearing before the Board to be first duly sworn and shall do so whenever an interested party will proffer facts on which the Board would be expected to rely. All rebuttal testimony or evidence shall be considered in such order as the Chairperson shall designate. Only relevant objections shall be considered by the Board. The Board shall not consider unreasonable, repetitive, or disorderly objections. The Chairperson shall have the power to limit objections to those expressed by "interested parties" as that term is defined in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and as construed by the courts of the State of New Jersey. The Chairperson may impose reasonable limitations as to time and number of witnesses in view of the nature of the application, the extent of testimony and proofs presented, the issues to be considered, the number of persons wishing to testify, and the extent to which the testimony is irrelevant, immaterial, or unduly repetitious.

5.18 Hearing Closure

When the applicant and all interested persons have had an opportunity to be heard, the Chairperson shall determine if the hearing shall be closed. The applicant or any other interested party may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its sound discretion, may either grant or deny such a request. In cases where the Board believes that testimony or other evidence should be received in the public interest from any municipal, county or state official or from any other persons in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing, to another date certain for such purposes. In the absence of any request to continue the hearing the Chairperson shall declare the hearing to be closed and thereafter no further evidence will be received in the action unless the matter is re-opened in accordance with these rules. In considering a request to continue any hearing, the Chairperson should consider the effect of the time limits for decision.

5.19 Board Request for Reports

The Board, on its own motion at any time, may refer an application to any officer, board or agency, or any expert employed or retained by it in connection with the pending application. The cost of such a report, if any, shall be borne by the Applicant to the extent provided for by the Ordinance. A copy of any such report shall be made available, upon request, to the Applicant and to other interested parties for examination and refutation. The applicant and interested parties shall have the right to subpoena the officer making the report for purposes of cross-examination as to its contents and the basis for conclusions. The Board shall either obtain such reports prior to the hearing, giving all interested parties the right to examine the same, or the hearing may be adjourned to a specific time and place for the purpose of receiving the reports and recommendations of public officials or agencies involved.

5.20 Continuance to a Date Certain

All applications may be continued to another date certain, which shall be the next regularly scheduled Board meeting unless otherwise determined by the Board. Requests for continuance may be made in person or in writing. The Chairperson shall announce to all those present the date, time, and place to which the hearing on the matter is continued. No further notice need be given by the Applicant in that event. However, if the matter is continued to a special meeting, the Board shall give notice pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. The Board reserves the right to continue a hearing on its own motion for purposes of further consideration, subject to limitations of time as provided in the Ordinance and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The Board may also grant reasonable requests of interested parties to continue a matter in order to afford such parties sufficient time to prepare, engage counsel, obtain witnesses or for other good cause shown. Where adjournment for a continuance requires extension of the statutory period within which the Board is required to act, the consent of the Applicant to such an extension shall be made on the record and shall be evidenced in writing. Where an Applicant has taken a substantial period of time to present his or her case and then refuses to consent to a continuance so that objectors can be heard, or where the Board has insufficient opportunity to consider the matter, such refusal by the Applicant may be deemed arbitrary and unreasonable by the Board. Should the Applicant move the Board to decide the matter without affording such opportunity, the Applicant shall be at risk of a denial of the application for failure to sustain the burden of proof and failure to afford the Board an opportunity to reach an informed decision. If the applicant requests a continuance, verbally, in person or in writing, but fails to expressly consent to an extension of the statutory period within which the Board is required to act, the continuance request shall be deemed to include an extension of time through the meeting to which the matter is continued.

5.21 Record of Applicant Commitments

At each public hearing on an application, the Chairperson shall designate the Board Attorney, to record all specific commitments made by the Applicant, such as (but not limited to) to make changes to the plans, provide additional information, or accept certain conditions of approval. Prior to adjourning each public hearing on a particular matter, the person so designated shall summarize those commitments, upon which the Applicant shall be given a chance to comment. In the absence of comment, the Applicant shall be deemed to have accepted the list and shall not receive an approval until the requisite plan changes and additional information have been provided. In the Board's discretion, approval may be granted conditioned upon the requisite plan changes and submission of the additional information.

5.22 Burden of Proof

The burden of proof is on the Applicant [or the objector] and it is the Applicant's [or the objector's] responsibility to supply competent and credible evidence in order for the Board to determine whether the Applicant is entitled to the relief sought (or in the case of an objector, whether an application should be denied). Further, the applicant must establish that the relief granted will not adversely affect the zoning plan, nor be inconsistent with the purposes of the Ordinance in cases where the applicant is seeking a variance. The Board assumes no obligation to seek independent verification of any testimony presented; therefore, adequate sworn testimony and exhibits are required where appropriate.

5.23 Applicant's Unreadiness to Proceed

The Board, at its discretion, may declare any Applicant unready to proceed at any hearing if any required or requested submissions to the Board are not received by the Secretary by the close of business of the tenth (10th) day prior to the scheduled hearing.

ARTICLE 6 – Exhibits, Testimony and Other Evidence

- 6.1 Rules of Evidence
 - 6.2 Introduction of Evidence
 - 6.3 Record
 - 6.4 Limitations on Testimony and Proffers of Evidence
 - 6.5 False Testimony
 - 6.6 Qualification of Expert Witness
 - 6.7 Board Expert Witness
 - 6.8 Acceptance of Expert Testimony
 - 6.9 Consultation Among Experts
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6.1 Rules of Evidence

The formal rules of evidence shall not apply. However, no decision shall be based upon any facts not proved or on matters not in the record, unless they are such items of which the Board is entitled to take judicial notice.

6.2 Introduction of Evidence

Documents or exhibits admitted into evidence during a hearing shall be marked and retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for filing an appeal has expired, the Secretary may return any such exhibits or documents to the person who offered them, upon that person's request. Any evidence presented, whether by testimony or by documents and exhibits presented at the hearing, which are not questioned or controverted by any other person appearing or by any member of the Board, may be deemed to be true by the Board in its decision-making process and findings of fact.

6.3 Record

The record before the Board shall consist of all materials received and filed to the Board's file for each matter, as well as all evidence and testimony present in connection with it.

6.4 Limitations on Testimony and Proffers of Evidence

The Chairperson may limit irrelevant, immaterial, or redundant testimony, and may impose reasonable limitations as to time and number of witnesses. The Board may consider whether proposed testimony or proffers of evidence are relevant to any matter before the Board or within its jurisdiction, and shall reject any testimony or evidence, which fails to meet the threshold of relevance or jurisdiction.

6.5 False Testimony

Any person who shall willfully give false testimony under oath in the course of any hearing held before the Board shall, in accordance with the provisions of the County and Municipal Investigations Law, N.J.S.A. 2A:67A-1 et seq., be guilty of perjury.

6.6 Qualification of Expert Witness

Individuals seeking to qualify as experts in a particular field must present to the Board their qualifications, including any relevant professional licenses, educational background, practical experience, or other pertinent expertise. The Chairperson, in his/her reasonable exercise of discretion, shall determine whether the individual shall be qualified as an expert, and whether the matters on which the individual wishes to testify are germane to the proceeding before the Board and would be of assistance to the Board in rendering a decision. Once an individual has satisfied the threshold of having the requisite background, the Board in rendering its decision shall determine how much weight, if any, shall be accorded to all testimony given.

6.7 Board Expert Witness

The Board shall have the power to engage its own independent experts to either corroborate or refute the testimony of experts produced by an Applicant or other party. The cost of such experts shall be borne by the Applicant to the extent provided for by the Ordinance.

6.8 Acceptance of Expert Testimony

The Board shall not be bound to accept the testimony of any expert where there is conflicting testimony of experts, the Board shall decide which, if any, to accept. These By-Laws shall not be construed as requiring expert testimony in all instances to sustain a Board finding.

6.9 Consultation Among Experts

The Board may require its consultants to confer with the experts of the Applicant and, where appropriate, with experts hired by objectors or the Board in order to expedite consideration of the application. Informal communications between the Board's consultants or experts and those for the Applicant shall be permitted outside the context of public meetings. The Applicant shall reimburse the municipality as provided in the Ordinance for the expenses incurred by the municipality in having Board professionals and experts participate in such communications.

ARTICLE 7 – Decisions on Applications for Development

- 7.1 Decisions Based on Record
 - 7.2 Decisions Made in Public Session
 - 7.3 Reasons Supporting Decision
 - 7.4 Memorializing Resolution
 - 7.5 Reservation of Decision
 - 7.6 Imposition of Conditions
 - 7.7 Draft Resolutions
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7.1 Decisions Based on Record

Each case shall be decided strictly on the basis of the facts adduced at the hearing. The facts adduced at the hearing, all testimony, and all evidence on which the Board makes its decision must be part of the record, except for matters of which the Board may properly take judicial notice. The Board's decision must include findings of fact from the record.

7.2 Decisions Made in Public Session

The Board's decision shall be made at a public meeting and the Board's vote on each application and its adoption of a resolution shall take place at a public meeting.

7.3 Reasons Supporting Decision

The official reasons for the Board's decision shall be contained in the Resolution of Memorialization approved by the appropriate vote of the Board. There shall not be individual reasons of individual Board Members.

7.4 Memorializing Resolution

The Board's decision on each application shall be reduced to a written resolution which shall contain the findings of fact and conclusions of law made by the Board. It shall be immaterial that at the time of voting certain Board members may have given other reasons or discussed matters not addressed in the resolution. Only those members who voted in the affirmative for an action may vote on the form of the resolution memorializing the decision.

7.5 Reservation of Decision

The Board may decide to reserve decision on a matter after the hearing is completed and may make its decision at the next meeting provided that the period within which to decide the application will not expire prior to the next meeting. The Board may also authorize the Board Attorney to prepare a resolution for consideration at the next meeting provided that the period within which to decide the application will not expire prior to the next meeting. In either instance, the applicable time limitation for action on the application may be extended by the mutual consent of the Board and the Applicant. The making and passage of a motion to have a resolution prepared for consideration by the Board shall not be construed as the making of a decision, but shall be only an indication of an intention to act upon an application in a certain manner. The Board shall not be bound thereby and may ultimately take an action different than the intention originally expressed.

7.6 Imposition of Conditions

The Board shall have the authority and discretion to impose reasonable conditions to the extent permitted by law. Conditions that are development-specific shall predominantly be aimed at mitigating specific concerns arising in connection with the proposed project. Such conditions shall not be deemed exclusive, and the Applicant shall be subject to terms and conditions of approval that are expressed and implied at law, including those imposed pursuant to the Ordinance as applied uniformly to every development application. If a term or condition of approval is imposed by the Ordinance or Applicable Laws and the Board is not expressly granted the power to waive, enlarge or relax such term or condition, the Board shall not have such discretion or power. The right to impose conditions is an inherent power of the Board that exists regardless of whether the Ordinance grants such a right to the Board. Conditions must not be inconsistent with any provisions of the Ordinance, must be in the public interest, must be reasonably calculated to achieve a legitimate objective of the Ordinance and shall not be unnecessarily burdensome to the Applicant and/or owner. The Board shall have the power to require that conditions be fulfilled within a stated time period. The Board may require that some or all conditions of approval, or the resolution itself, be recorded with the County Clerk.

7.7 Draft Resolutions

A draft Resolution (or any document which includes proposed findings of fact or conclusions of law that may ultimately be included in such Resolution of Memorialization) prepared by the Board Attorney and transmitted to the Board and/or its Professionals for consideration by the Board at a public meeting shall be considered a privileged document between the Board Attorney and the Board and its Professionals, and shall not become a matter of public record until the Board Members have had an opportunity to provide comment regarding said draft but not later than five (5) days after submission to the Board Members. Thereafter, the draft may be distributed to the Applicant or Applicant's Attorney and/or Objectors.

ARTICLE 8 – Decisions on Variance Applications

- 8.1 Timeframe for Decisions
 - 8.2 Memorializing Resolution
 - 8.3 Annual Report
-

8.1 Timeframe for Decisions

Upon the certification of a complete application, the Board shall render its decision in accordance with the MLUL as set forth below, unless the applicant agrees in writing or on the record to an extension of the Board's time for review:

1. Minor subdivision or site plan - 45 days
2. Preliminary major subdivision - 10 lots or more - 45 days
3. Preliminary major subdivision - 11 lots or more - 95 days
4. Preliminary site plan - 10 acres or 10 units or less - 45 days, over 10 acres or units - 95 days.
5. Final subdivision or site plan - 45 days
6. Variance - 120 days
7. Conditional use applications – 45 days
8. Simultaneous review of subdivision, site plan, conditional use – the longest period applicable

The Secretary shall determine when the time period for Board review of any application shall expire and such date shall be made known to the Board at the commencement of the hearing of the application.

8.2 Memorializing Resolution

The Board's decision on each application shall be reduced to a written resolution which shall contain the findings of fact and conclusions of law made by the Board. It shall be immaterial that at the time of voting certain Board members may have given other reasons or discussed matters not addressed in the resolution.

The resolution of memorialization shall be adopted within forty-five (45) days of the decision. Such resolution of memorialization shall be adopted by a majority vote of the members of the Planning Board who voted in favor of the action previously taken. No other member shall vote thereon.

Municipal action is deemed to have taken place at the meeting at which the vote on the application is taken and not the date on which the resolution of memorialization is adopted, except that the date of the memorialization shall constitute the date of decision for the required mailing of a copy of the decision to the applicant and for the placing of a publication of the Board's decision in the official newspaper of the municipality as required by subsections (h) and (i) of N.J.S.A. 40:55D-10.

A copy of the Board's resolution shall be furnished to the applicant or his attorney within ten days from the date of the Board's memorialization.

If review and/or approval of other governmental entities is required as a condition of approval, applicant shall submit evidence that the application has been submitted for such review. The Board shall not await the determination of any other governmental agency, but shall render its decision conditioned upon receipt by the applicant of any other requested approvals. The Board may also require as a condition of approval that an applicant post a performance bond and/or a maintenance bond to assure the installation and

maintenance of improvements which have been approved as part of the application. Such required performance bonds must be posted and accepted in accordance with the Ordinance.

8.3 Annual Report

At least once a year, the Board shall review its decisions on applications and appeals and prepare and adopt by resolution a report of its findings on the Ordinance provisions which were the subject of variance requests. Such a report shall also include any recommendations for amendments or revisions to the Ordinance. Copies of the Board's report shall be forwarded to the Borough Council.

DRAFT

ARTICLE 9 – Amendment of Rules and Ordinance

- 3.1 Relaxation of By-laws
 - 3.2 Suspensions
 - 3.3 Amendment of By-Laws
-

3.1 Relaxation of By-laws

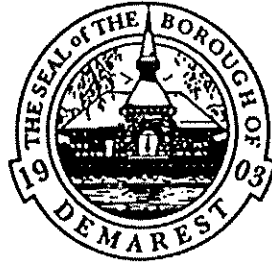
For good cause shown, or where the strict application of any rule would work surprise or injustice, the Board may relax the requirement of such rule, except where the provisions of the rule are also statutory requirements.

3.2 Suspensions

These By-Laws may be suspended by a majority vote of the Board.

3.3 Amendment of By-Laws

Amendments to these By-Laws may be made by the Board at any regular meeting by a majority vote of the entire membership of the Board, provided notice of such amendment has been given in writing to all members of the Board at least three days prior to such meeting. In no case, however, shall any rule as amended be applicable to any action commenced prior to the adoption of such amendment where the application thereof to such action would result in surprise, hardship or injustice to the petitioner or other interested persons.



Borough of Demarest Planning Board Regular Meeting

MINUTES

April 2, 2025

7:30 PM

DEMAREST BOROUGH HALL

The Borough of Demarest Planning Board held a special meeting on WEDNESDAY, APRIL 2, 2025, at 7:30 p.m. located at 118 Serpentine Road Demarest, NJ 07627.

CALL TO ORDER

Meeting was called to order at 7:30 PM by Julie Falkenstern.

FLAG SALUTE

The Board was led in a salute to the flag by Julie Falkenstern.

APPOINTMENT OF NEW MEMBERS

Mayor Bernstein announced that Timothy Woods is appointed as a Class IV member of the Borough of Demarest Joint Planning Board for the unexpired term ending December 31, 2025.

SWEARING IN OF NEW MEMBERS

Mayor Bernstein administered the Oath of Office for Timothy Woods.

ROLL CALL

MEMBERS PRESENT: Theodore Alevrontas, Mayor Brian Bernstein, Jodi Brenner, Kiran Chin, Blake Chroman, Camille DiSclafani, Councilwoman Daryl Fox, Timothy Woods

MEMBER(S) ABSENT: Fatemah Mamdani, Mary Hamilton

ALSO PRESENT: Julie Falkenstern – Acting Borough Clerk, Darlene Green – Planner, Danielle Federico – Attorney, Michael Greco – Secretary, Zoning Officer

ELLECTION OF OFFICERS

CHAIR OF THE BOARD 2025

Ms. Falkenstern stated that as the Board Chair has resigned from the board, the board would need to elect a new chair person from the Class IV members.

A nomination was made to elect Timothy Woods as the Board Chair for the year of 2025 by Mayor Bernstein, the nomination was seconded by Councilwoman Fox.

On a roll call, the vote was recorded as follows *n/e = not eligible*

Mr. Alevrontas:	Yes	Mayor Bernstein:	Yes	Vice Chair Brenner:	Yes
Ms. Chin:	Yes	Mr. Chroman:	Yes	Ms. DiSclafani:	Yes
Councilwoman Fox:	Yes	Ms. Mamdani:	Absent	Chair Woods:	Yes

Mrs. Hamilton: Absent
Motion passed

Chair Woods took his place on the dais.

NEW/OLD BUSINESS

Ms. Falkenstern explained that she is only here for a short time to cover for the normal Board Secretary as the first order of business requires him to act in his other capacity as the Zoning Officer.

Zoning Officer Request for Interpretation

Mr. Greco was sworn in by Ms. Federico.

Mr. Greco, Zoning Officer, explained to the board that there have been two issues that have been coming up fairly often since he took over as zoning officer. He explained that the two issues have been handled inconsistently in the past and he is requesting the record be set straight moving forward.

Mr. Greco first explained that A/C Units and Generators are currently not allowed in the Side or Front yards of a home, and that the ordinance is silent on both.

Ms. Federico explained to the board the process of interpretation, and the board's responsibility.

Ms. Federico stated that she pulled the minutes from when the ordinance was adopted, but they did not offer any view into the intent of the ordinance.

Chair Woods clarified that we are discussing whether the A/C and Generator are allowed in the side yard at all and not just about the setback. Mr. Greco confirmed that currently they are not allowed at all. Chair Woods asked if the planner had input into this.

Ms. Green was sworn in by Ms. Federico. Ms. Green explained that this came up during the masterplan re-examination as an issue that the ordinance is silent on A/C and Generators. Ms. Green explained that most homes now have these pieces of equipment, and a lot of other towns separately call them out and provide guidance for them. Ms. Green stated that this needs to be interpreted by the board, so that all applications can be reviewed consistently by all approving authorities. Ms. Green recommends that the interpretation should be done and then the town should change the code to reflect this intent. Ms. Green explained that the board could rule that A/C and Generators are not accessory structures which would make them allowed in the side and front yards.

Chair Woods clarified that if they are accessory structures they are still allowed in the rear yard.

Ms. Chin stated that the things currently described as examples of accessory structures are larger things meant for enjoyment, but these mechanicals do not fall under the same classification.

Councilwoman Fox agreed that the mechanicals are appurtenant to the building and should not be considered structures, as they are needed for the house to function.

Chair Woods stated that it began as a single unit, but it has become a lot more than an ancillary item, and that as far as the definition of a structure, it does qualify. He expressed concern about how it could affect the neighbors in these areas, and that he believes it is more appropriate in the rear yard.

Councilwoman Fox asked the attorney if they are deciding if it is or is not a structure and not the best use.

Ms. Federico explained that both should be considered when making this decision.

Mayor Bernstein stated that if you go around town, you will see that most of the A/C units and Generators are in the side yards. Mayor Bernstein also stated that the backyard is meant as an outside living space and that placing these

mechanicals in the rear yard could offer some safety concerns. As well if it is abutting the neighbor's rear yards, it could be a disturbance for neighbors who are trying to enjoy their outside living space.

Councilwoman Fox asked that pool equipment be considered separately, and Mr. Greco confirmed that he does not allow pool equipment in the side or front yard as it is connected to the accessory use of the pool. He explained that he is specifically calling for an interpretation on A/C units and Generators.

Chair Woods expressed concern that this is a slippery slope to lead toward additional equipment that could be added.

Ms. Chin agreed with Councilwoman Fox that pool equipment is ancillary to the pool and should be under the same restrictions as the pool. Ms. Chin stated that the A/C units and Generators are ancillary to the principal dwelling and should then not be considered an accessory structure.

Vice Chair Brenner asked what accounts for the houses that already have them in the side yard.

Mr. Greco explained that if the code is silent on something in zoning that it is prohibited, but even if a prior person allowed them, he is seeking to set the record straight and get everyone on the same page.

Ms. Falkenstern asked if the zoning board has ever considered them a structure in the past.

Chair Woods stated that he believes it falls under the definition of structure.

The board discussed the use of these mechanicals and if they are considered part of the principal use of the dwelling and therefore not an accessory.

Ms. DiSclafani stated that the board should consider practicality when deciding, because homeowners would always seek to put the mechanicals in the side yard.

Mayor Bernstein stated that this interpretation would not hinder the ability to still enforce that these mechanicals meet the required side-yard setbacks, and that they still count for coverage.

Mr. Greco confirmed that these would both still apply.

Chair Woods asked Ms. Green what other towns are doing.

Ms. Green explained that towns treat them differently in all towns, but that they are typically permitted in the side-yards.

A motion was made to interpret the ordinance as A/C units and Generators are not accessory structures, but that they are a part of the house, by Councilwoman Fox and was seconded by Mayor Bernstein.

On a roll call, the vote was recorded as follows *n/e = not eligible*

Mr. Alevrontas:	Yes	Mayor Bernstein:	Yes	Vice Chair Brenner:	Yes
Ms. Chin:	Yes	Mr. Chroman:	Yes	Ms. DiSclafani:	Yes
Councilwoman Fox:	Yes	Ms. Mamdani:	Absent	Chair Woods:	Yes
Mrs. Hamilton:	Absent				

Motion passed

A motion was made to open the meeting to the public by Mayor Bernstein and seconded by Councilwoman Fox.

Ray Cywinski expressed concern over the location of the mechanicals in the side yard. He stated that there should be more thoughts when the eventual change of the ordinance is done.

A motion was made to close the meeting to the public by Mayor Bernstein and seconded by Councilwoman Fox.

The board confirmed that no one wished to change their vote on the interpretation.

Mr. Greco presented to the board the second issue that has come up, and that is the Livable Floor Area calculation. He explained that at the zoning board hearing it was called out that a finished and heated basement is included in the Livable Floor Area calculation, and the same is true for a garage. He requested that the board decide if the interpretation of the ordinance includes basements and garages and if them being heated should be a factor in this decision.

Chair Woods discussed with Mr. Greco the wording of the ordinance.

Chair Woods asked for the Planner's view.

Ms. Green explained that the wording is up for interpretation but the use of the word "other" changes the definition. She told the board to look at the definition of "Floor Area" as well. Ms. Green explained the use of a Floor Area Ratio in boroughs. She then explained the borough's ordinance on Livable Floor Area and its connection to Floor Area Ratio. Ms. Green stated that basements which are significantly underground are typically not counted, but garages usually are included.

Ms. Green asked the board what the intent of the zoning ordinance was when adopted in respect to livable floor area.

Ms. Chin asked the board a question about the amount of different coverage requirements the borough is imposing on the residents.

Councilwoman Fox stated that the zoning ordinance is in process for being updated and changed.

Mayor Bernstein explained that the use of F.A.R. is to prevent McMansions, but this is creating issues for smaller homes that are not McMansions. Mayor Bernstein explained that the use of this ordinance to prevent basements seems to be a misnomer.

Councilwoman Fox explained the history of the ordinance and the reason behind the definitions and the intent from that time. She explained that if a basement is 70% below grade it should not count, but otherwise it would.

Chair Woods explained that in the past they were not included.

A motion was made to open the meeting to the public by Mayor Bernstein and seconded by Councilwoman Fox.

With no public seeking to make comment a motion was made to close the meeting to the public by Mayor Bernstein and seconded by Councilwoman Fox.

Vice Chair, Brenner asked the counsel if the board can interpret this ordinance.

Councilwoman Fox explained that this ordinance can be read more than one way.

Ms. Federico explained that the ordinance is vague enough to be the perfect candidate interpretation.

A motion was made to interpret the ordinance as basements and garages, whether heated or unheated do not count for Livable Floor Area, by Mayor Bernstein and was seconded by Councilwoman Fox.

On a roll call, the vote was recorded as follows *n/e = not eligible*

Mr. Alevrontas:	Yes	Mayor Bernstein:	Yes	Vice Chair Brenner:	Yes
Ms. Chin:	Yes	Mr. Chroman:	Yes	Ms. DiSciafani:	Yes
Councilwoman Fox:	Yes	Ms. Mamdani:	Absent	Chair Woods:	Yes
Mrs. Hamilton:	Absent				

Motion passed

MS. Falkenstern stepped down, and Mr. Greco took his seat as Secretary of the Board.

Zoning Board of Adjustment Year End Report – 2024

Chair Woods stated that the next item is the Zoning Board of Adjustment Year End Report.

Ms. Chin asked if someone could walk the board through this document.

Councilwoman Fox stated that lot coverage has been a continuing issue in town, and that the ordinance should allow for a sliding scale based on lot size. She continued to explain the reason for the multiple types of coverage, and that it was an attempt to force builders to allow for outdoor structures and uses.

Chair Woods confirmed this past problem that the board was seeing.

Mayor Bernstein spoke about an issue that he knows about an undersized lot where a resident had to see the board and stated that this seems like something that the borough can fix to allow undersized lots to build without variance.

Mayor Bernstein also asked that the board discuss the use of artificial turf as opposed to grass.

Councilwoman Fox stated that the ordinance had impervious coverage, and it led to arguments over what is pervious and impervious. That is when the board changed to improved lot coverage.

Mayor Bernstein stated that there is a house in town who has a full lawn of turf, and that there may be a reason for residents to want to do this and so it needs to be discussed.

Ms. Green explained that this is a new phenomenon, and that it is not a bad idea to take a stance.

Chair Woods expressed concern over being vague about what kind of turf could be allowed. He also asked that the board clarify what is being included in the 25% maximum residential and parking coverage. He stated that this should include the front walkway.

A motion was made to open the meeting to the public by Mayor Bernstein and seconded by Councilwoman Fox.

Wellington Gomez stated that he is a contractor, and that he is an expert on turf, and is here today to speak about turf. He explained to the board that Turf if installed correctly is not a detriment to the drainage of the town.

The board discussed the positives and negatives of Turf with Mr. Gomez.

Raymond Cywinski Expressed his concern over allowing the installation of turf instead of green space.

Elan Duran, spoke on the sizes of the lots in reference to lot coverage, and agreed with the board about the issues and requested that this be addressed.

A motion was made to close the meeting to the public by Councilwoman Fox and seconded by Mayor Bernstein.

Discussion with the Attorney on Procedure for Merged Boards

Ms. Federico explained to the board how a joint planning and zoning board functions and the board's responsibilities and answered questions from the board.

Ms. Chin asked if there is a procedure for the sequence of activity for the meetings.

Ms. Federico stated that there is nothing dictating this in the MLUL, but the board could implement by laws to structure the meetings. Ms. Chin stated that she would love for there to be by-laws, and she volunteered to help with the writing of these by-laws.

The board discussed the by-laws. Councilwoman Fox asked if Ms. Federico could provide some samples for Ms. Chin. Ms. Chin stated that she would bring it back to the next meeting for discussion.

Joint Planning Board 2025 Meeting Dates

Mr. Greco explained that he wanted to clarify with the new board the current adopted meeting schedule and confirm that this is still the schedule the board would like to use moving forward.

The board agreed that the meeting schedule as is would be fine.

APPROVAL OF MINUTES

A motion was made to approve the February 5, 2025, meeting minutes, by Mayor Bernstein and was seconded by Mr. Alevrontas.

On a roll call, the vote was recorded as follows *n/e = not eligible*

Mr. Alevrontas:	Yes	Mayor Bernstein:	Yes	Vice Chair Brenner:	Absent
Ms. Chin:	n/e	Mr. Chroman:	n/e	Ms. DiSclafani:	n/e
Councilwoman Fox:	Yes	Ms. Mamdani:	Absent	Chair Woods:	n/e
Mrs. Hamilton:	Absent				

Motion passed

A motion was made to approve the February 27, 2025, special meeting minutes, by Councilwoman Fox and was seconded by Mayor Bernstein.

On a roll call, the vote was recorded as follows *n/e = not eligible*

Mr. Alevrontas:	Yes	Mayor Bernstein:	Yes	Vice Chair Brenner:	Absent
Ms. Chin:	Yes	Mr. Chroman:	Yes	Ms. DiSclafani:	Yes
Councilwoman Fox:	Yes	Ms. Mamdani:	Absent	Chair Woods:	n/e
Mrs. Hamilton:	Absent				

Motion passed

PUBLIC COMMENT PERIOD – CORRESPONDENCE

A motion was made to open the meeting to the public by Councilwoman Fox and seconded by Mayor Bernstein. All in Favor – Motion Passed

Raymond Cywinski asked for clarification on the term of office for Chair Woods, and Mayor Bernstein clarified the unexpired term. Mr. Cywinski asked that the board check their term expirations to make sure they are properly staggered.

A motion was made to close the meeting to the public by Mayor Bernstein and seconded by Councilwoman Fox. All in Favor – Motion Passed

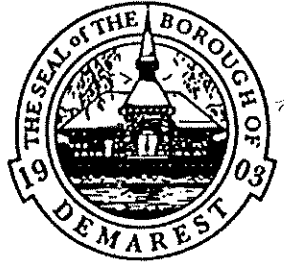
ADJOURNMENT

With no further business presented, a motion to adjourn the meeting was made by: Mayor Bernstein and seconded by Councilwoman Fox.

All in Favor – Motion Passed

The meeting was adjourned at 9:02 PM.

Respectfully Submitted,
Michael Greco, Joint Planning Board Secretary



**Borough of Demarest
Zoning Board of Adjustment
Special Meeting
MINUTES**

March 25, 2025

7:30 PM

DEMAREST BOROUGH HALL

The Borough of Demarest Zoning Board of Adjustment held this special meeting on TUESDAY, March 25, 2025, at 6:00 p.m. located at 118 Serpentine Road Demarest, NJ 07627.

CALL TO ORDER

Meeting was called to order at 6:00 PM by Chair Woods.

FLAG SALUTE

The Board was led in a salute to the flag by Chair Woods.

ROLL CALL

MEMBERS PRESENT: Robert Corrado, Michael Feinstein, David McLain, Timothy Woods, Diana Pavlova

MEMBER(S) ABSENT: Todd Adelman, Steve Park

ALSO PRESENT: Mark Madaio – Attorney, Darlene Green – Planner (via phone), Michael Greco – Secretary

RESOLUTIONS

A motion was made to approve Resolution ZB-007-25 to amend resolution ZB-24-006 – 22 Drury Lane, by Mr. Corrado and seconded by Chair Woods.

On roll call, the vote was recorded as follows: *(n/e = not eligible)*

Chair Woods:	Yes	Mr. Corrado:	Yes	Mr. Feinstein:	n/e
Vice Chair McLain:	n/e	Mr. Park:	n/e	Mr. Adelman:	Absent
Ms. Pavlova:	n/e				

Motion Carries.

NEW/CONTINUING APPLICATIONS

ZB-24-007 – 109 Lake Road

Carmine Alampi. The applicant’s attorney presented the application to the board.

Mario Navedo, the applicant’s architect, was confirmed to be still sworn in.

Mr. Madaio marked in the new revised plans dated 02/19/2025.

Mr. Navedo described the new plans and explained the new updated Livable Floor Area calculation.

Chair Woods clarified if the existing details were on the original plan, and Mr. Navedo confirmed that it was not.

Vice Chair McLain stated for the record that the second level has four bedrooms, even though one of the bedrooms was listed as an office. Vice Chair McLain also asked about outdoor grill area, and why the applicant was excavating an area just to put a patio above it. Mr. Navedo stated that the applicant is seeking to gain as much space as possible.

Vice Chair McLain asked for clarification on the coverage calculations, and Mr. Navedo stated that the engineer did those calculations.

Chair Woods stated that the applicant is proposing a large variance on livable floor area, but the application has a lot of poorly utilized space, and the livable floor area can be decreased. He asked the architect what efforts they took to get the application as close to the town's requirements as possible.

Mr. Navedo explained their position and why they presented the application as is.

Vice Chair McLain clarified the numbers of the proposed variance request. He expressed concern that the applicant is not taking efforts to save space where they can.

Ms. Green asked the architect about the lot size shown and the livable floor area requested, confirming that the request is for 55.32% livable floor area.

Jonathan Kestenbaum, 109 Lake Road, the applicant was confirmed to be still sworn in by Mr. Madaio.

Mr. Kestenbaum explained the history of the home from when he purchased it. Mr. Kestenbaum explained his needs, and why he is presenting the application the way it is.

Chair Woods explained that even if the lot was conforming, the applications would still be over on coverage.

The board discussed the basement with the basement.

Vice Chair McLain clarified the numbers for the livable floor area. He then asked for an explanation of the topographical nature of the rear yard.

Mr. Kestenbaum explained the rear yard from a grading viewpoint.

Chair Woods reiterated his question about the homeowners' attempt to get closer to the ordinance.

Mr. Kestenbaum explained that he must work from home and so he needs the space for his office, and he needs to expand his son's bedroom. He explained that he needs more closet space.

Paul Ercolano, the applicant's Engineer, was confirmed to be still sworn in by Mr. Madaio.

Mr. Ercolano presented the new plan for the site of the application from plans dated as revised 02/26/2025.

Mr. Corrado suggested that the applicant read the room and go back to the drawing board and come back with a plan that the board can consider.

Mr. Feinstein stated that he would feel better about approving the plan if the applicant could find ways to reduce the request.

Ms. Pavlova confirmed that this is an addition and not a new construction.

Chair Woods stated that the home is already over on coverage and that the home has no existing variances.

Ms. Green concurred that the engineer updated the plans to reflect the issues raised in her review letter.

Vice Chair McLain explained to the board the history of the current coverage limitations in the zoning code.

The board took a 10-minute recess to allow the applicant to discuss with his attorney at 8:27 PM.

Mr. Kestenbaum explained to the board that he would like to go back and discuss his options with his professionals.

The application was carried to the April 15, 2025, regular meeting of the Zoning Board of Adjustment. Mr. Alampi agreed to extend the board's time to act.

MINUTES

A motion was made to approve the February 18, 2025, minutes, by Vice Chair McLain and seconded by Mr. Corrado.

On roll call, the vote was recorded as follows: *(n/e = not eligible)*

Chair Woods:	Yes	Mr. Corrado:	Yes	Mr. Feinstein:	n/e
Vice Chair McLain:	Yes	Mr. Park:	Absent	Mr. Adelman:	Absent
Ms. Pavlova:	Yes				

Motion Carries.

PUBLIC COMMENT

Motion to open to the public for questions was made by Mr. Corrado. The motion was seconded by Vice Chair McLain. All in Favor – Motion Carries

With no public seeking to ask questions, a motion to close the meeting to the public was made by Mr. Corrado. The motion was seconded by Vice Chair McLain.

All in Favor – Motion Carries

ADJOURNMENT

With no further business presented, a motion to adjourn the meeting was made by: Mr. Corrado and seconded by Vice Chair McLain.

All in Favor – Motion Carries

The meeting was adjourned at 8:47 PM.

Respectfully Submitted,
Michael Greco
Land Use Secretary

