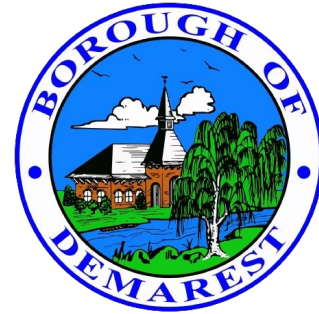


**BOROUGH OF DEMAREST
 JOINT PLANNING BOARD
 REGULAR MEETING AGENDA**

**Wednesday, October 15, 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 the Record and Star Ledger on September 14, 2025, notice posted at Borough Hall, on the Borough website was filed in the office of the Borough Clerk.

3. FLAG SALUTE

4. ROLL CALL

- | | |
|--|---|
| <input type="checkbox"/> 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 |

5. RESOLUTION(S)

Res. JPB-013-25 - JPB-25-008 – 29 John Street – Austin Siboni

Seeking a Variances related to a first and second floor addition.

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"/>
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. Hamilton (<i>Alt</i>)	<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"/>

6. NEW/CONTINUING APPLICATIONS

JPB-25-005 – 93 Pine Terrace – Jason Lieberman

Seeking a Variances related to a front yard fence.

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"/>
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"/>
Ms. Hamilton (<i>Alt</i>)	<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"/>
Chair Woods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

JPB-25-007 – 32 Brookside Avenue – Patrick Min

Seeking a Variances related to an existing building built out of compliance.

Request to push to the November hearing. Please see discussion on Meeting Date below.

7. DISCUSSION ON BOARD MATTERS – NEW/OLD BUSINESS

FUTURE APPLICATIONS AND REQUEST FOR A SPECIAL MEETING OR CHANGE OF MEETING DATE – MICHAEL GRECO

ZONING ORDINANCE DISCUSSION – MICHAEL GRECO

LAND USE PROCEDURES DISCUSSION – CHAIR WOOD & DANIELLE FEDERICO

8. APPROVAL OF MINUTES:

9. PUBLIC COMMENT PERIOD

10. ADJOURNMENT

NEXT REGULAR MEETING – WEDNESDAY, NOVEMBER 5, 2025

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

RESOLUTION JPB-013-25

VARIANCE APPROVAL

In the Matter of the Application of
29 John Demarest LLC
29 John Street
Block 154, Lot 11

WHEREAS, 29 John Demarest LLC (the “Applicant”) is the applicant and owner of the property located at 29 John Street and designated as Lot 11 in Block 154 on the Tax Maps of the Borough of Demarest (the “Property”); and

WHEREAS, the Applicant’s request for a Zoning Permit to construct a second-floor addition and attached garage addition at the Property was denied by the Zoning Officer of the Borough of Demarest on July 28, 2025 (the “Denial Letter”), stating:

Your zoning permit has been denied.
C Variances required
(1) 2nd floor addition 29.1 feet front lot line where 35 feet is required.
(2) Attached garage addition 29.1 feet from front lot line where 35 feet is required; and

WHEREAS, thereafter, the Applicant filed an Application with the Joint Planning Board of the Borough of Demarest (the “Board”) for “C” Variance approval to construct an addition and renovations to the existing single-family dwelling on the Property, including a new driveway, walkways, rear deck, drainage improvements and related improvements (the “Application”); and

WHEREAS, the following plans, reports and correspondence were submitted by the Applicant and considered by the Board:

- A. Variance Application along with the Application Contact Sheet and attachment from Axis Architectural Group with calculations of the improved lot coverage, building coverage and floor area ratio/livable floor area (the “Application”);
- B. Affidavit of Representation executed July 5, 2025;
- C. Correspondence from Capizzi Law Offices regarding the Application submission dated August 6, 2025;
- D. Denial Letter dated July 28, 2025;
- E. Architectural Plans prepared by Axis Architectural Group dated April 30, 2025, last revised July 23, 2025, and consisting of two (2) sheets;
- F. Boundary Survey prepared by Schmidt Surveying dated March 31, 2025 and consisting of one (1) sheet;
- G. Affidavit of Service for notices mailed on August 22, 2025 prepared by Capizzi Law Offices; and
- H. Affidavit of Publication on August 24, 2025 prepared by The Record and Herald News; and

WHEREAS, a public hearing was held by the Board on September 3, 2025 in accordance with the Open Public Meetings Act and the Municipal Land Use Law (the “MLUL”), at which time the Applicant, represented by Matthew Capizzi, Esq. of Capizzi Law Offices: (a) presented proof of notice and publication as required by law; and (b) submitted the following evidence to the Board in support of Applicant’s Application including:

- A. Revised Architectural Plans prepared by Axis Architectural Group dated April 30, 2025, last revised September 3, 2025, and consisting of two (2) sheets, marked as Exhibit A-1;
- B. Google Photo of Property, marked as Exhibit A-2;

- C. Schematic Landscape Plan prepared by Christopher L. Karach dated August 26, 2025, marked as Exhibit A-3;
- D. Planning Exhibit prepared by MJP Land Use Planning LLC dated September 2025 and consisting of five (5) sheets;
- E. Testimony of the Applicant's architect, Piero Gabucci of Axis Architectural Group, whose testimony can be summarized as follows:
 - a. The Property is located at 29 John Street and contains a 1.5 story single-family dwelling;
 - b. The Property is a corner lot and, therefore, has 2 front yards (John Street and Demarest Avenue);
 - c. The dwelling fronts on John Street and has a 1-story garage located towards Demarest Avenue;
 - d. The existing garage is connected to the dwelling via an enclosed former breezeway;
 - e. The Applicant is proposing to expand the 1-car garage into a 2-car garage with a small infill addition in the front and approximately 230 square foot addition on the back;
 - f. The Applicant intends to minimize the impact of the proposed addition by keeping the addition on the second floor, prominently to the western portion of the existing house, and by maintaining the 1-story over the existing garage and setback from Demarest Avenue;
 - g. There is an existing fence on the Property, which will be removed and replaced with a 6 foot high decorative metal fence in the rear of the Property and a 4 foot high decorative metal fence in the Demarest Avenue

front yard setback area; the proposed fence will comply with the requirements of the Borough Code, including compliance with the minimum 50% open requirement;

- h. The Applicant is proposing to maintain the traditional, colonial style of the single-family dwelling, which is consistent with other houses in the neighborhood;
- i. The proposed dwelling will comply with the height requirements of the Borough Code, as it will be 29.5 feet in height, whereas 30 feet is permitted;
- j. The Applicant is going to maintain the existing grade of the Property;
- k. The proposed dwelling is relatively modest and will have a livable area of 3,500 square feet (it currently has a livable area of 2,700 square feet);
- l. The floor plan of the existing dwelling is relatively narrow and the proposed rear addition will expand the existing mud room, laundry space and kitchen area. The remaining area is existing and will be reconfigured to fit modern standards of development;
- m. In total, the dwelling will have 5 bedrooms and 3 bathrooms;
- n. The proposed dwelling will use traditional materials (predominately siding with some stone accents) and blend with other homes in the neighborhood;
- o. With regard to the elevations, the Applicant revised the plans to ease the slope of the roof line from the main 2-story portion of the dwelling toward the 1-story garage and enhanced the aesthetics of the Demarest Avenue façade with a dormer and windows in order to minimize any impact of the second floor addition on the Demarest Avenue neighbors;

- p. The Applicant is proposing a variety of new plantings and will work with the Board Engineer to his satisfaction and make any revisions necessary, including relocating any plantings along the Demarest Avenue inside the Property line;
- q. The Applicant is proposing to collect all stormwater from the roof of the structure, including the roof of the existing garage, in a Stormtech Chamber so that there is zero runoff, which exceeds the requirements;
- r. With regard to the John Street setback, the Applicant's average setback survey determined the average setback of the dwellings on John Street is 20 feet; the existing dwelling and proposed second floor addition, which are both located 29.6 feet from John Street, comply with this setback requirement;
- s. The proposed second floor addition will be placed directly over the first floor of the existing dwelling;
- t. If the Board determines that the minimum front yard setback along John Street is 35 feet, the existing dwelling is a pre-existing non-conforming condition and a variance would be required for the second story addition expansion. To comply without a variance, the Applicant would need to shift the proposed second floor addition 6 feet, toward the rear of the Property. However, this alternative would be difficult to construct and be visually unappealing, as it would result in a cantilever at the back of the dwelling and create an irregular roof condition and at the front of the dwelling;

- u. The existing deck in the rear of the Property will be removed and replaced with a new deck;
 - v. The Applicant will comply with all requirements of the Borough Code with respect to building coverage (19.94% is proposed) and residential and parking coverage (24.74% is proposed); and
- F. Testimony of Applicant's professional planner, Michael Pessolano of MJP Land Use Planning LLC, whose testimony can be summarized as follows:
- a. The Property is located in a neighborhood of various sizes, designs and massing;
 - b. The Property is an undersized, corner lot, which presents challenging development conditions which make strict compliance with the zoning ordinance difficult;
 - c. Acquiring additional land to bring the lot size into greater conformance is unrealistic given the lot sizes of the two (2) lots that directly abut the Property;
 - d. To the extent the Board determines the Applicant requires a variance with respect to the minimum front yard setback from John Street (if the Board determines a 35 foot setback is required as opposed to the alternative average front yard setback of 20 feet), this is a longstanding setback condition and qualifies for c(1) hardship approval due to the undersized condition of the lot and position of the existing dwelling on the Property;
 - e. The proposed second floor addition, which will be building upward on the Property, instead of outward, is a better alternative than creating additional impervious coverage;

- f. With respect to the “C” variance for minimum side yard abutting a street (Demarest Avenue) – where 35 feet required - the setback of the existing 1-story garage is 12.5 feet and the proposed new rear yard addition, which will be further in from the garage, will be setback 26.67 feet. This represents a longstanding setback condition and qualifies for c(1) hardship variance relief due to the skewed orientation of the existing dwelling on the Property, which results in the existing structure being positioned closer toward Demarest Avenue and further from the side yard to the South (15 feet is permitted; 24.2 feet is existing and permitted). Nevertheless, adequate yard area remains on the Property and any potential perception of an encroachment into the side yard abutting Demarest Avenue will be effectively mitigated by a curtain of green giant arborvitae around the rear of the Property, which will adequately screen the proposed rear yard addition from the neighbors;
- g. To the extent the Board deems a rear yard setback variance necessary for the new rear yard deck, the variance can also be granted based on c(1) variance relief due to the existing shallow depth of the Property or c(2) variance relief since there are no detriments to replacing an old deck with a smaller deck, which will be virtually invisible to the neighbors given the proposed landscaping in the rear yard;
- h. The Property complies with all impervious coverage, building coverage, residential and parking coverage and height requirements;
- i. There is virtually no detriment of the proposed rear yard addition, which will nestle between the existing garage and the existing dwelling and adequately screened by the proposed landscaping;

- j. There is no substantial detriment caused by the proposed second floor addition, which will comply with all height requirements in the Borough Code and be consistent in size and scale with other homes in the neighborhood;
- k. All of the proposed improvements will be adequately screened by the proposed landscaping and not have any substantial impact on the adjacent properties, the zoning ordinance or the Borough's master plan;
- l. The Applicant will be maintaining the front and side yards in harmony with the existing development pattern, which is consistent with the Borough's plan and vision;
- m. The Application meets the required criteria positive and negative criteria for c(1) or c(2) variance approval and that the Application warrants approval from the Board; and

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

- A. Completeness Letter from the Borough Zoning Officer, Michael Greco (the "Zoning Officer"), dated August 8, 2025, along with testimony from the Zoning Officer;
- B. Board Engineer Report prepared by Colliers Engineering and Design dated August 22, 2025 (the "Board Engineer Report"), along with testimony from Nick Chelius, PE of Colliers Engineering & Design (the "Board Engineer"); and

WHEREAS, the Board, during the course of the hearing, considered the following definition of Front Yard Setback from the Limiting Schedule, District of the Borough Code, Footnote B:

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; and

WHEREAS, the Board and the Board Engineer had extensive questions for the Applicant and the Applicant's professionals regarding the second-floor addition and the Applicant's average setback study;

WHEREAS, several property owners were present at the public hearing and asked questions of the Applicant's professionals regarding the proposed addition, the existing and proposed landscaping and the location, style and height of the proposed fence; and

WHEREAS, the Board having heard and considered the testimony, arguments and documents referenced above.

NOW, THEREFORE, BE IT RESOLVED that the Joint Planning Board of the Borough of Demarest makes the following findings of fact and conclusions of law with respect to the within Application:

1. All of the "**WHEREAS**" clauses set forth above are incorporated by reference. All of the testimony, documents and exhibits produced by the Applicant, including those produced at the public hearing on September 3, 2025 are incorporated herein by reference.
2. The Property is located at 29 John Street and designated as Lot 11 in Block 154 on the Tax Maps of the Borough of Demarest and is an undersized, mostly regularly shaped parcel.
3. The Property is located on the corner of Demarest Avenue and John Street in the Single Family Residence C Zone (the "R-C Zone") and consists of 11,734 square feet.
4. The Property is currently occupied by a 1.5 story single-family dwelling with associated 1-story garage, driveway, walkways and other related improvements.

5. Single-family residential dwellings are permitted uses in the R-C Zone.

6. The Property has pre-existing non-conformities with respect to lot area (15,000 square feet is required; 11,734 square feet is existing and proposed) and minimum side yard abutting a street (Demarest Avenue) (35 feet is required; 12.5 feet is existing).

7. By this Application, the Applicant is seeking to renovate and expand the existing 1.5 story dwelling by adding a full second story over the first floor of the existing dwelling and constructing a 2 story addition in the rear of the Property. The Applicant also proposes to convert the existing 1-story, single-car garage into a two-car garage with a small infill addition in the front of the Property. Additional site improvements include a new driveway, walkways, rear wooden deck, drainage improvements, landscaping, decorative metal fence and other related improvements.

8. The Applicant's existing 1.5 story dwelling is 29.1 feet from John Street and the proposed second story vertical addition, which will be located entirely over the first floor of the existing dwelling, will also be 29.1 feet from John Street.

9. The Applicant is seeking variance relief from the requirements of the R-C Zone pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2) with respect to the minimum side yard setback from Demarest Avenue to the rear 2-story addition (35 feet is required; 12.5 feet is existing to the existing 1-story garage and 26.67 feet is proposed to the rear 2-story addition).

10. During the course of the hearing, the Applicant amended their Application to also request variance relief, to the extent the Board deems necessary, from the requirements of the R-C Zone pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2) with respect to minimum front yard setback from John Street. However, the Board finds that, instead of a uniform 35 foot front yard setback requirement for John Street, the Property is required to comply with the alternate average front yard setback for John Street, as set forth and as calculated in Footnote B of the Limiting

Schedule, District of the Borough Code, which the Board finds will maintain a visually consistent street.

11. The Board agrees with the depiction of the front yard (John Street) shown on the Applicant's Exhibit A-1 and agrees that, based on the Applicant's representation regarding the average setback study of 20 feet, the Applicant's existing 1.5 story dwelling and proposed second story vertical addition do not require a front yard setback variance from John Street.

12. The Board further finds that the proposed second floor addition does not require a variance with respect to height, as it complies with the 30-foot height requirement.

13. During the course of the hearing, the Applicant also amended their Application to request variance relief, to the extent the Board deems necessary, from the requirements of the Borough Code pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2) with respect to minimum rear yard setback to the replacement deck. However, the Board finds that no variance is necessary for the proposed deck, as the deck is an accessory structure and complies with the 10-foot setback requirement set forth in the Borough Code.

14. The Board finds that the proposed Application complies with the purposes set forth in the MLUL by promoting appropriate uses in proper locations with appropriate density, promoting the general welfare by continuing the existing single-family nature of the existing neighborhood, promoting appropriate population densities, promoting open space and preventing urban sprawl and degradation of natural resources.

15. The Board finds that adequate light air and open space are provided, as the Property complies with the impervious coverage, residential and parking coverage, building coverage, livable floor area, side yard, rear yard and height requirements.

16. The Board finds that the Applicant's undersized corner lot presents challenging development conditions which make strict compliance with the zoning ordinance extraordinarily difficult and create a hardship, which is a function of the Property itself.

17. The Board finds that the proposed addition to the existing single-family dwelling on the Property is relatively modest and that the 1-story infill addition in the rear of the Property and second floor addition over the existing dwelling is consistent with the surrounding neighborhood and provides a significant aesthetic improvement to the Property.

18. The Board finds that the benefits of granting variance for the side yard abutting a street (Demarest Avenue) far outweigh any detriment, as the proposed minor 1 story addition will be located behind the existing garage in the rear of the Property and will be entirely screened from the surrounding properties by the proposed landscaping. Additionally, the Board finds that the proposed 1 story rear addition, which will be setback 26.67 feet from Demarest Avenue, will not have any substantial impact on the surrounding properties as it will not be protruding any further than the existing garage, which is setback 12.5 feet from Demarest Avenue.

19. The Board finds that the "C" variance requested by the Applicant for setback regarding side yard abutting a street (Demarest Avenue) can be granted under the c(1) or c(2) criteria.

20. The Board finds that the Application also provides significant benefits by providing an oversized stormwater management system to collect stormwater not only from the proposed addition, but from the entire roof area, where none exist today;

21. The Board finds that the benefits of granting the Application outweigh any detriments.

22. The Board further finds that the granting of the variances will not substantially impair the intent and purpose of the Borough's Zoning Ordinance or Master Plan and is in the

furtherance of the purposes set forth in N.J.S.A. 40:55D-2, e.g. adequate light, air and open space is provided.

23. The Board finds that the Applicant has proven its entitlement to variance approval under N.J.S.A. 40:55D-70(c)(1) and (2).

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of the Borough of Demarest, based upon the above findings of fact and conclusions of law, that the within application for Variance Approval is hereby granted, subject to the following conditions:

- a) The Applicant shall provide the Board Engineer with the necessary proofs to substantiate, to the satisfaction of the Board Engineer, the height of the roof, which shall not exceed 30 feet, and the Applicant's calculation of the average setback of the street.
- b) The Applicant shall revise the architectural plans to show that the existing fence on the Property will be replaced with a decorative metal fence (instead of a white vinyl fence), which shall comply with the height requirements set forth in the Borough Code.
- c) The Applicant shall revise the landscape plan to the satisfaction of the Board Engineer.
- d) The Applicant shall provide the Board Engineer with a site plan containing a tree location and tree removal plan and shall ensure that no trees are removed from any adjacent property. The Applicant shall comply with the Borough's Tree Removal and Protection Ordinance with respect to the removal and replacement of any trees on the Property.
- e) Unless otherwise addressed herein or at the public hearing before the Board, the Applicant shall comply with the recommendations of the Board, including but not limited to the Board Engineer Report, as well as any stipulations made during the hearing on the Application and all conditions enumerated herein.

- f) Notwithstanding the approval granted herein, the Applicant shall comply with all of the ordinances of the Borough of Demarest and all applicable county, state, and federal statutes, ordinances, rules and regulations.
- g) The Applicant shall obtain the approval (or waiver thereof) of any and all other governmental agencies having jurisdiction over the proposed development.
- h) The Applicant shall be required to obtain all necessary permits and approvals from the Construction Official and such other municipal departments as may be necessary.
- i) The Property shall be kept neat during all construction and all construction hours shall strictly adhere to the ordinances of the Borough of Demarest.
- j) The Applicant shall post all fees and deposits as required by applicable ordinances of the Borough of Demarest which shall include payment of all outstanding taxes and the payment of all fees to the Borough's professionals for the review of the within Application and the inspection of work to be performed incidental thereto. The Applicant shall pay any fees or additional escrow deposits which may be due and owing within ten (10) days of notification.
- k) All construction, use and development of the Property shall be in conformance with the plans approved by the Board. In the event the Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
- l) The Applicant shall correct and make safe any dangerous or unsafe condition caused by the Applicant or those acting for it, affecting public safety or general welfare, if any such condition develops.

- m) The Applicant shall be and remain liable for any and all damages or money loss occasioned by the Borough of Demarest or its officers or agents by any neglect, wrongdoing, omissions or commissions by the Applicant or its agents arising from the making of improvements and shall save, indemnify, hold harmless the Borough of Demarest or Board, its officers, agents, employees and all charges, judgments, costs or counsel fees arising from such damages or loss. The Applicant agrees not to commit any public or private nuisance by reason of dirt, dust, debris, air-pollution, noise pollution, gas, smoke, or other occurrences resulting from the construction or installation authorized by the approval of this plan or any building permit issued in pursuit thereof.
- n) The Applicant's failure to comply with any condition set forth with this Resolution shall constitute a failure of the conditions of this approval and may be the cause for the revocation of either a Building Permit and/or Certificate of Occupancy issued in respect of the contemplated improvements, subject to reasonable notice and the opportunity to cure.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Planning Board of the Borough of Demarest upon a roll call vote at a meeting held on October 15, 2025.

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

ATTEST:

SO APPROVED:

MICHAEL GRECO, Secretary

JODI BRENNER, Vice Chair

BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTE TO APPROVE THE APPLICATION

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	NOT ELIGIBLE
Mr. Adelman	✓	☐	✓	☐	☐	☐	☐
Mr. Alevrontas	☐	☐	☐	☐	☐	✓	☐
Vice Chair Brenner	☐	☐	✓	☐	☐	☐	☐
Ms. Chin	☐	☐	✓	☐	☐	☐	☐
Ms. DiSclafani	☐	☐	✓	☐	☐	☐	☐
Councilwoman Fox	☐	✓	✓	☐	☐	☐	☐
Ms. Hamilton	☐	☐	✓	☐	☐	☐	☐
Ms. Mamdani	☐	☐	☐	☐	☐	✓	☐
Mayor Bernstein	☐	☐	✓	☐	☐	☐	☐
Chair Woods	☐	☐	☐	☐	☐	☐	✓

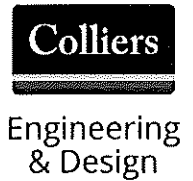
Date of Approval: September 3, 2025

VOTE TO APPROVE THE RESOLUTION

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mr. Adelman	☐	☐	☐	☐	☐	☐
Vice Chair Brenner	☐	☐	☐	☐	☐	☐
Ms. Chin	☐	☐	☐	☐	☐	☐
Ms. DiSclafani	☐	☐	☐	☐	☐	☐
Councilwoman Fox	☐	☐	☐	☐	☐	☐
Ms. Hamilton	☐	☐	☐	☐	☐	☐
Mayor Bernstein	☐	☐	☐	☐	☐	☐

Date of Adoption: October 15, 2025

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



July 11, 2025

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

93 Pine Terrace
Block 84.08, Lot 1
Borough of Demarest, Bergen County, NJ
Joint Planning Board Application - Engineering Review
Colliers Engineering & Design Project No. DEZ0053

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 with variances related to fence height. The Applicant is proposing to install at 6-foot-high fence around the perimeter of the property.

- a) Site plans consisting of one (1) sheet, prepared and signed by Joseph F. Vince, PE, of Schwanewede Hals & Vince, dated November 19, 2024;
- b) Variance Application for the subject property and attachment signed and undated.

The Property Owner/Applicant is:

Jason Lieberman
93 Pine Terrace
Demarest, NJ 07629

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 site plans, the site is currently occupied by a single-family dwelling with associated driveway, walkways, deck, and other related improvements. The property is a corner lot which fronts Pine Terrace to the north and Emily Court to the west. The property is located in the R-BB zoning district.

The Applicant is proposing to install at 6-foot-high fence around the perimeter of the existing property. A portion of the fencing will be constructed within the front yard area.

The property is an irregular shaped parcel consisting of 25,958 SF. The property is located west of Lake Road at the intersection of Emily Court and Pine Terrace.

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: BB

Use: Single Family Residential

Description	Required	Existing	Proposed	Complies
Lot area**	30,000 sf.	25,958 sf.	25,958 sf.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Lot Frontage	150 ft.	195 ft.	195 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Lot depth	150 ft.	165 ft.	165 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Front yard setback	50 ft.	50.9ft.	50.9ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Side yard setback	25 ft.	42.3 ft.	42.3 ft.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Livable Floor Area	22.50%	13.2%	13.2%	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Building Height	30 ft.	<30 Ft	<30 Ft	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Max Building Coverage	15 %	9.9%	9.9%	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Improved Lot Coverage	30 %	20.0%	20.0%	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Residential Parking Coverage	25 %	21.2%	21.2%	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

N/A = not applicable

* = variance required

** = pre-existing non-conformance

B. The Following Variances are Required:

- 175-24c -Fencing – A portion of the proposed fence is located in a front yard area The proposed fence is 6 feet in height. Ordinance 175-24c states the following:

"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."

A variance is required for this condition.

III. Engineering Review

- A. It does not appear that the Applicant is proposing any site work beyond the installation of the 6-foot-high fence. The Applicant should confirm in testimony.

- B. The Applicant has not provided existing or proposed contours on the site plans. As such, it is assumed that no alterations to grading are proposed. Should the Applicant require changes to grading on site, a revised plan shall be submitted for review and approval prior to making any alterations to grades on site.

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

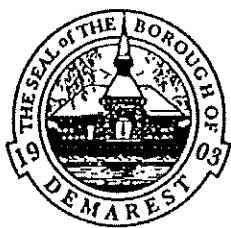
Sincerely,

Colliers Engineering & Design



Nick Chelius, P.E., C.M.E.
Joint Planning Board Engineer

cc: Board Members (via Board Secretary)
Jason Lieberman, Applicant (jlieberman23@mac.com)
Corey Vandervalk, Schwanewede Hals & Vince, Applicant's Engineer (cvandervalk@halsengineering.com)



THE BOROUGH OF DEMAREST
118 SERPENTINE ROAD
DEMAREST, N.J. 07627-2199

MICHAEL GRECO
ZONING OFFICER
(201) 768-0167 X 110
mgreco@demarestnj.gov

September 29, 2025

The Mayor & Council
The Joint Planning Board
Borough of Demarest

Subject: Recommended Updates to the Borough Zoning Ordinance

Dear Mayor, Council, and Board Members,

Over the past year, I have been working collaboratively with various bodies, professionals, and community members to **review and modernize the Zoning Code of the Borough of Demarest**. Throughout this process, I have identified numerous inconsistencies, both within the code itself and in how it has been interpreted and applied.

In response, I have compiled a comprehensive set of **Zoning Ordinance Suggestions**. These suggestions reflect feedback and recommendations gathered from the **Joint Planning Board, the former Zoning Board, members of the Council, the prior Zoning Official, the Building Department, Borough professionals**, and numerous comments and concerns raised by the public.

Within the attached document, I have included **specific questions and highlighted sections** that, in my professional opinion, require further attention. Below is a summary of key areas I believe warrant particular focus by the Governing Body and the Board:

1. Definitions - Significant work has been undertaken to revise and align definitions more closely with the *Moskowitz Book of Definitions*, promoting clarity and consistency. Notable updates include but are not limited to:

- Building / Building Height
- Floor Area
- Corner and Through Lots
- Signs
- Pergola

2. Floor Area Ratio (F.A.R.) - The current code's use of "Livable Floor Area" has caused confusion. I recommend replacing it with **Floor Area Ratio (F.A.R.)**, consistent with the *Municipal Land Use Law (MLUL)*. The proposed definition includes garages in total calculations. To address concerns regarding overbuilding and design quality, the proposed amendments **reduce allowable F.A.R.** in the R-C

and R-D zones, while allowing limited increases based on exceptional architectural design.

3. Improved Lot Coverage - Feedback from residents suggests that **Improved Lot Coverage** restrictions in the R-C and R-D zones are overly limiting – particularly for outdoor accessory structures. I recommend increasing the permitted percentage for these two zones to 35%, aligning them more closely with other districts.

4. Accessory Buildings, Uses, and Structures - The existing code applies uniform standards across all accessory types. I recommend revising this section to **differentiate requirements** based on the type and scale of accessories. For example, pools should adhere to stricter standards than patios, and large secondary structures should have greater setbacks than small sheds.

5. Administration and Fees - This section has been updated to **clarify fee applicability** and reflect current Borough procedures. The revisions make the fee structure more transparent and better aligned with actual administrative responsibilities. The new fees are more in line with other town fee schedules.

6. Residential District Bulk and Area Requirements - Historically, these standards appeared only in the *Limiting Schedule*. I recommend **codifying these requirements directly within the ordinance**, with the schedule updated accordingly based on the Governing Body's determinations.

7. Certificate of Continued Occupancy - Although currently included in the Zoning Code, this section is more appropriately housed elsewhere in the Borough Code. I recommend **relocating it to its own section** to improve organization and clarity.

8. Development and Variance Fees - These fee provisions are currently included within the zoning section but should be **relocated to the appropriate administrative sections** of the Borough Code, as they fall outside the Zoning Officer's jurisdiction.

These represent the **most significant areas of focus**, though I recommend a careful review of the entire code.

The following sections were **not modified**, as they serve specialized purposes or fall outside my technical expertise:

1. Conditional Uses Enumerated (particularly the antenna and church provisions, which should be re-evaluated)
2. Affordable Accessory Apartments
3. Residential Multifamily District
4. Residential Multifamily-2 Overlay District
5. Golf Course
6. Satellite Earth Stations

7. Affordable Housing District

In addition, you will see areas written in **Blue**. These areas are sections written by the Borough Planner to bring the code in compliance with the approved Master Plan.

I hope the enclosed document and this summary assist the Governing Body and Joint Planning Board in moving forward with this important update. I appreciate the opportunity to contribute to a clearer, more consistent, and more functional Zoning Code for the Borough of Demarest.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Greco', written in a cursive style.

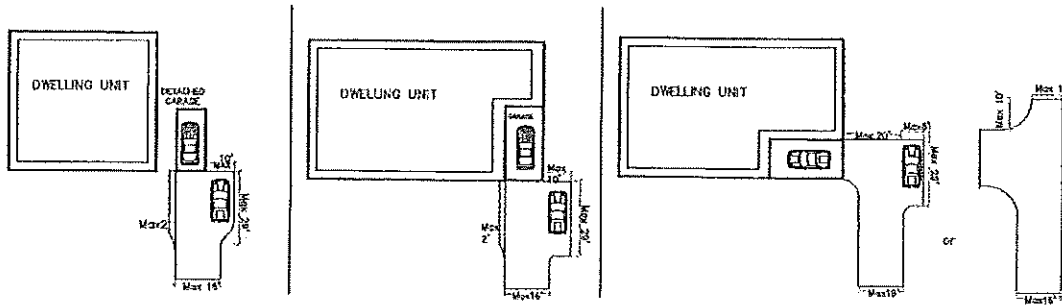
MICHAEL GRECO, *CMR, Notary Public State of New Jersey*
ZONING OFFICER

ZONING

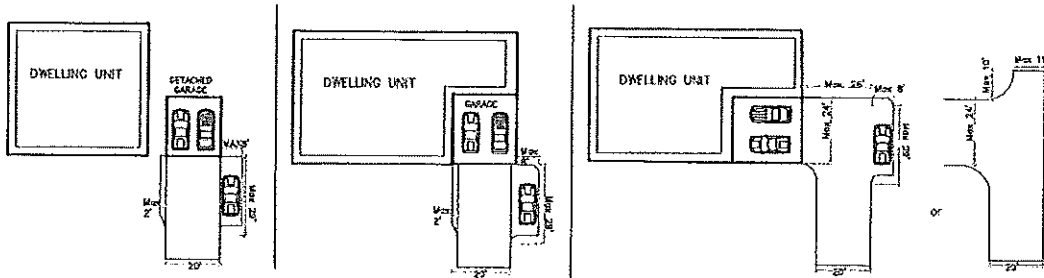
101 Attachment 5

Borough of Park Ridge

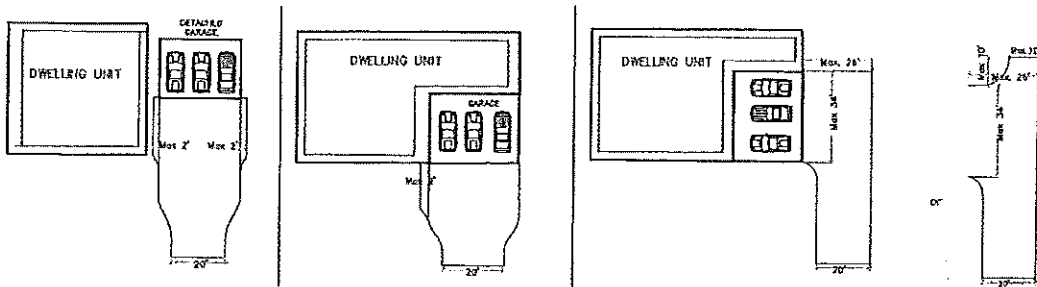
Driveway Regulations
[Amended 5-27-2014 by Ord. No. 2014-010]



One-car or garage regulations: maximum garage width of 12 feet



Two-car or garage regulations: maximum garage width up to 24 feet



Two-car garage regulations: maximum garage width up to 34 feet

ARTICLE I
Short Title & Terminology

§ 175-1. Title.

This chapter shall be known and may be cited as the "Borough of Demarest Zoning Ordinance."

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§ 175-2 Interpretation of certain terms.

- A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "shall" is mandatory; the word "building" includes the word "structure;" "occupied" or "used" shall be construed to include the words "intended, arranged or designed to be used or occupied."
- B. Whenever a term is used in this chapter, which is defined in the Municipal Land Use Law, as amended and supplemented, such term is intended to have the meaning set forth in the definition of such term as found in the applicable statute, unless a contrary intention is clearly expressed from the context of this chapter.

§ 175-3 Definitions.

- A. Definitions. N.J.S.A. 40:55D-3, Municipal Land Use Law, and its amendments shall also become part of this Article I.
- B. The following terms or words used herein shall be interpreted or defined as follows:

ABANDONMENT

The relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

ACCESSORY USE

A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land of building and located on the same lot with the principal use; for example, but not by way of limitation, swimming pools, tennis courts and other active recreational areas.

ACCESSORY STRUCTURE

A structure detached from a principal building located on the same lot and customarily incidental and subordinate to the principle building or use.

AFFORDABLE ACCESSORY APARTMENT

An affordable accessory apartment shall be a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance which is created to be occupied by a low- or moderate-income household in accordance with the applicable provisions of the substantive rules at N.J.A.C. 5:93-1 et seq. The affordable accessory apartment may be created within an existing dwelling unit, may be created within an existing structure on the lot or may be an addition to an existing home or accessory building.

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ALTERATION

As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

ANIMAL CARE FACILITY

An animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission and practice is, in whole, or significant part, the rescue and placement of animals in permanent homes or rescue organizations.

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ANIMAL RESCUE ORGANIZATION

Any not-for-profit organization which has tax-exempt status under Section 501(c)(3) of the United State Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue and placement of animals in permanent homes. This term does not include an entity that is a breeder or broker or one that obtains animals from a breeder or broker for profit or compensation.

ATTIC

The unheated space between the ceiling beams of the top story and the roof rafters, provided it is not on the same level as the living space.

AVERAGE NATURAL GRADE

An average of a natural grade adjacent to the perimeter of a building measured at points 10 feet apart starting at the lowest elevation.

AWNING

A roof-like cover that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

BASEMENT

A space having 70% or more of its floor-to-ceiling height below the average natural grade of the adjoining ground.

BREEDER

A person that maintains a dog or cat for the purpose of breeding and selling their offspring.

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BROKER

A person that transfers a dog or cat from a breeder for resale by another person.

BUILDING

Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind and intended for use in one place.

BUILDING, ACCESSORY

A subordinate building on the same lot as the principal building or use, whose use is clearly incidental and subordinate to the principal use.

Commented [MG1]: I currently do not have a follow up section for accessory buildings do you want standards on where any additional buildings that are not the principle building can be located?

BUILDING, PRINCIPAL

A non-accessory building in which is conducted the principal use of the lot on which it is located.

BUILDING COVERAGE

The ratio of the horizontal area, measured from the exterior surface of the exterior walls of the ground floor, of all principal and accessory buildings on a lot to the total lot area.

BUILDING HEIGHT

The vertical distance measured from the average natural grade all around the building to the midpoint of the roof.

Commented [MG2]: Please decide on where we want height measured from.

BUILDING LINE

A line parallel to the street right-of-way line touching that part of a building closest to the street.

CANTILIVER

A part of a beam or structure projecting beyond its support

CELLULAR TELECOMMUNICATIONS TOWER AND ANTENNA

- (1) An antenna that is intended for commercial transmission or reception of personal wireless telephone services communications and including commercial mobile services communications and licensed wireless communications and common carrier wireless exchange access services and also including any tower or other supporting structures and equipment necessary for such transmission or reception.
- (2) Expressly omitted from this definition are those antennas intended for personal private use.

CHILD CARE CENTER

Any facility which is maintained for the care, development or supervision of six or more children under six years of age who attend for less than 24 hours per day and which is licensed by the New Jersey Department of Human Services.

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CHIMNEY

A structure containing one or more flues for drawing off emissions from stationary sources of combustion.

CLUB

A group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

CLUB FACILITIES ACCESSORY TO A CLUBHOUSE

Parking facilities, tennis court(s); swimming pool(s); children recreation areas; paddle tennis court(s); putting greens; driving range; shuffleboard or bocci court(s); cabana(s); pump rooms; storage facilities; maintenance facilities; golf cart buildings; snack bar(s); and the full panoply of typical uses associated with a golf club.

CLUB FACILITIES ACCESSORY TO SECONDARY SOCIAL FACILITY

Parking facilities, putting green(s), driving range(s), golf cart/storage building, and maintenance buildings.

CLUBHOUSE

A golf course facility with dining room(s); banquet facilities; grill room(s); bar(s); a pro shop; golf bag room(s); locker room, shower and lavatory facilities; club offices; card room(s); and the full panoply of typical uses associated with such a facility.

COFFEE HOUSE

An establishment that serves primarily prepared coffee and other hot drinks as well as light snacks.

COMMERCIAL USE

Activity involving the sale of goods or services carried out for profit.

COMMUNITY CENTER

Concentration of activities, services, and land uses that serve, and are focal points for, the immediate neighborhoods and used for recreational, social, educational, and cultural activities.

COMMUNITY RESIDENCE

A facility licensed pursuant to P.L. 1977, c.448 (C.30:11B-1 et seq.) providing food, shelter, and personal guidance under such supervision as required, to no more than 15 developmentally disabled or mentally ill persons, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of Health Care Facilities Planning Act, P.L. 1971, c.136 (C.26:2H-1 et al.)

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COMPOST

Relatively stable decomposed organic matter.

COMPOSTING

A controlled process of degrading organic matter by microorganisms.

CONDEMNATION

The exercise by a governmental agency of the right of eminent domain.

CONDITIONAL USE

A use permitted in a particular zoning district when it is shown that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving authority.

Commented [MG3]: Need clarification on wording from planner.

CONDITIONS OF APPROVAL

Requirements established by the approving authority before preliminary or final approval of an application for development becomes effective.

CONSERVATION AREA

Environmentally sensitive area with characteristics such as steep slopes, wetlands, floodplains, high water tables, forest areas, endangered species habitat, or dunes, or areas of significant biological productivity or uniqueness that have been designated for protection from any activity that would significantly alter their ecological integrity, balance, or character.

CONTAINER

Any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

COUNTRY CLUB

A recreational facility, usually restricted to members and their guests, that generally includes a clubhouse, dining and eating establishments, and recreational facilities such as golf courses, tennis courts, and swimming pools.

COURTYARD

Landscaped outdoor areas that are walled for privacy.

CURB

A stone, concrete, or other improved boundary marking the edge of the roadway or paved area.

DECK

An unroofed platform, either freestanding or attached to a building that is supported by pillars

or posts.

DEMOLITION/NEW CONSTRUCTION

An altered structure shall be deemed new construction for all development, building and zoning purposes if:

- (1) The square footage of the foundation of the altered structure is increased by 25% or more when compared to the square footage of the foundation of the structure prior to alteration; or
- (2) The gross floor area of the altered structure is increased by more than 25% of the gross floor area of the structure prior to alteration.

DENSITY

The number of families, individuals, dwelling units, households, or housing structures per unit of land.

DORMER

A projection from a sloping roof that contains a window.

DRIVEWAY

A private roadway providing access to a street or highway

DUMPSTER

An exterior waste container designed to be mechanically lifted by and emptied into or carted away by a collection vehicle.

DWELLING

A structure or portion thereof that is used exclusively for human habitation.

DWELLING, MULTIFAMILY

A building containing three or more dwelling units. Including units that are located one over another.

DWELLING, SINGLE-FAMILY

A building containing one dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards.

DWELLING, TOWNHOUSE

A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access top the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls.

DWELLING, TWO-FAMILY

A single building containing two dwelling units.

DWELLING UNIT

One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

EQUIPMENT ROOM

A room consisting of mechanical equipment necessary for the operation of the dwelling, not intended for occupancy.

EXTERIOR WALL

Any wall that defines the exterior boundaries of a building of structure.

FAMILY DAY CARE

The private residence of a family day care provider, which is registered as a family day care home pursuant to the Family Day Care Provider Registration Act.

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FENCE

An constructed barrier of any artificial material or combination of materials erected to enclose, screen, or separate areas.

FENCE, GARDEN

A temporary fence designated for separating a section of yard to protect a garden, made of wood, metal, or wire, and supported by posts.

FENCE, LIVING

Plantings created by human effort consisting of the growth or placement of hedges, trees, bushes, or any other plants, or any combination thereof, creating a barrier or boundary.

FLOOR AREA, GROSS

The total area of all floors of the principal building on a lot.

FLOOR AREA, NET

The total area of the gross floor area of a building, after excluding stairwells, elevator shafts, equipment rooms, attics and basements.

FLOOR AREA RATIO (FAR)

The net floor area of all buildings on a lot divided by the total lot area.

Commented [MG4]: IMPORTANT: This will define our future Scale of buildings. I removed the exclusions of garages, do you agree?

GARAGE, PRIVATE

A structure that is accessory to a single- or two-family dwelling, is used for the parking and storage of vehicles owned and operated by the residents thereof, and is not a separate commercial enterprise available to the general public.

GAS STATION

An establishment used for the retail dispensing or sales of vehicular fuels.

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GOLF COURSE

A tract of land for playing golf with 18 holes consisting of tees, greens, fairways and hazards. [Added 8-20-2001 by Ord. No. 840]

GOLF COURSE WITH CLUB FACILITIES

A golf course with any of the facilities comprising club facilities accessory to a clubhouse and may include secondary social facility and club facilities accessory to a secondary social facility. [Added 8-20-2001 by Ord. No. 840]

GRADE

- (1) When used in conjunction with the terms “existing,” “Finished,” or “natural,” grade is the same as “elevation”;
- (2) when used as a measurement, grade refers to the percentage of rise or descent of a sloping surface.

GRADE, FNISHED

The final elevation of the average ground level adjoining a building at all exterior walls after

development.

GRADE, NATURAL

The elevation of the ground level in its natural state, before construction, filing, or excavation.

HOME OCCUPATION

Any activity carried out for financial gain by a resident and conducted in the resident's dwelling unit.

HOME PROFESSIONAL OFFICE

A home occupation consisting of the office of a practitioner of a recognized profession.

IMPERVIOUS SURFACE

A surface covered with a layer of material that is highly resistant to water infiltration. Examples of impervious surfaces include asphalt, brick, pavers, compacted surfaces, including stone roadways, driveways, parking areas, walkways, patios, buildings, concrete, metal and most structures.

IMPROVED LOT COVERAGE

The part of the site that is covered by buildings, accessory buildings, accessory uses, accessory structures, impervious or pervious parking areas, driveways, walls, walkways, pavers or similar improvements; and any other structures or impervious surfaces.

INSTRUCTIONAL USE

Uses for the teaching and practice of dance, drama, art, language, martial arts, music, aerobics, sports, fitness, photography, and the like.

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ISOLATED LOT

An undeveloped, undersized lot in separate ownership from surrounding property and not meeting area requirements for the zone in which it is located.

LOT or PLOT

A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon, whose frontage is on a public street or on a private street of record.

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 be designated as the rear yard.

Commented [MG5]: Discuss corner lots and if we want to continue to allow the designation of a rear yard.

LOT, THROUGH

A lot fronting on two (2) parallel streets or on two (2) streets that do not intersect at the boundaries of the lot.

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Commented [MG6]: Same question as corner lots.

LOT DEPTH

The average distance measured from the front lot line to the rear lot line.

LOT FRONTAGE

The length of the front lot line measured at the street right-of-way line.

LOT LINE

A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

LOT LINE, FRONT

The lot line separating a lot from a street or right-of-way.

LOT LINE, REAR

The lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

LOT LINE, SIDE

Any lot line not a front lot line or a rear lot line.

LOT WIDTH

The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

MARIJUANA (CANNABIS)

All parts of the plant *Cannabis sativa*, Linnaeus, *Cannabis indica* or *Cannabis ruderalis*, whether growing or not; the seeds thereof, the resin, whether crude or purified, acted from any part of the plant; and every compound, manufacture, salt derivative, mixtures, or preparation of the plant, its seeds, or resin. Cannabis also means the separate resin, whether crude or purified, obtained from cannabis. Cannabis does not include the mature stalks of the plant, fiber provided from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture salt derivative mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. For purposes of this Chapter, Cannabis does not mean Industrial Hemp.

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Commented [MG7]: It has been 5 years, do we want to change this?

MEDICAL OFFICE

The office of a licensed medical or health care practitioner providing health care services to a person for the purpose of maintaining or restoring a person's physical or mental health, including but not limited to a physician, dentist, chiropractor, podiatrist, osteopath, acupuncturist, optometrist, orthotist, occupational or speech therapist, and psychologist. The term "licensed" is defined in the New Jersey Administrative Code.

NONCONFORMING LOT

A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

NONCONFORMING STRUCTURE OR BUILDING

A structure or building, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

NONCONFORMING USE

A use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

OFF-STREET PARKING SPACE

A parking space that is not located on a dedicated street right-of-way and that is directly accessible to an access aisle.

OFFER FOR SALE

To sell, offer for sale or adoption, advertise for the sale of, barter, auction, giveaway or otherwise dispose of a dog or cat.

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OUTDOOR DINING

A designated area of a restaurant or casual restaurant, but outside the principal building, and where patrons may sit at tables while consuming food and beverages.

PARKING SPACE

A space for the parking of one motor vehicle and having an area of not less than 180 square feet, exclusive of passageways and aisles appurtenant thereto, with a minimum length of 20 feet and contiguous with the principal use driveway.

PERGOLA

A structure of parallel colonnades supporting an open roof of crossing rafters or trelliswork.

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Commented [MG8]: Please define.

PERSONAL SERVICE SHOPS

Establishments primarily engaged in providing services involving the care of a person or their personal goods or apparel. Examples include dry cleaners, salons, barber shops, travel agencies, and the like.

PLACE OF WORSHIP

A building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

PORCH

A roofed, open area, which may be screened, attached to or part of a building, and with direct access to or from ~~the Principal Building~~.

PREMISES

A lot, parcel, tract, or plot of land together with the buildings and structures thereon.

PRINCIPLE USE

The primary or predominant use of the premises.

PROFESSIONAL OFFICE

A room or group of rooms used for conducting the affairs of a bank, business, profession, industry, or government and generally furnished with desks, tables, files, and communication equipment.

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RESTAURANT

An establishment where food and beverages are prepared, served, and consumed on site and patrons are served by waiters/waitresses. Restaurants may also include take-out and delivery services.

RESTAURANT, CASUAL

An establishment that sells pre-prepared or rapidly prepared wrapped food directly to the customer at a counter in bags or on trays for consumption on or off the premises, such as a bagel shop, coffee shop, delicatessen, cafe, etc.

RETAIL BUSINESS

Establishments engaged in selling goods or merchandise to the surrounding neighborhood for personal or household consumption and rendering services incidental to the sale of such goods.

RIGHT-OF-WAY (ROW)

The boundary between the total width of property owned by the public body, whether or not it is dedicated as a street, road or roadway and over which the public has the right of passage.

Commented [MG9]: Do we want to define the public's responsibility in regard to maintenance of the right-of-way.

SATELLITE EARTH STATION

Any apparatus, building, or structure which is designed for the purpose of receiving television, radio, microwave, satellite or similar signals in connection with what is commonly referred to as a dish-type antenna.

SECONDARY SOCIAL FACILITY

An additional building other than the clubhouse with sit down eating areas and kitchen(s) and bar(s) for serving breakfast and lunch and snacks; locker rooms and showers and lavatory facilities; card room(s); pro shop; bag room; storage space; and the full panoply of typical uses associated with such a facility. Banquet facilities are expressly prohibited. Supper is specifically excluded, excepting for sporadic barbecues and special events occurring not more than three times a month between May 1 and September 30.

SETBACK

The distance between a building or structure and any lot line.

SHED

An accessory structure or building used primarily for storage purposes.

SIDEWALK

The portion of a road right-of-way paralleling and usually separated from the cartway, paved and designates for preferential or exclusive use by pedestrians.

SIGHT TRIANGLE

A 15 ft. triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

SIGN

Any object, device, display, or structure, or part thereof, situated outdoors or indoors, that is used to advertise, identify, display, or direct or attract attention to an object, person, institution, organization, business, product, service, event, or location by means of words, letters, figures, design, symbols, fixtures, colors, illumination, or projected image.

SIGN, BILLBOARD

A commercial sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

SIGN, BUSINESS

A sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered, or manufactures, or to an entertainment offered on the premises where the sign is located.

SIGN, CONSTRUCTION

A temporary sign erected on the premises where construction is taking place, during the

period of such construction, indicating the names of the architects, engineers, landscape architects, contractors or similar artisans, and the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the structure of project.

SIGN, FREESTANDING

A sign supported by structures or supports that are placed on or anchored in the ground or at ground level and which are independent of any building or other structure. Unless otherwise limited or restricted, a freestanding sign may be either a freestanding monument sign or a freestanding pole sign.

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SIGN, MONUMENT

A freestanding sign, other than a pole sign, in which the entire bottom is in contact with or is close to the ground.

SIGN, OPEN HOUSE

Temporary, off-premises signs used to direct prospective purchasers to a house for sale.

SIGN, POLITICAL

A temporary sign announcing or supporting political candidates or issues in connection with any national, state, or local election.

SIGN, PORTABLE

Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs to be transported on wheels; signs on vehicles; and signs on balloons or umbrellas.

SIGN, PROJECTING

A sign that is wholly or partly dependent upon a building for support and that projects more than twelve inches from such building

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SIGN, REAL ESTATE

A sign pertaining to the sale or lease of the premises, or a portion of the premises, on which the sign is located.

SIGN, SIDEWALK

Any temporary freestanding display located on the sidewalk or sidewalk area adjacent to a public roadway or storefront.

SIGN, TEMPORARY

A sign intended for a use not permanent in nature. For the purposes of this article, a sign with an intended use of thirty days or less shall be deemed a temporary sign.

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SIGN, WALL

All flat signs of solid-face construction and/or individual letters, which are placed against a building or other structure and attached to the exterior front, rear, or side wall of any building or other structure, so that the display surface is parallel with the plan of the wall. Signs painted on an exterior wall shall be deemed to be wall signs subject to all applicable requirements.

SIGN, WINDOW

A permanent sign that is painted or mounted onto a windowpane, or that is hung directly inside a window solely for the purpose or effect of identifying any premises from the sidewalk or street; or a temporary sign advertising special sales, events, or products.

SIGN AREA

The entire face of a sign, including the advertising surface and any framing, trim, or molding but not the supporting structure, unless the same are illuminated.

SPORTS COURT

- (1) Paved surfaces, designed and built to accommodate a variety of athletic purposes or recreational pastimes, such as tennis, basketball, and roller hockey.
- (2) A turf field designed and built to accommodate a variety of athletic purposes or recreational pastimes, such as soccer, football, baseball, softball, lacrosse or rugby.

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, then the space between any floor and the ceiling next above it.

STREET

Any street, avenue, boulevard, road, parkway, viaduct, drive or other way which is an existing state, county or municipal roadway; or which is shown upon a plat heretofore approved pursuant to law; or which is approved by official action as provided by this chapter; or which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a Planning Board and the grant to such Board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

STRUCTURE

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 or water.

SWIMMING POOL

A water-filled enclosure, permanently constructed or portable, having a depth of more than 24 inches below the level of the surrounding land, or an above- surface pool having a depth of more than 24 inches, designed, used, and maintained for swimming and bathing.

TEMPORARY STORAGE CONTAINER

A container designed for the outdoor storage of personal property for temporary use, which is to be delivered and removed by vehicle, excluding cargo containers.

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TRAILER

A structure standing on wheels, towed or hauled by another vehicle, and used either for short-term human occupancy (also known as a “Camper”); carrying materials, goods, or objects; or as a temporary office.

WALL

A continuous vertical structure that encloses or divides an area of land.

WALL, GARDEN

A wall under two feet in height.

WALL, RETAINING

A wall over two feet in height that is constructed between lands of different elevations to stabilize the surfaces, prevent erosion, and/or protect structures.

YARD

An open space that lies between the principal building or buildings and the nearest lot line.

YARD, FRONT

A space extending the full width of the lot between the principal building and the front lot line and measured perpendicular to the building at the closest point to the front lot line.

YARD, REAR

A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line.

YARD, SIDE

A space situated between the building and the side lot line and extending from the front yard to the rear yard.

**ARTICLE II
Establishment of Districts**

§ 175-4. Districts enumerated.

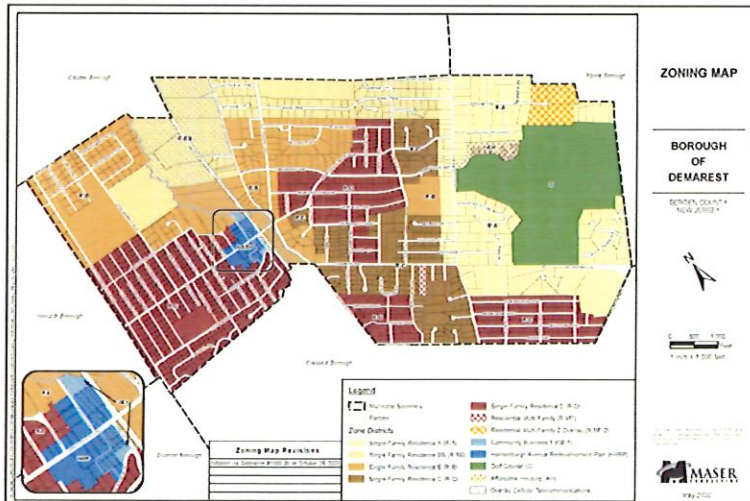
For the purpose of this chapter, the Borough of Demarest is hereby divided into classes of districts as follows:

- R-A Single-Family Residence
- R-BB Single-Family Residence
- R-B Single-Family Residence
- R-C Single-Family Residence
- R-D Single-Family Residence
- CB-I Community Business I
- OL Overlay Cellular Telecommunications
- G Golf Course
- R-MF Residential Multifamily
- R-MF-2 Residential Multifamily-2 Overlay District
- AH Affordable Housing
- HARP Hardenburgh Avenue Redevelopment Plan

§ 175-5. Zoning Map.

[Amended 7-7-1997 by Ord. No. 791; 10-26-2020 by Ord. No. 1085-20]

The Zoning Map of the Borough of Demarest prepared and submitted by Maser Consulting, dated May 26, 2020, and appended hereto and incorporated herein by reference, be and is hereby approved and adopted, supplanting and replacing the Zoning Map of 1984, or the latest version adopted, subject to statutory review by the Planning Board of the Borough of Demarest.



§ 175-6. Interpretation of boundaries.

- A. Where a boundary line is shown as approximately following a lot line, such lot line shall be construed to be said boundary.
- B. Where a boundary line is shown as approximately following the center line of a street, highway, stream or railroad or a street line or highway or railroad right-of-way, such center line, street line or right-of-way line shall be construed to be such boundary.
- C. Where a boundary line is shown as approximately parallel to a street, highway or stream, such boundary shall be construed as being parallel thereto and at such distance from the center line thereof, as indicated on the Zoning Map, Borough of Demarest, New Jersey.

ARTICLE III
Application of Regulations

§ 175-7. Use of land and buildings.

No land shall be hereafter used or occupied and no building or part thereof shall hereafter be used, occupied, erected, moved or altered unless in conformity with the regulations and Limiting Schedule hereinafter specified for the district in which it is located.

§ 175-8. Erection of buildings.

No building shall be designed, erected or altered to accommodate or house a greater number of families and/or to have a narrower or smaller front yard, rear yard or side yard than specified herein for the district in which such building is located.

§ 175-9. Yards and open space.

No part of a yard or other open space required about any building for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another building.

§ 175-10. Lot size.

No lot shall be so reduced in area that it does not meet the area requirements or be so reduced that any required open space will be smaller than prescribed in the regulations for the district in which said lot is located.

Commented [MG10]: Ask Darlene and Deena if these are necessary.

ARTICLE IV
Administration

§ 175-11. Administration.

A. The provisions of this chapter shall be enforced by the Zoning Officer.

B. Zoning Permits.

(1) A zoning permit issued by the Zoning Officer shall be required for the following activities:

(a) No person shall commence the construction, reconstruction, alteration, conversion or installation of a new home, existing home, garage, swimming pool, deck, porch, hot tub, spa, shed, patio, fence, driveway, wall, sign, sidewalk, A/C units, generators, or any other accessory building or structure without first obtaining a zoning permit.

(b) No person shall commence a use nor change an existing principal or accessory use of property without first obtaining a zoning permit.

(2) The Zoning Officer shall issue a zoning permit where it is determined that the following conditions have been met:

(a) One of the following:

[1] It is a permitted use in the proposed location; or

(b) The structure and lot meet all required bulk criteria as required by the Borough of Demarest Limiting Schedule and all other sections of the Zoning Code

(3) A zoning permit shall not be required for:

(a) Garden Fences

~~(b) Walls 2 feet and under, Garden Walls~~

~~(b)(c) Living Fences~~

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(4) Administration. The ~~Zoning Administrative~~ Officer shall have the authority to ~~create~~~~promulgate~~ any checklists and/or application forms necessary for the administration of this section.

(5) Application Fees

(a) The fee for a ~~zoning permit for a~~ new construction, addition, accessory building, ~~accessory~~ structure or use shall be \$150

~~(b) The fee for a fence, wall or sign shall be \$10050~~

~~(b)~~

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(c) The fee for any certificate supplied by the Zoning Officer shall be \$75

~~(d) The fee for a zoning application resubmission shall be \$25~~

(6) Appeal.

- (a) The grant or denial of a zoning permit may be appealed to the Joint Planning Board by any interested party pursuant to N.J.S.A. 40:55D-70a.
- (b) A notice of appeal shall be filed within 20 days of the grant or denial of the permit request.
- (c) The Joint Planning Board shall reverse or affirm the grant or denial of the zoning permit within 120 days of the filing of the notice of appeal. The failure of the Joint Planning Board to act within the period shall constitute a decision favorable to the appellant. An extension of the time to act may be granted by written consent from the applicant.

§ 175-12. Enforcement.

- A. The provisions of this chapter shall be enforced by the Zoning Officer or the Code Enforcement Official. ~~It shall be the duty of members of the Fire and Police Departments to report any violations of the provisions of this chapter to the Zoning Officer.~~
- B. The Construction official shall not issue a permit ~~for the construction, alteration or use of any building of land~~ until he has confirmed that zoning review has been completed and a zoning permit has been issued when required.

§ 175-13. Violations and penalties.

Any owner, lessee or other person or persons who permit, take part in or assist in any violation of any provision of this chapter shall, upon conviction for each and every violation thereof, be subject to a fine not to exceed \$1,000 or to imprisonment in the county jail for not more than 90 days or to a period of community service not exceeding 90 days, or all of the above, in the discretion of the Judge imposing the same. When such violation shall continue for more than one day, each day of the continuation of said offense shall be considered as a separate violation of this chapter. No provision of this section shall be construed to prevent the Borough of Demarest from taking injunctive proceedings in the Superior Court of New Jersey or to any other court for the proper enforcement of this chapter and the prevention of continuance of violations of the same.

§ 175-14. Zoning Certificates

Upon request the zoning officer will review applications and if accepted provide a Zoning Certificate for the reasons below:

A. Certificate of Zoning Compliance

- (1) A person desiring to obtain an official acknowledgement that an existing building, lot or use meets the requirements of the current Borough zoning regulations shall request a review, which may require an accurate survey and an inspection of the premises.

B. Certificate of Non-Conformance

- (1) A person desiring to obtain a certification pursuant to N.J.S.A. 40:55D-68 that a use or structure existed before the adoption of the ordinance that rendered the use or structure nonconforming, may apply for a ~~zoning permit certificate~~. A ~~zoning permit certificate~~ under this section may be issued only if an application is made within ~~twelve months~~ one year of the adoption of the ordinance that made the structure or use

nonconforming. After ~~twelve months~~one year, application shall be made to the Joint Planning Board pursuant to N.J.S.A. 40:55D-68.

~~C. Continued Certificate of Occupancy~~

~~(1) The following shall be unlawful until a certificate of occupancy shall have been applied for and issued by the Construction Official:~~

~~(a) Occupancy and use of a building hereafter erected, structurally altered or moved or any change in the use of an existing building;~~

~~(b) Any change in the use or occupancy of an existing, nonresidential building;~~

~~(c) Any change in the use or occupancy of any land;~~

~~(d) Any change in the use of a nonconforming use;~~

~~(e) Any change in the occupancy of a residential dwelling after its sale. The certificate of occupancy may be issued up to two weeks prior to the sale closing. The certificate of occupancy must be obtained by the seller prior to the resale.~~

~~(2) No certificate of occupancy shall be issued for any conditional use of a building or of land requiring the approval of the Joint Planning Board unless and until such conditional use has been duly approved by the Board. Every certificate of occupancy for a conditional use or in conformance with a duly granted variance granted by the Joint Planning Board shall contain a detailed statement of such conditional use or variance and of any conditions to which the same is subject.~~

**§ 175-. Certificate of compliance; continued certificate of occupancy; inspections; fees.
[Amended 10-20-2003 by Ord. No. 876; 2-23-2004 by Ord. No. 882]**

There is a need to have an inspection requirement of all property upon sale, transfer or change of ownership, vacancy and re-occupancy, regardless if the business remains the same use, to ensure that all of the Borough of Demarest's municipal ordinances are being complied with and no change of use has occurred. If a change in use has occurred, a business certificate of continued occupancy cannot be issued; instead, the requirements of all Borough of Demarest zoning codes and the New Jersey Uniform Construction Code certificate of occupancy shall be met.

~~D.C.~~ The following shall be unlawful until a certificate of occupancy shall have been applied for and issued by the Construction Official:

- (1) Occupancy and use of a building hereafter erected, structurally altered or moved or any change in the use of an existing building.
- (2) Any change in the use or occupancy of an existing, nonresidential building.
- (3) Any change in the use or occupancy of any land.
- (4) Any change in the use of a nonconforming use.
- (5) Any change in the occupancy of a residential dwelling after its sale. The certificate of occupancy may be issued up to two weeks prior to the sale closing. The certificate of occupancy must be obtained by the seller prior to the resale.

~~E.D.~~ No certificate of occupancy shall be issued for any conditional use of a building or of land

requiring the approval of the Joint Planning Board unless and until such conditional use has been duly approved by the Board. Every certificate of occupancy for a conditional use or in conformance with a duly granted variance granted by the Joint Planning Board shall contain a detailed statement of such conditional use or variance and of any conditions to which the same is subject.

~~F.E.~~ Application for a certificate of occupancy, on a form furnished by the Construction Official, for a new building or for an existing building which has been altered shall be made after the erection of such building or part thereof has been completed in conformity with the provisions of this chapter and, in the case of a new building, shall be accompanied by an accurate survey prepared by a land surveyor licensed by the state, showing the current location of all buildings as built. Such certificate shall be issued within 10 days after receipt of the application, but only provided that all requirements of this chapter and of all other applicable codes and ordinances in effect are complied with. This form may be revised from time to time without the necessity of a revision to this chapter.

~~G.F.~~ If the proposed use is in conformity with the provisions of this chapter and of all other applicable laws and ordinances, a certificate of occupancy for the use of vacant land or for a change of use of a nonconforming use shall be issued by the Construction Official within 10 days after receipt of a written application therefor. If a certificate of occupancy is denied, the Construction Official shall state the reasons therefore in writing.

~~H.G.~~ Inspections.

- (1) The Construction Official shall issue a certificate of occupancy for a residential dwelling if inspection establishes that:
 - (a) There are no visible safety problems, such as missing hand or guardrails, or visible safety defects.
 - (b) There has been no illegal work performed without permits and inspections.
 - (c) No illegal conversions have been made, i.e., one-family to two-family or three-family homes, etc.
- (2) The purpose of this change is to ensure that there are no violations of either the zoning or building codes; specifically to check to see that no illegal conversions of single-family homes to two-family and to check for safety violations.
- (3) The fee for such inspection shall be \$75 payable to the Borough of Demarest to cover administrative costs of inspection and assurance of the continued certificate of occupancy.

~~I.H.~~ Every application for a certificate of occupancy shall state that the building or the proposed use of a building or land complies with all applicable provisions of this chapter.

~~J.I.~~ A certificate of occupancy shall be required for both initial and continued occupancy and use of the building or land to which it applies, as certified.

~~K.J.~~ A certificate of occupancy shall be required of all nonconforming uses.

- (1) Such certificate shall specify each condition or use not conforming to this chapter.
- (2) A new certificate shall be required if there is any change in use or ownership from that

specified.

- (3) The Building Inspector shall issue such certificate if an inspection by the Zoning Officer establishes that no provision of this chapter has been violated.

~~L.K.~~ A record of all certificates of occupancy shall be kept in the office of the Construction Official, and copies shall be furnished on request to any agency of the Borough or to any person having a proprietary or tenancy interest in the building or land affected.

~~M.L.~~ The issuance of either a certificate of compliance for residential resale or a continued certificate of occupancy shall not preclude the imposition of penalties upon the subsequent discovery of violations.

§ 175-16. Smoke detector certificate upon change of occupancy. [Added 11-16-1998 by Ord. No. 804.]

- A. An applicant for a smoke detector certificate upon change of occupancy of a structure used or intended for residential purposes by not more than two households shall pay an application fee of \$40.
- B. An applicant for a smoke detector certificate in case of change of occupancy of a structure used or intended for use for residential purposes by not more than two households where a reinspection is required shall pay a fee of \$40 for each reinspection.

Commented [MG11]: This section appears to partially belong somewhere else in the town code. Maybe its own section outside of zoning.

§ 175-. Escrow required for one- and two-family residences. [Added 11-16-1998 by Ord. No. 804]

- A. For new construction of a one- or two-family residence, there shall be an application made to the Construction Office. The application shall be accompanied by an escrow deposit in the amount of \$3,000 to cover site inspections by the Borough Engineer. The sum posted hereunder shall remain on deposit with the Borough until the Borough Engineer certifies that all site inspections have been completed and all vouchers for services rendered in connection with such services have been paid in full, after which time any balance remaining shall be refunded. This subsection is solely applicable to new construction on a vacant lot.
- B. In connection with an addition to a one- or two-family residence where soil will be disturbed, applications shall be made to the Construction Office. The application shall be accompanied by an escrow deposit in the amount of \$1,500 for construction of 750 square feet or less plus \$100 for each additional 250 square feet. The sum posted hereunder shall remain on deposit with the Borough until the Borough Engineer certifies that all site inspections have been completed and all vouchers for services rendered in connection with such services have been paid in full, after which time any balance remaining shall be refunded upon issuance of a certificate of occupancy.

Commented [MG12]: This belongs elsewhere for the construction department.

§ 175-19. Fees and Escrow Deposits for Variance and Conditional Use Applications

- A. An applicant for a variance or conditional use shall remit to the Borough of Demarest the following nonrefundable fees:
- (1) Variance pursuant to N.J.S.A. 40:55D-70a (Appeals) or 40:55D-70b (Interpretations): \$200
 - (2) Variance pursuant to N.J. S.A. 40:55D-70c (C Variances): \$250 + \$100 per additional variance
 - (3) Variance pursuant to N.J. S.A. 40:55D-70d (D Variances): \$500 per variance

- (4) Conditional Use: \$500
- B. The application shall be accompanied by an escrow deposit to pay Borough Professional fees in the following amount:
 - (1) Variance pursuant to N.J.S.A. 40:55D-70a (Appeals) or 40:55D-70b (Interpretations): \$2,500
 - (2) Variance pursuant to N.J. S.A. 40:55D-70c (C Variances): \$2,500 + \$250 per additional variance
 - (3) Variance pursuant to N.J. S.A. 40:55D-70d (D Variances): \$3,000 + \$1,000 per additional variance
 - (4) Conditional Use: \$5,000
- C. The escrow deposit posted hereunder shall remain on deposit with the Borough until the Attorney, Engineer and Planner for the Joint Planning Board certifies that all vouchers for services rendered in connection with the application before the Joint Planning Board have been paid in full, after which time any balance remaining shall be refunded upon request by the applicant after the issuance of a building permit.

Commented [MG13]: This should be moved to the land use section.

§ 175-20. Development fees. [Added 8-20-2001 by Ord. No. 841; amended 4-17-2010 by Ord. No. 971; 7-29-2019 by Ord. No. 1067-19]

- A. Purpose. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32 through 38 (N.J.S.A. 52:27D-329.2) and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7). Fees collected pursuant to this section shall be used for the sole purpose of providing very-low-, low- and moderate-income housing in accordance with a court-approved spending plan.
- B. Basic requirements.
 - (1) This section shall not be effective unless and until approved by the Superior Court in connection with Demarest's declaratory judgement action concerning its third-round affordable housing obligation.
 - (2) The Borough of Demarest shall not spend development fees until the Superior Court has approved a spending plan for spending such fees.
- C. Definitions. The following terms when used in this section shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

COAH

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act, or any successor agency charged with the administration of the Fair Housing Act.

COURT

The Superior Court of New Jersey, Law Division, Bergen County.

DEVELOPER

The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE

Money paid by a developer for the improvement of property as authorized by *Holmdel Builder's Association v. Holmdel Borough*, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and regulated by applicable COAH rules.

EQUALIZED ASSESSED VALUE

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

GREEN BUILDING STRATEGIES

Strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

D. Residential development fees.

(1) Imposition of fees.

- (a) Within the Borough of Demarest, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the equalized assessed value for all new residential development, provided no increased density is permitted.
- (b) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a bonus development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential developments.

- (a) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by ordinance or by agreement with the Borough of Demarest, shall be exempt from the payment of development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of this section shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site

plan approval is not applicable, the issuance of a zoning permit and/or construction permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the construction permit is issued.

- (c) Development fees shall not be collected for the expansion of an existing dwelling unit and/or for the construction of an accessory use.
- (d) Owners of residential structures demolished and replaced in-kind as a result of a natural disaster shall be exempt from paying a development fee.

E. Nonresidential development fees.

(1) Imposition of fees.

- (a) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (b) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

(2) Eligible exactions, ineligible exactions and exemptions for nonresidential development.

- (a) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
- (b) The 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (c) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), as specified in Form N-RDF, "State of New Jersey Nonresidential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- (d) A developer of a nonresidential development exempted from the nonresidential

development fee pursuant to the Statewide Nonresidential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.

- (e) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Demarest as a lien against the real property of the owner.

F. Collection procedures.

- (1) Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a construction permit.
- (2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Nonresidential Development Certification/Exemption," to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The Construction Official responsible for the issuance of a construction permit shall notify the Borough Tax Assessor of the issuance of the first construction permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.
- (5) The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (7) Should the Borough of Demarest fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).

- (8) Except as provided in § 175-34 E(1)(c) hereinabove, 50% of the initially calculated development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of the certificate of occupancy.
- (9) Appeal of development fees.
 - (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of Demarest. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - (b) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of Demarest. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing Trust Fund.

- (1) There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Demarest for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by ordinance or by agreement with the Borough of Demarest;
 - (b) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and

(g) Any other funds collected in connection with Demarest's affordable housing program.

(3) Noncompliance.

(a) In the event of a failure by the Borough of Demarest to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved spending plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (affirmed 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the court; or for other good cause demonstrating the unapproved use(s) of funds, the court may authorize the State of New Jersey, Department of Community Affairs (DCA), Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Demarest or, if not practicable, then within the county.

(b) Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the noncompliant condition(s), and upon a finding of continuing and deliberate noncompliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

(4) Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by COAH or the court.

H. Use of funds.

(1) The expenditure of all funds shall conform to a spending plan approved by the court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the court to address the Borough of Demarest's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to, preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing nonresidential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the court and specified in the approved spending plan.

- (2) Funds shall not be expended to reimburse the Borough of Demarest for past housing activities.
- (3) At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of the median income for Housing Region 1, in which Demarest is located.
 - (a) Affordability assistance programs may include, but are not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the spending plan.
 - (b) Affordability assistance to households earning 30% or less of median income may include, but are not limited to, buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very-low-income affordability assistance shall be identified and described within the spending plan.
 - (c) Payments in lieu of constructing affordable housing units on site, if permitted by ordinance or by agreement with the Borough of Demarest, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (4) The Borough of Demarest may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.
- (5) No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
 - (a) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.
 - (b) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the court are not eligible uses of the Affordable Housing Trust Fund.

I. Monitoring. The Borough of Demarest shall provide annual reporting of Affordable Housing

Trust Fund activity to the New Jersey DCA, COAH, LGS, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey DCA, COAH or LGS. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended.

J. Ongoing collection of fees.

- (1) The ability for the Borough of Demarest to impose, collect and expend development fees shall be permitted through the expiration of the repose period covered by its judgment of compliance and shall continue thereafter so long as the Borough of Demarest has filed an adopted Housing Element and Fair Share Plan with the court or with a designated state administrative agency, has petitioned for a judgment of compliance from the court or for substantive certification or its equivalent from a state administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
- (2) If the Borough of Demarest is not pursuing authorization to impose and collect development fees after the expiration of its judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320).
- (3) After the expiration of the judgment of compliance, if the Borough does not pursue or obtain continued authorization, the Borough of Demarest shall not impose a residential development fee on a development that receives preliminary or final site plan approval, retroactively impose a development fee on such a development, or expend any of its collected development fees.

Commented [MG14]: This should have a separate section in the Borough Code.

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ARTICLE V
Residence Districts

§ 175-21. Residential Districts (R-A, R-BB, R-B, R-C, R-D)

A. Permitted uses

- (1) A single, detached dwelling used as a residence by not more than one family ~~and accessory buildings necessary thereto.~~
- (2) Family day cares.
- (3) Community residences.
- (4) Public parks, playgrounds, and open space.
- (5) Municipal Buildings.

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B. Permitted accessory uses

- (1) Garages, attached or detached from the principal dwelling.
- (2) Storage sheds.
- (3) Gazebos.
- (4) Pergolas.
- (5) Above ground or in-ground swimming pools.
- (6) Patios and decks.
- (7) Sports courts ~~such as tennis, volleyball, full and half basketball courts, etc.~~
- (8) Roof-mounted solar panels.
- (9) Customary and incidental accessory uses to a single-family home.
- (10) Professional or business practices, as defined in §175-1.2B, including without limitation, a physician, surgeon, dentist, architect, engineer, lawyer, real estate agent, insurance agent, artist, or musician, shall be a conditional accessory use in the Borough's Residence Districts, provided that all of the following conditions are met:
 - (a) Only one professional or business practice shall be permitted in any one residence.
 - (b) Such professional or business practice shall be carried on wholly within the principal building.
 - (c) Such professional or business practice shall be confined to one floor or basement and shall occupy not more than 400 square feet or 25% of the floor area of said floor or basement, whichever is the lesser.
 - (d) There shall be no advertising on the premises other than a sign subject to §175-17C, and there shall be no display of goods on or about the premises.
 - (e) Retail uses shall not be permitted. There shall be no stock trade, production materials, items for resale, goods stored or sold on the premises. There shall be no outdoor storage of materials or equipment.
 - (f) Not more than one employee shall be employed so that the total number of persons, including the principal, so employed shall be not more than two persons.
 - (g) All parking of motor vehicles for the persons engaged in the professional or business

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practice, including the principal and one employee, must be parked on the premises. A maximum of one business or practice visitor may park on the street.

- (h) The hours of operation of the professional or business practice shall be limited to between the hours of 9 AM and 9 PM.
- (i) The principal conducting the activity shall be the bona fide owner or lessee and resident of the entire residential premises.
- ~~(j) The occupant who conducts the professional or business practice must apply for and obtain a zoning permit prior to commencement of the home occupation. The occupant must complete an application provided by the Zoning Department and must pay a one-time application fee of \$250. The Zoning Department shall conduct an inspection prior to issuance of a permit to ensure that the proposed business complies with this chapter.~~

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C. Permitted Accessory Structures & Encroachments

Yards referred to herein are in each case the entire yard, regardless of the minimum required yards provided in the Limiting Schedule (§ 175-16).

(1) Front Yard.

The following accessory buildings, uses and structures shall be permitted ~~to encroach~~ in the front yard.

- (a) Open trellises of a single, vertical plane.
- (b) Flag poles.
- (c) Walkways.
- (d) Ordinary projections of windowsills, belt courses, cornices, eaves and other architectural features of the principal building.
 - 1. These architectural features ~~may~~ shall be permitted to encroach into the front yard setback not be more than not more than 3 feet in width.

(e) Unroofed steps.

- 1. Unroofed steps shall be permitted to encroach into the front yard setback not more than 5 feet.

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(f) Porches

- ~~(e)1.~~ Porches, whether roofed or unroofed, shall not be permitted to encroach into the front yard setback.

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(2) Side Yard.

The following accessory buildings, uses and structures shall be permitted to encroach in the side yard(s).

- (a) Anything aforementioned permitted in a front yard shall be permitted to encroach.
- (b) Generators and air conditioning units shall be permitted in the side yards, subject to the following provisions:
 - 1. Generators and air conditioning units shall not be permitted to encroach into any required rear or side yard setback.
 - 2. Generators and air conditioning units located in the side yard shall be screened

Commented [MG17]: This means that if you are in the R-D District and your home has a setback of 10 ft. that you will not be permitted an AC unit in your side yard. Do you want this?

from the view of the public right-of-way with evergreen shrubs planted at a minimum height of three feet.

- (c) Decks, Patios & Pools shall be permitted in the side yards, subject to the following provisions:
 1. Decks, Patios & Pools shall not be permitted to encroach into any required rear or side yard setback.
 2. Decks, Patios & Pools located in the side yard shall be located entirely behind the principal building and shall be screened from the view of the public right-of-way by the principal building.

(3) Rear Yard.

The following accessory buildings, uses and structures shall be permitted to encroach in the rear yard.

- (a) Anything aforementioned permitted in a front and side yard shall be permitted to encroach.
- (b) All accessory buildings, structures and uses shall be permitted to encroach subject to the restrictions set forth in Subsection (4) below.
- (4) Accessory buildings, uses and structures shall be permitted in a rear yard, subject to the following regulations, which shall apply to the entire rear yard, not just the required minimum depth:
 - (a) No accessory use, building or structure shall exceed a mean roof height in excess of 12 feet. For purposes of this section, "mean roof height" shall be 1/2 the distance between the highest part of the roof and the top of its supporting wall.
 - (b) All accessory buildings, uses and structures or improvements in any residence district shall be set back from the side & rear property lines at least 10 feet.
 - (c) No swimming pools shall ~~encroach be whole or partly into~~ any front yard.

Commented [MG18]: From discussions with board members and also from knowledge of other towns, I think it would be helpful to have more specific guidelines. Does a pool only require a 10 feet setback? Is this the same for Decks and patios? Our current ordinance provides only this as guidance, where I believe a more specific to the type of structure rule could be added and this could be the all encompassing rule for anything not mentioned.

D. Bulk Regulations

- (1) In all single-family residence zones, the following regulations shall apply to the principal building:

Regulations	R-A	R-BB	R-B	R-C	R-D
Minimum required					
Lot frontage (ft)	200	150	150	100	100
Lot depth (ft)	200	150	150	100	100
Lot area (sq ft)	40,000	30,000	22,500	15,000	10,000
Front yard setback (ft)	50	50	50	35	25
Side yard setback (ft)	25	25	20	15	10
Rear yard setback (ft)	50	50	40	30	30
Rear yard width (ft) ^	50	50	40	30	30

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Maximum permitted					
Number of families	1	1	1	1	1
Building height	33 ft	30 ft	30 ft	30 ft	30 ft

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^A 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.

(2) In all single-family residence zones, the following regulations shall apply:

Regulations	R-A	R-BB	R-B	R-C	R-D
Maximum permitted					
Building coverage	15%	15%	15%	20%	20%
Improved lot coverage	30%	30%	30%	30%	30%
Residential & parking coverage ^B	25%	25%	25%	25% ^C	25% ^C
Floor Area Ratio (FAR)	22.5%	22.5%	22.5%	25% ^D	25% ^D

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Commented [MG20]: Should we consider increasing improved lot coverage for smaller lots?

Commented [MG21]: The thought here is that if we decrease the Floor Area Ratio then grant bonuses for features, to bring the ratio back to the allowed to encourage more pleasing to the eye developments.

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^B Residential and parking coverage shall include the principal building and the driveway, and any other parking areas.

^C In the R-C and R-D zone there will be a sliding scale for the maximum improved lot coverage based on the size of the property, please see section § 175-.(section below)

^D Certain bonuses to Floor Area Ratio will be granted for inclusion of architectural features. See § 175-.(section below)

§ 175-. Floor area ratio bonuses.

Requirements for permitted floor area ratio bonuses.

A. A developer shall be entitled to an increase in the permitted floor area ratio for a residential structure if the proposed development complies with the requirements set forth in § 175-. Below.

B. In order to qualify for the permitted increase in floor area ratio, the following items shall be submitted:

(1) For an architectural guidelines bonus, all of the following items shall be submitted for review by the Borough Planner:

(a) Building elevations for each façade fronting on a public right-of-way and floor plans for all floors in the structure.

(b) Dimensions and calculations for each design component that is being utilized to meet the standards identified in Subsection D below.

(c) An escrow deposit of \$2,000. The Borough may require additional funds if more reviews are needed.

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C. Applications that do not require public hearings before the Joint Planning Board shall be reviewed by the Borough Planner. No building permit shall be issued prior to the completion of the Borough Planner's review.

D. Architectural guidelines. A structure must meet both of the criteria in Subsection D(1) and (2) below to be deemed in compliance with this section. If the structure does meet both criteria below, an additional five-percent floor area ratio over the maximum for a residential structure shall be permitted.

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(1) Facade vertical articulation. Each building facade facing a public right-of-way must have elements of vertical articulation comprised of columns, recessed or projecting window features, entry designs, overhangs, ornamental projection of the molding, or recession or protrusion of the main surface of the wall itself. The vertical articulations shall be designed in accordance with the following.

(a) Each vertical articulation must be a minimum of one foot deep.

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(b) Each projection may extend into the required front yard setback a maximum of two feet in depth.

(c) The total width of the building facade projections, identified in § 175- D(1), must occupy between 20% and 60% of the total facade width.

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(2) Building materials. Exterior building materials shall be classified as either primary, secondary or accent materials. The facade must be designed in accordance with the following:

(a) Primary materials are materials that shall cover at least 80% of the facade of the building.

(b) Secondary materials are materials that shall cover not more than 20% of the facade.

(c) Accent materials may include door and window frames, lintels, cornices and other elements and may cover no more than 10% of the facade.

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Commented [MG22]: Example from another town's ordinance. Needs review by Borough Planner.

§ 175-26. Private garages.

The construction, use or occupancy of a private garage in any residence district shall be permitted only as accessory to a residential dwelling. All vehicles stored in such garage shall be the property of the owner or lessee of the premises and shall be noncommercial by type and by registration, unless otherwise permitted by this chapter.

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§ 175-22. Conditional uses enumerated.

A. In Districts R-B, R-C and R-D, the following uses may be allowed as conditional uses:

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(1) Churches or houses of worship and accessory uses normally incidental thereto, including an administration office, day school and day care for preschool students, all of which shall be contained on the same site. In addition, a residence for attending clergy may be erected as an accessory use. Said uses shall be permitted, subject to the following conditions:

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(a) The height of any structure shall not exceed the maximum requirement of the particular zone. In addition, a spire or steeple may be 30 feet in excess of the maximum height requirement, provided that the average height to width ratio shall not be more than 10, not to be higher than 30 feet in excess of the maximum requirement of the structure for the particular zone, may be permitted on further condition that the average height to width ratio shall not be less than 10.

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(b) Site plan review in accord with Chapter 153, Subdivision and Site Plan Review, of

~~the Code of the Borough of Demarest is required.~~

B. In those portions of Residence Districts R-A, R-BB, R-B, R-C and R-D, inclusive, that are within the OL-Overlay Zone, cellular telecommunications towers and antennas shall be permitted as conditional uses, provided that they comply with the following specifications and standards:

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- (1) An application to construct, modify or place the facilities will be subject to site plan review in accordance with Chapter 153, Subdivision and Site Plan Review, of the Code of the Borough of Demarest.
- (2) The applicant will be required to demonstrate that the development is the minimal necessary to provide adequate communications as may be authorized by the Federal Communications Commission; that the proposed site is an integral part of a communications network. CMK Communications of New Jersey v. Point Pleasant Zoning Board of Adjustment, Docket No. L-3177-95-PW (Law Div. 1996) p. 17, citing NYNEX Mob. Comm. Co. v. Hazlet Tp., 276 N.J. Super. 598, 612 (App. Div. 1994). As part of this requirement the applicant shall demonstrate that:
 - (a) The technology proposed is the least visually intrusive of the available suitable technologies.
 - (b) The height of the tower and/or antennas is the minimum necessary to provide adequate communications.
 - (c) The co-location of the antennas on other existing structures, either within or outside the Borough of Demarest, is either not practical in order to provide adequate communication; is barred by Subsection D(3) below limiting the number of carriers utilizing the same tower; or that the visual impact to the community from the proposed tower and/or antennas on the site is less than exists at such alternative locations.
 - (d) Based upon the inventory of existing towers, antennas or sites approved for towers or antennas belonging to the applicant or others, that are either within the jurisdiction of the Borough of Demarest or within 10 miles of the border thereof, which inventory will include specific information about the location, height and design of each tower, the siting of the cellular telecommunications tower and antennas in the Borough of Demarest is necessary in order for the applicant to provide adequate efficient communications to its customers. [Added 8-18-1997 by Ord. No. 792]
- (3) Not more than one tower shall be located on each site. A single tower may not have more than three commercial antenna carriers utilizing the same tower, and not more than 27 antennas shall be installed on a single tower.
- (4) Area, bulk and yard requirements.
 - (a) Minimum front yard setback: 50 feet or the height of the structure, whichever is greater.
 - (b) Minimum rear yard setback: 50 feet or the height of the structure, whichever is greater.
 - (c) Minimum side yard setback: 50 feet or the height of the structure, whichever is

greater.

- (d) Maximum height of the structure: 100 feet where there is a single commercial carrier; 115 feet where there are two commercial carriers; 130 feet where there are three commercial carriers.
 - (e) Any buildings for equipment serving a cellular telecommunications tower and antennas shall conform with setback requirements otherwise applicable in the zone district (i.e., not OL Zone, but Residence A through D or Community Business I Zones). [Amended 8-18-1997 by Ord. No. 792]
- (5) The base of the antenna support structure and any structures accessory to or servicing the cellular telecommunications tower and antennas structure, except for buildings, shall be screened from the street and adjacent properties in a manner acceptable to the applicable Municipal Land Use Board. If deemed necessary by said Board to mitigate the visual impact of the antennas and related structures, the color, materials and design of the tower and antennas and related structures shall be required to be modified in appearance so as to blend in with the surrounding environment, determined by said Board to be appropriate in the particular situation. Mitigation of visual impact may, without limitation, include such methods as painting, landscaping and selection of antenna materials and design or using an alternative tower structure such as man-made trees, clock towers, bell steeples, light poles or similar alternative-design mounting structures that conceal or camouflage the presence of the tower and antennas. The equipment building shall also be constructed to be architecturally compatible with other structures located on the lot. [Amended 8-18-1997 by Ord. No. 792]
 - (6) All structures shall be suitably secured and shall be equipped with an anticlimbing device.
 - (7) Except as specifically addressed herein, design standards as established by § 153-18, Design Standards, of Chapter 153, Subdivision and Site Plan Review, shall be applicable.
 - (8) Any generator located on the site in connection with the cellular telecommunications tower and/or antenna structure shall be located within an equipment structure. All fuel shall be contained in accordance with New Jersey Department of Environmental Protection Regulations.
 - (9) All permitted exterior lighting, including floodlights, parking lot lighting and lighting necessary for the safety and protection of the property shall be made up of a light source and reflector so selected that acting together the light beam is controlled and not directed across any lot line. Additionally, the intensity of light at any residential property line shall not exceed 1/2 footcandle.
 - (10) The noise level at any residential property line shall not exceed the levels established by N.J.A.C. 7:29-1.2.
 - (11) Applicants must agree to the co-location for multiple carriers permitted by this chapter to the extent said co-location is permitted by the property owner and to the extent carriers wishing to co-locate on an existing tower are willing to reasonably share in the allocation of costs in connection with the construction, modification and maintenance of the cellular telecommunications tower and antenna structures and any equipment structures. [Amended 8-18-1997 by Ord. No. 792]

(12) Removal. [Amended 8-18-1997 by Ord. No. 792]

- (a) In the event that a cellular telecommunications tower and/or antenna structure is abandoned or not operated for a period of one year, the same shall be removed at the sole expense of the operator(s) or property owner(s), who will be individually obligated for the removal, within not more than three months upon written notice from the Borough.
- (b) In the event that an antenna(s) is removed or relocated, the tower or the portion of the tower no longer needed to support the remaining antennas shall be removed at the sole expense of the operator(s) or property owner(s), who will be individually obligated for the removal, within not more than three months upon written notice from the Borough.
- (c) If the operators or property owner(s) fails to remove the cellular telecommunications tower and/or antenna structure within said three-month period, pursuant to Subsection D(12)(a), or fails to remove all or a portion of the cellular telecommunications tower within said three-month period, pursuant to Subsection D(12)(b) above, the Borough may cause said removal at the cost of the operators and property owner(s), and the cost of said removal shall be a lien against the property until the Borough is reimbursed in full for all costs incurred by the Borough, including engineering and attorney's fees, reasonably expended in accomplishing the removal.

(13) The applicant must demonstrate that pursuant to N.J.S.A. 48:17-8 it has obtained the consent, in writing, of all of the owners of property within 200 feet in all directions of the property upon which the tower and antennas are to be located or within 650 feet of the cellular telecommunications tower and antennas, whichever is greater, and that said owners were advised, in writing, by the applicant that the radio wave to be emitted from the cellular telecommunications tower and antennas is a conduit, as that term is used in N.J.S.A. 48:17-8, which will pass upon, through or over said owners' land.

(14) The applicant must demonstrate pursuant to N.J.S.A. 48:17-8 that it has paid for or agreed to pay all owners of property within 200 feet in all directions of the property upon which the tower and antennas are to be located, or within 650 feet of the cellular telecommunications tower and antennas, whichever is greater, full compensation for any taking resulting by virtue of the radio wave to be emitted from said cellular telecommunications tower and antenna upon, through or over said property owners' land. If there is a dispute between the applicant and the property owner as to the value of the land taken, this provision may be satisfied by the applicant having agreed to be subject to a decision, as to the fair market value of the property taken, by condemnation commissioners pursuant to the Eminent Domain Act or some other legally binding arbiter or court of competent jurisdiction.

(15) A landscape buffer of not less than 25 feet in width shall be provided around any cellular telecommunications tower and antennas located on a lot in a residential district, abutting a residential district or abutting a lot containing a residential use.

(16) No signs shall be permitted in connection with the siting of a cellular telecommunications tower and/or antenna structure. [Added 8-18-1997 by Ord. No. 792]

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- (17) An applicant must warrant that the proposed cellular telecommunications tower and antennas shall not interfere with any of the Borough's police, fire, ambulance, public works or any municipal emergency transmission or reception equipment. The applicant must further agree that, in the event that such interference occurs after the applicant's operations commence, the applicant will take all necessary steps to eliminate the interference. If the applicant is unable to eliminate the interference or fails to eliminate the interference in a timely manner, it shall cease operations from the offending location until the problem is corrected, upon receiving 10 days' advance written notice from the Borough. [Added 8-18-1997 by Ord. No. 792]
- (18) The applicant shall post necessary escrows in accordance with N.J.S.A. 40:55D-53.1 and 40:55D-53.2 to pay the cost of application review and inspection charges by outside consultants retained by the Borough's Planning Board (or Zoning Board of Adjustment, if applicable), which outside consultants shall include without limitation structural, mechanical, electrical and electronic engineers. After completion of construction of a cellular telecommunications tower and antennas, said professionals shall perform as-built inspections and certify to the Borough that the cellular communications tower and antennas comply with all acceptable standards before the applicant may obtain a certificate of occupancy and commence operations. [Added 8-18-1997 by Ord. No. 792]
- (19) In addition to the Planning Board (or Zoning Board of Adjustment, if applicable) application process, the applicant must notify the Borough not less than 45 days before construction of a cellular telecommunications tower and antennas or any new or additional services to be installed on said tower. Said notice period may run concurrently with the site plan process in whole or in part. [Added 8-18-1997 by Ord. No. 792]
- (20) The applicant must provide as part of its application package an environmental impact statement (EIS) which shall evaluate the effects of the proposed project on the environment. It shall be prepared by consultants as may be deemed qualified by virtue of their systematic interdisciplinary approach to ensure the integrated use of the natural and social sciences and the environmental design arts. The EIS shall be in a form and content as shall be in conformance with guidelines adopted by resolution by the Planning Board of the Borough of Demarest. [Added 8-18-1997 by Ord. No. 792]
- (21) The applicant shall provide a certification that the proposed cellular telecommunications tower and antennas do not interfere with or adversely affect any properties, buildings or structures of historical significance located in the Borough of Demarest. [Added 8-18-1997 by Ord. No. 792]
- (22) Applicants shall be required as a condition of approval to obtain liability insurance with limits established by resolution of the Planning Board. The Borough of Demarest shall be named as an additional insured on all insurance policies, and the Borough shall be entitled to not less than 30 days' notice of cancellation, termination or modification of the policy. [Added 8-18-1997 by Ord. No. 792]
- (23) Any applicant applying to a Borough Municipal Land Use Board to construct, modify or place a cellular telecommunications tower and antennas in any area other than the OL-Overlay Zone shall be required, in addition to establishing proofs regarding the affirmative and negative criteria established by the Municipal Land Use Law,¹ to meet and satisfy all the specifications and standards of this § 175-10D in the same manner as

if said cellular telecommunications tower and antennas were to be sited in the OL Zone.

§ 175-23. Affordable accessory apartments.³ [Added 8-20-2001 by Ord. No. 842; amended 4-17-2010 by Ord. No. 972; 8-26-2019 by Ord. No. 1069-19]

A. Where permitted.

- (1) Notwithstanding any provision of this Borough of Demarest Zoning Chapter to the contrary, affordable accessory apartments shall be permitted on a lot within the A, BB, B, C or D Zoning Districts which meets the following requirements:
 - (a) The lot must fully conform to the minimum lot dimensions specified for the subject zoning district in the schedule entitled Limiting Schedule, District, as referenced within and attached to Article VI of this chapter;
 - (b) The lot must have a single-family detached dwelling situated thereon.

B. Requirements. All affordable accessory apartments shall meet the following requirements, although the Planning Board shall have the right to grant exceptions to one or more of the requirements for good cause shown by the applicant:

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- (1) The minimum yard dimensions specified for the subject zoning district in the schedule entitled "Limiting Schedule, District," as referenced within and attached to Article VI of this chapter, shall be adhered to, provided that any existing yard dimension that is less than a minimum required dimension shall be permitted to remain, but shall not be made less by providing the affordable accessory apartment.
- (2) All affordable accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey, including all applicable building codes.
- (3) The affordable accessory apartment shall be affirmatively marketed to low- and moderate-income households throughout the Borough's Housing Region and shall be rented only to a household which is either a low- or a moderate-income household at the time of occupancy of the unit.
- (4) The affordable accessory apartment shall, for a period of at least 10 years from the date of the issuance of a certificate of occupancy, be rented only to low- or moderate-income households.
- (5) Rents of affordable accessory apartments shall be affordable to low- or moderate-income households in accordance with the applicable provisions at N.J.A.C. 5:93-7.4, and shall specifically include an allowance for utilities in accordance with N.J.A.C. 5:93-7.4(h).
- (6) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the affordable accessory apartment is located running with the land and limiting its subsequent rental to the requirements of § 175-11C(4) and (5) hereinabove.
- (7) Each affordable accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants. It shall consist of no less than two rooms, one of which shall be a full bathroom.
- (8) The affordable accessory apartment shall have a separate door with direct access to the

outdoors.

(9) The affordable accessory apartments shall be affirmatively marketed to households within the Northeast Housing Region consisting of Bergen, Hudson, Passaic and Sussex Counties, in accordance with the substantive rules and the affirmative marketing plan provisions in § 175-11F of this section hereinbelow.

(10) In the case of an existing accessory apartment previously created illegally on the subject property, the owner is entitled to legitimize the accessory apartment as an affordable accessory apartment under the terms of this section, provided that all of the requirements of this and all related affordable criteria shall apply, and except that no subsidy need be provided by the Borough of Demarest.

C. Administration of the affordable accessory apartment program. The Borough of Demarest's designated administrative agent shall administer the affordable accessory apartment program in accordance with the following:

(1) The administrative entity shall administer the affordable accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports, and affirmatively marketing the affordable accessory apartment program.

(2) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with any and all affordable housing requirements and/or the provisions of this section. All denials shall be in writing with the reasons clearly stated.

(3) The Borough of Demarest shall provide \$20,000 per unit to subsidize the physical creation of the first 10 affordable accessory apartments. The program shall be funded by the Borough's existing Affordable Housing Trust Fund.

(4) Prior to the grant of such subsidy to a property owner, the property owner shall enter into a written agreement with the Borough of Demarest insuring that the apartment shall meet the requirements of this section.

D. Application procedures. Each application for the creation of an affordable accessory apartment shall submit the following information to the administrative entity:

(1) A sketch of floor plan(s) showing the location, size and relationship of both the affordable accessory apartment and the primary dwelling within the building or in another structure;

(2) Rough elevations showing the modification of any exterior building facade to which changes are proposed; and

(3) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum required building setback lines; the required parking spaces for both dwelling units; and any natural or man-made conditions which might affect construction.

E. Affirmative marketing. The administrative entity shall be responsible to prepare and execute an affordable accessory apartment affirmative marketing plan consistent with the Borough's

adopted Affirmative Marketing Plan.

§ 175-24. Residential Multifamily District.
[Added 8-26-2019 by Ord. No. 1066-19]

A. Permitted principal uses.

- (1) Townhomes.
- (2) Stacked flats.

B. Permitted accessory uses.

- (1) Trash.
- (2) Fences.
- (3) Landscaping and buffering.
- (4) Open space.

(5) [Roof-mounted solar panels](#)

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C. Bulk standards.

- (1) Minimum lot area: two acres.
- (2) Minimum lot width: 150 feet.
- (3) Minimum front yard setback: 35 feet.
- (4) Minimum side yard setback: 15 feet.
- (5) Minimum rear yard setback: 50 feet.
- (6) Maximum building coverage: 20%.
- (7) Maximum impervious coverage: 50%.
- (8) Maximum building height: two stories and 30 feet.
- (9) Maximum density: four units per acre.

D. Architectural standards.

- (1) Garage doors shall face in to the center of the site.
- (2) The building closest to County Road shall be designed to look like a large, single-family home.
- (3) Building offsets (projects and recesses) shall be provided every 35 feet to break up the mass of the buildings. These offsets shall be a minimum of eight inches.

E. Parking.

- (1) Parking shall be provided in conformance with the Residential Site Improvement Standards.

- (2) Where provided, garages shall be used to park cars and not converted to living space or used as storage units.

F. Signage.

- (1) One monument sign may be installed to identify the development.
- (2) Said sign shall be a maximum of 20 square feet and a maximum of 5 feet tall.
- (3) Said sign shall be set back 10 feet from the property line.
- (4) Said sign may be externally illuminated.

G. Lighting.

- (1) A lighting plan prepared by a qualified individual shall be provided with site plan applications.
- (2) All parking areas shall have a minimum average illumination of 0.5 footcandles.
- (3) No lighting at the property line shall exceed 0.5 footcandles.
- (4) Light fixtures shall be full cutoff and no taller than 15 feet.

H. Landscaping.

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, screen parking areas and mitigate adverse visual impacts.
- (2) Shade trees shall be provided at a rate of one per 50 linear feet along the public right-of-way. Shade trees shall be a minimum three-inch caliper.
- (3) Side yard setbacks shall be suitably landscaped where they abut existing single-family homes to provide a solid screen. Said screen shall consist of six-foot-tall evergreens.
- (4) Parking and driveways areas shall be landscaped with a combination of shade trees and shrubs. Shrubs shall be a minimum of 2.5 feet tall at installation.
- (5) Foundation plantings shall be provided to soften the mass of the buildings. Said plants shall provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed development.

I. Trash.

- (1) Trash and recycling shall be stored inside each individual garage space.

J. Affordable housing.

- (1) Block 145, Lot 5 shall provide two affordable family rental units in accordance with the Settlement Agreement.
- (2) The affordable units shall meet the standards listed in § 175-46, Affordable housing regulations.
- (3) The developer/HOA shall be responsible for retaining a qualified administrative agent, who shall be the Borough's administrative agent, or a certified entity approved by the Council.

- (4) All necessary steps shall be taken to market affordable units provided creditworthy pursuant to applicable law.

§ 175-25. Residential Multifamily-2 Overlay District.
[Added 5-18-2020 by Ord. No. 1080-20]

A. Permitted principal uses.

- (1) All uses permitted in the Residential A Zone.
- (2) Townhouses.

B. Permitted accessory uses.

- (1) Recreation centers for the condominium development, lounges, game rooms, private recreational facilities and similar uses serving condominium developments.
- (2) Community pool.
- (3) Off-street parking.
- (4) Fences and walls.
- (5) Signs.
- (6) Trash enclosures.
- (7) Landscaping and buffering.
- (8) Public or private open space facilities.
- (9) Gazebo to be centrally located containing mailboxes for the condo unit owners.

(10) [Roof-mounted solar panels](#)

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C. Bulk standards.

- (1) Minimum tract area: 18 acres, which shall include any acreage for which an environmental easement has been granted to the New Jersey Department of Environmental Protection.
- (2) Minimum tract setback, excluding access roads and utilities: 25 feet, except for patios and decks, which patios and decks may be set back 20 feet from any property line, and further excepting accessory buildings and accessory uses abutting Block 120, Lot 16.02 (Alpine Country Club), which accessory buildings or accessory uses may be set back five feet from the property line at such locations.
- (3) Minimum distance between buildings:
 - (a) Eighteen feet between principal buildings.
 - (b) Accessory buildings may be 10 feet from other accessory buildings or principal buildings.
- (4) Maximum building length: 200 feet excluding eaves, gutters, and covered porches.
- (5) Maximum building coverage: 10%.

- (6) Maximum impervious coverage: 15%.
- (7) Maximum density: 24 units for the entire tract.
- (8) Maximum building height: 2.5 stories and 37 feet, which is measured for each individual unit from the average finished grade to the peak. Average finished grade shall be calculated by taking proposed finished grades at ten-foot intervals along each exterior wall of each individual unit at the foundation line.

D. Architectural standards.

- (1) Buildings shall be constructed of brick, stone, cast stone, hardy plank siding, or other high-quality material.
- (2) Buildings shall be designed to avoid long monotonous, uninterrupted walls or rooflines. Wall offsets shall be used to provide architectural interest and variety and relieve the visual effect of a simple, long wall. Said offsets include projections from the building, such as balconies, canopies, porches, and decks.
 - (a) The maximum spacing between wall offsets shall be 25 feet.
 - (b) The minimum projection or depth of any offset shall be at least one foot.
- (3) Roofline offsets, which include dormers and gables, shall be provided to provide architectural interest and variety to the massing of a building. The maximum spacing between roof offsets shall be 35 feet.
- (4) The architectural design of the front facade shall be continued around all visibly exposed sides of a building. All sides of a building shall be consistent in design, including style, materials, and details.
- (5) All main building entrances shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- (6) Gable and hipped roofs shall be used to the greatest extent possible. Both gable and hipped roofs shall provide overhanging eaves on all sides that extend a minimum of one foot beyond the building wall.

E. Parking.

- (1) Parking shall be provided in conformance with the Residential Site Improvement Standards,⁶ including the guest parking requirements.
- (2) A minimum of one attached garage space is required per unit.

F. Signage.

- (1) One monument sign is permitted to be installed to identify the development, and one sign shall be permitted to identify the roadway as private.
- (2) Said sign shall be a maximum of 20 square feet and a maximum of five feet tall.
- (3) Said sign may be externally illuminated.

G. Lighting.

- (1) A lighting plan prepared by a qualified individual shall be provided with site plan applications.
- (2) All parking areas shall have a minimum average illumination of 0.5 footcandles.
- (3) Public and private streets shall have a minimum average of one footcandle over the cartway.
- (4) No lighting at the property line shall exceed 0.5 footcandles, except for where there is an access road.
- (5) Light fixtures shall be full cutoff where required and no taller than 15 feet.

H. Landscaping.

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, screen parking areas, and mitigate adverse visual impacts.
- (2) Landscape plans shall be prepared by a New Jersey licensed landscape architect. A plant list shall be provided, listing quantity, plant key, botanical name, common name, installation size, and mature size.
- (3) Shade trees shall be provided easterly from the intersection of Duane Lane and Brenner Place at an average of 50 feet on center. Shade trees shall be provided along all internal roadways, whether public or private, at an average of 60 feet on center. Shade trees shall be a minimum of three inches caliper and 10 feet in height at the time of planting. The following shade tree species are permitted:
 - (a) Regent Scholar.
 - (b) Chinese Elm.
 - (c) October Glory Maple.
 - (d) Katsure tree.
 - (e) Maidenhair tree.
 - (f) Greenspire Linden.
 - (g) Village Green Zelkova.
 - (h) Red Sunset Maple.
 - (i) Such other species as approved by the Borough Engineer or Planner.
- (4) Foundation plantings shall be provided to soften the mass of the front facade of buildings. Said plants shall provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed development.
- (5) Surface parking areas shall be landscaped with a combination of shade trees and shrubs. Shade trees shall be a minimum three-inch caliper and shrubs shall be no less than one foot tall at the time of installation. One shade tree and one shrub shall be provided for every 10 parking spaces.
- (6) The tract setback shall be suitably landscaped, where required by the Planning Board,

to provide a visual screen from adjacent uses. Where existing vegetation can provide a suitable screen, the existing vegetation shall be illustrated on the landscaping plan to confirm. If additional landscaping is required, the landscape architect shall develop a plan that reasonably accomplishes same. Excluded from the foregoing shall be areas that are to be used for detention/water quality facilities. In such areas, the developer, through its landscape architect, shall create an appropriate landscape area separating the new development from the existing golf course.

I. Fences, walls, and entrance gate/piers.

- (1) Fences and walls between a building and public street shall be a maximum of six feet tall.
- (2) Fences and walls not located between a building and public street shall be a maximum of six feet tall.
- (3) The piers supporting the entrance gates to the development and the adjoining walls to such piers shall not exceed seven feet in height plus decorative lighting may be installed on top, provided such decorative lighting does not exceed two feet for a total of not more than nine feet in height. The entrance gates shall not exceed nine feet in height.

J. Trash. Trash and recycling may be stored inside each individual unit, or in the recreation center area, or in a common trash enclosure subject to the following requirements:

- (1) The trash enclosure shall not be visible from any public street.
- (2) The trash enclosure shall be constructed of a six-foot-tall masonry wall on three sides and a solid heavy-duty gate closure on the fourth side.
- (3) The trash enclosure shall be surrounded and screened on three sides by a mixture of evergreen plants. Evergreen plants must be at least six feet tall at the time of planting.

K. Affordable housing.

- (1) Block 119, Lots 1.05, 1.06, and 1.07 (which were to have been changed to Block 119, Lot 1.51) and Block 120, Lots 1.03 and 1.04 (which were to have been changed to Block 120, Lots 1.31, 1.32, 1.41 and 1.42 on the Tax Assessment maps of the Borough of Demarest) shall provide five affordable housing units through a payment in lieu of \$1,000,000. The payments shall be made based upon the milestones set forth herein:
 - (a) Upon the commencement of site work, road construction or excavation: \$250,000. The term "site work" is specifically understood to exclude the eastern extension of Duane Lane including the construction of the cul-de-sac and site clearing of the property;
 - (b) Upon the issuance of the first building permits(s) for actual construction of the first townhouse building: \$250,000;
 - (c) Upon issuance of the 10th certificate of occupancy to occupy residential units in the development: \$500,000.

L. Utilities. All utilities shall be underground.

M. Site improvement standards.

- (1) Streets, curbs, gutters, sidewalks (which at the discretion of the developer may be waived if they are not on a public street), pavements, street signs, parking lots, the water supply, fire hydrants, the sanitary sewer system, and stormwater management shall be designed pursuant to the Residential Site Improvement Standards (N.J.A.C. 5:21).

N. Off-site improvements.

- (1) Off-tract improvements are required whenever an application for development requires the construction of off-tract improvements that are clearly, directly, and substantially related to or necessitated by the proposed development. The Planning Board, as the case may be, may require as a condition of final site plan or subdivision approval that the applicant provide for such off-tract improvements if such off-tract improvements are necessitated by the townhouse development. Off-tract improvements shall include water, sanitary sewer, drainage, and street improvements.
- (2) Determination of cost. When off-tract improvements are required, the Borough Engineer shall calculate the cost of such improvements in accordance with the procedures for determining performance guaranty amounts in N.J.S.A. 40:55D-53.4. Such costs may include, but not be limited to, any or all costs of planning, surveying, permit acquisition, design, specification, bidding, construction, construction management, inspection, legal, traffic control and other common and necessary costs of the construction of improvements. The Borough Engineer shall also determine the percentage of off-tract improvements that are attributable to the applicant's development proposal and shall expeditiously report his findings to the Planning Board and the applicant.
- (3) Improvements required solely for the application's development. Where the need for an off-tract improvement is necessitated by the proposed development and no other property owners receive a special (i.e., more than incidental) benefit thereby, or where no planned capital improvement by a governmental entity is contemplated, or the improvement is required to meet the minimum standard of the approving authority, the applicant shall be solely responsible for the cost and installation of the required off-tract improvements. The applicant shall elect to either install the off-tract improvements or pay the municipality for the cost of the installation of the required off-tract improvements.
- (4) Performance guaranty. If the applicant elects to construct the improvements, the applicant shall be required to provide, as a condition of final approval, a performance guaranty for the off-tract improvements in accordance with N.J.S.A. 40:55D-53 and § 172-12.1N(2) above.
- (5) Certification of costs. Once the required off-tract improvements are installed and the performance bond released, the developer shall provide a certification to the Borough Engineer of the actual costs of the installation. The Borough Engineer shall review the certification of costs and shall either accept them, reject them, or conditionally accept them. In the review of costs, the Borough Engineer shall have the right to receive copies of invoices from the developer sufficient to substantiate the certification. Failure of the developer to provide such invoices within six months of the Borough Engineer's request shall constitute forfeiture of the right of future reimbursement for improvements that benefit other.
- (6) Time limit for reimbursement. Notwithstanding any other provisions to the contrary, no reimbursement for the construction of off-tract improvements providing excess capacity

shall be made after 10 years has elapsed from the date of the acceptance of the certification of costs by the Borough Engineer.

O. General.

- (1) All applications within the Residential Multifamily-2 Overlay District shall include a statement from the developer or its professional that the proposed development is in compliance with § 153-4H of the Borough of Demarest Code.
- (2) All applications within the Residential Multifamily-2 Overlay District shall comply with § 153-4, Performance standards.
- (3) Site plans submitted as part of any application within the Residential Multifamily-2 Overlay District shall be prepared in accordance with § 153-5.

ARTICLE VI
Golf Course
[Added 8-20-2001 by Ord. No. 840]

§ 175-27. Permitted uses.

In the G Golf Course District, the following uses are permitted by right:

- A. Single-family residence on minimum 40,000 square foot lot (see Limiting Schedule, District').

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§ 175-28 Accessory uses.

- A. The following accessory uses are permitted in conjunction with a single-family residence:

- (1) Garage parking spaces, attached or detached from the principal dwelling.
- (2) Storage sheds.
- (3) Gazebos.
- (4) Pergolas.
- (5) Above ground or in-ground swimming pools.
- (6) Patios and decks.
- (7) Sports courts such as tennis, volleyball, full and half basketball courts, etc.
- (8) Roof-mounted solar panels.
- (9) Customary and incidental accessory uses to a single-family home.

- B. A clubhouse, subject to the following standards:

- (1) It must be located entirely within 600 feet of the property line fronting the county road on which the golf course has its frontage.
- (2) Minimum setback of 200 feet from Anderson Avenue, the county road on which the golf course has its frontage.
- (3) Minimum setback of 100 feet from any property line other than the county road on which the golf course has its frontage.
- (4) Maximum floor area of the clubhouse building (excluding other club facilities buildings and structures) of 40,000 square feet.
- (5) Maximum clubhouse building coverage of 20,000 square feet.
- (6) Maximum clubhouse height of 40 feet from the average elevation of the proposed finished grade all around the clubhouse to the highest point of the roof measured to the horizontal line halfway between the eave and ridge of the roof, but in no event shall the ridge of the roof exceed 45 feet in height and 2 1/2 stories.

- C. Club facilities accessory to a clubhouse, subject to the following standards:

- (1) Minimum setback of 10 feet from Anderson Avenue, the county road on which the golf course has its frontage.
- (2) Minimum setback from lot lines in Residence A District of 25 feet excepting a private drive

or private road need only be set back not less than 15 feet from lot line in Residence A District.

- (3) Minimum number of parking spaces of 72 and maximum number of parking spaces of 215. Front yard parking is permitted.
- (4) Maximum number of tennis courts is eight.
- (5) Maximum impervious area of clubhouse and club facilities accessory to a clubhouse of six acres.
- (6) The county road on which the golf course has its frontage shall be buffered from any uses or structures by deciduous street trees not less than 2 1/2 inches caliper measured six inches above the ground planted 40 feet on center with understory conifer shrubbery of a type three feet to four feet in height when fully grown subject to sight distance requirements. This standard is the minimum standard which may be modified pursuant to the provisions of § 163-6 of the Borough Code.
- (7) Notwithstanding the frontage requirements, the Alpine Country Club may access its club facilities accessory to clubhouse, from a new street (to be dedicated to the Borough) located in Block 120, Lot 13.
- (8) The tennis courts may be lighted, provided that all lights must be turned off by 10:00 p.m. daily.

D. Club facilities accessory to a secondary social facility, subject to the following standards:

- (1) Access must be achieved through private driveways internal to the site originating from the Anderson Avenue access.
- (2) The maximum floor area of a secondary social facility shall be 20,000 square feet.
- (3) The maximum building coverage of a secondary social facility shall be 10,000 square feet.
- (4) The maximum height of a secondary social facility shall be 31 feet and eight inches (i.e., not more than 10 feet above the 21 feet, eight-inch structure which existed in the general area of Academy Lane as of November 2000).
- (5) A secondary social facility shall be set back a minimum of 190 feet from any municipal street, excepting that any porte cochere must only have a minimum setback of 170 feet.
- (6) Club facilities accessory to a secondary social facility shall meet the following standards.
 - (a) Maximum number of parking spaces permitted shall be 160.
 - (b) Parking areas shall be set back a minimum 70 feet from any public street.
 - (c) All uses, except as set forth in Subsection E. below, shall have a minimum setback of 50 feet from any public street and from any residential property line.
 - (d) Lighting shall be limited to that which is the minimum permitted by the Code of the Borough of Demarest.
 - (e) Outdoor speaker or public address systems and all manner of sound projection devices are strictly prohibited.
 - (f) Setback areas from public streets shall be densely landscaped to produce an appropriate and substantial buffer. The landscaping shall include at least one row of trees which are a minimum of 15 feet in height to ensure that all floors of the secondary social facility are substantially shielded from neighboring properties; and

to shield headlights from vehicles parking in a parking area accessory to a secondary social facility.

- (g) Fencing constructed of a solid material and uninterrupted shall be required to shield headlights from vehicles parking in a parking area accessory to a secondary social facility. Said fencing shall not be required in those areas where a structure exists which shields the headlights of vehicles. Low level landscaping shall also be required on the side of the fence nearest contiguous property lines in addition to the landscaping set forth in Subsection D(6)(f) above.

E. Additional club facilities.

- (1) Notwithstanding the provisions of Subsections B, C and D above, there shall be permitted an accessory structure for maintenance that shall meet the following standards:

- (a) The maintenance building must be set back a minimum of 35 feet from any public street and 75 feet from any other property line.
- (b) The maintenance building may not exceed 8,000 square feet.
- (c) Activities in the maintenance building must be conducted so that noise emanating from said building minimally meets the standards of N.J.A.C. 7:29-1.2(a).
- (d) The maintenance building shall be screened from a public street and neighboring residential properties by a row of trees which are a minimum of 15 feet in height.

- (2) Notwithstanding the provisions of Subsections A, B, and C above, there shall be permitted an accessory structure for storage of items not in use that will remain stored uninterruptedly for not less than a season at a time (i.e., dead storage) or golf carts that shall meet the following standards.

- (a) There shall be a minimum setback from a public street of 10 feet.
- (b) It shall have a maximum floor area of 5,100 square feet.
- (c) There shall be landscaping shielding the storage/golf cart building from neighboring uses, including without limitation 15 feet evergreens.

F. Roof-mounted solar panels.

Section § 175-29 Conditional uses enumerated.

- A. Golf courses and golf courses with club facilities in the G – Golf Course District must meet the following conditions:

- (1) Minimum contiguous area of 140 acres of land within the Borough.
- (2) Minimum frontage of 450 feet along a section of Anderson Avenue, a County Road within the Borough. Vehicular access to the site shall be restricted to access from said Anderson Avenue.
- (3) The golf course shall be an eighteen-hole regulation course.

ARTICLE VII
Community Business District I

§ 175-30. Permitted uses.

In the Community Business District I, the following uses are permitted by right:

- A. Those uses permitted in residence districts (Article IV).
- B. A store or shop for the conduct of retail business, provided that all merchandise shall be contained wholly within a building.
- C. A personal service shop.
- D. Professional offices
- E. Restaurants, including casual restaurants.
- F. A laundry and/or dry-cleaning agency, provided that no laundering or dry cleaning is done on the premises.
- G. Child care centers
- H. Instructional uses.
- I. Medical offices
- J. Public parks, playgrounds, and open space

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§ 175-31. Accessory uses

In the Community Business District I, the following accessory uses are permitted by right:

- A. Off-street parking and loading.
- B. Signs.
- C. Fences and walls, including retaining walls.
- D. Roof-mounted solar panels.
- E. Outdoor dining associated with permitted food establishments it permitted so long as a four-foot-wide unobstructed pedestrian passage is provided.

§ 175-32. Prohibited uses

The following uses are prohibited in the Community Business District I:

- A. Any use not specifically permitted shall be prohibited.
- B. Automobile repair stations.
- C. Gas stations.
- D. New or used car lots.
- E. Tattoo parlors.
- F. Adult uses.
- G. Drive-through facilities associated with retail, restaurants, and casual restaurants.

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§ 175-33. Prohibited uses

- A. In those portions of the Community Business I District that are within the OL-Overlay Zone, cellular telecommunications towers and antennas shall be permitted as conditional uses,

provided that they comply with the specifications and standards of Section §175-10B.

§ 175-34. Bulk Regulations

- A. Minimum side yard setback: 15 feet.
- B. Minimum rear yard depth: 30 feet.
- C. Maximum building coverage: 50%
- D. Maximum building stories: 2
- E. Maximum building height: 30 feet.
- F. Maximum impervious surface area: 90%

§ 175-35. Encroachments

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:

- A. No accessory use, building or structure shall be erected with a mean roof height in excess of 12 feet. For purposes of this section, "mean roof height" shall be 1/2 the distance between the highest part of the roof and the top of its supporting wall.
- B. All accessory uses, buildings or structures in any community business district shall be set back from the rear property line at least five feet, except when abutting a residence district, where such setback shall be at least 10 feet.
- C. Generators and air conditioning units shall be permitted in the side or rear yards, subject to the following provisions:
 - (1) Generators and air conditioning units shall not be permitted to encroach into any required rear or side yard setback.
 - (2) Generators and air conditioning located in the side yard shall be screened from the view of the public right-of-way.

ARTICLE VIII
Supplementary Regulations For All Districts

§ 175-36. Area and bulk. ~~Amended 4-15-1996 by Ord. No. 774~~

The schedules entitled "Limiting Schedule, District" and "Limiting Schedule, Conditional Use" shall be deemed to be a part of this article and shall govern the use of land and buildings within the Borough of Demarest.

§ 175-37. Signs.

A. All Districts

(1) Permitted

(a) Political Signs

(b) Real Estate Signs

[1] Not more than four square feet in area.

[2] Located at least two feet from the front property line.

[3] In no case shall such sign be illuminated.

(c) A sign of not more than two square feet advertising the location elsewhere of a church or a public or semipublic building shall be permitted.

(d) Construction Signs

[1] Not more than four square feet in area.

[2] In no case shall such sign be illuminated.

[3] Construction signs shall only be permitted during the course of construction after a valid construction permit has been issued and on the issuance of a CO, CA or TCO shall be removed.

(e) Any sign for the purpose of identifying the premises of a club or a public or quasi-public building.

[1] Such sign shall not be more than six square feet in area

[2] Such sign shall refer only to the premises which it occupies.

[3] Such sign shall either be affixed to the building or situated not less than 10 feet from the lot line bordering the street.

[4] Notwithstanding the above, a church bulletin board of not more than 20 square feet may be placed not closer than 10 feet to the front lot line.

[5] In no case shall such sign be illuminated except by a light fixture which is an integral part of the sign and so arranged as to have the light shine only on the sign.

(2) Prohibited

(a) Billboard Signs

(b) Neon tubes outlining all or part of a building or premises are strictly prohibited.

(3) Temporary Signs

(a) Temporary Signs shall be permitted subject to the following regulations.

[1] No temporary sign shall be placed on public property.

[2] Temporary signs shall not be more than 6 square feet in size.

[3] Temporary signs shall not be situated less than 5 feet from a property line.

[4] Temporary signs shall not impede the flow of pedestrian traffic.

[5] Temporary signs shall only remain for 30 days, with the option to request two 30 day extensions from the zoning officer.

B. Residence Districts

(1) Permitted

(a) Open House Signs

(b) Garage or Estate Sale Signs

(c) Business Signs for a permitted home occupation

[1] No Business Sign will be granted without the business first obtaining the required use permit for their business from the zoning officer.

[2] Such sign shall only advertise or promote the business located within said building.

~~[2]~~[3] Such signs shall not exceed a height of 10 inches or a length of 18 inches.

~~[3]~~[4] There shall not be more than one sign for each building per lot.

~~[4]~~[5] In no case shall such signs be illuminated except by a light fixture which is an integral part of the sign and so arranged as to have the light shine only on the sign.

(2) Prohibited

(a) Advertising Signs

(b) Portable Signs

C. Community Business District

(1) Permitted

(a) Business Signs

[1] Such sign shall not exceed 18 inches in height.

[2] Such sign shall not cover more than 75% of the width of the building to which

it is attached.

[3] Such sign shall not project more than one foot from said building.

[4] Such sign shall only advertise or promote the business located within said building.

(b) Window Signs

~~(b)[1]~~ A window sign shall not cover more than 30% of the window.

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(c) Wall Signs

(d) Sidewalk Signs

[1] Such sign shall not be more than 5 feet from the business.

[2] Such sign shall not impede the flow of pedestrian traffic.

[3] Such sign shall not be more than 3 feet in height.

(e) Projecting Signs

(2) Prohibited

(a) Monument Signs

(b) Free Standing Signs

§ 175-38. Fences.

No fence shall be erected without first obtaining a zoning permit.

A. All fences erected in the Borough of Demarest shall be subject to the following requirements:

- (1) The maximum height for rear and side yard fences shall not exceed six feet.
- (2) The total height of the fence will not include any slight undulations of the grounds, provided that 80% of the fence does not exceed the maximum height of six feet.
- (3) Front yard fences shall be less than 50% solid and shall not exceed a maximum height of four feet.
- (4) Fences must be constructed with the face or finished side away from the property and the structural side toward the inside.
- (5) Fences shall not impede the flow of natural drainage and shall not cause surface water to be blocked or dammed to create ponding.
- (6) Every fence or wall shall be maintained in a safe, sound, upright condition.
- (7) No fence may be erected so as to encroach upon a public right-of-way or to interfere with vehicular traffic or with the sight triangles on corner lots.
- (8) Fence heights will be measured from the Average Natural Grade, excluding berms and swales.

- (9) The following fences and fencing materials are specifically prohibited: barbed-wired fences, short-pointed fences, canvas, cloth, electrically charged fences, poultry netting, temporary fences such as snow fences, expandable fences and collapsible fences, at any location of the lot upon which a dwelling or structure is situated.

B. Pool Fences

- (1) All swimming pools now or hereafter constructed shall be enclosed by a substantial fence no less than 48 inches in height, so constructed as to prevent, within reason, any person from gaining access beneath or through such fence, and it shall have a similarly substantial self-latching and self-closing gate of the same height as the fence with latches placed four feet in height and with facilities for locking the gate when the pool is unguarded or unattended. All pool fences require a UCC permit from the Construction Official.

C. Temporary Construction Fences

- (1) During construction on such property and until a certificate of occupancy is issued, a temporary fence shall be maintained.
- (2) Upon issuance of a CO such fence shall be promptly removed.
- (3) Such a fence shall be a minimum of 4 feet in height, and a maximum of 6 feet in height.
- (4) Such a fence shall be permitted up to the property lines and shall completely encompass the work area.
- (5) Such a fence shall be maintained in a clean and upright condition.
- (6) Such a fence shall be locked ~~by chain~~ at all times that the construction site does not have workers present, construction is not actively taking place.
- (7) Such fence shall not require a zoning permit when an active construction permit exists for the property.

§ 175-39. Walls.

~~A. All Walls~~

- ~~(1) No wall erected on any lot shall exceed 6 feet in height.~~
- ~~(2) Walls shall be set back 10 feet from all rear lot lines and side lot lines~~

A. Standards for a non retaining wall?

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B. Retaining Walls

- (1) Retaining walls shall not exceed 4 feet in height.
- (2) Retaining walls will have their height measured collectively when placed behind each other unless there is a minimum of 4 feet between each wall.

~~C. Landscaping Walls~~

- ~~(1)(3) Any wall used in connection with general landscaping 1 foot in height or less shall not require a permit.~~

§ 175-40. Garages.

A. Every residential dwelling shall be required to have at least one+ attached garage with the following requirements:

- (1) Minimum width: 12 feet.
- (2) Minimum depth: 22 feet.

B. There shall not be more than one private garage appurtenant to each dwelling.

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§ 175-41. Off-street parking.

In conjunction with any building or use of land, there shall be provided on the same lot therewith sufficient parking spaces to meet the minimum requirements specified herein. No parking area once established shall be diminished unless the remaining parking area meets the minimum requirements specified herein.

A. All Districts

- (1) Library, museum or club: one space for each employee, plus one space for each 300 square feet of net floor area or any fraction thereof.
- (2) Schools, grades 1 to 8 inclusive: one space per employee, including teachers, plus 10%.
- (3) Schools, grades 9 to 12 inclusive: one space per employee, including teachers, plus one space for each six pupils.
- (4) Places of worship: parking shall equal 40% of the maximum fire occupancy of the entire building or structure.
- (5) Parks and playgrounds: There shall be no overnight parking on the premises. There shall be no parking space within a dedicated street right-of-way adjacent to the park or playground.
- (6) Parking for the Demarest Nature Center shall be within the boundaries of the Demarest Nature Center or on adjacent public lands owned by the Borough and with agreement of the governing body. A minimum number of parking spaces shall be available to accommodate 1/3 of the lawful membership of the Demarest Nature Center.
- (7) Where any of the foregoing uses, other than places of worship, consist of structures containing auditoriums, halls, cafeterias, gymnasiums or other rooms that may be used for a public assemblage, there shall be provided one additional parking space for each one-hundred-square-foot area of such auditorium, hall, cafeteria or gymnasium.

B. Residence Districts (R-A, R-BB, R-B, R-C & R-D)

- (1) Dwelling: Parking for residential uses shall comply with the standards of the Residential Site Improvement Standards, N.J.A.C. 5:21, which shall be minimum requirements.
- (2) At least two off-street parking spaces shall be provided.

C. Driveway Standards

- (1) Maximum Width?

(2) Setback?

(3) Maximum Curb cuts?

(4) Circular Driveway?

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C.D. Community Business District I

- (1) No parking space or access thereto, except entrance or exit drives as limited in this section, shall be between the front building setback line and the street line. Entrance and exit drives connecting the parking area and the street shall be permitted between the front building setback line and the street line as required above provided that:
 - (a) Such drives shall not exceed 15 feet in total aggregate width for each 50 feet of street line abutting such lot but in no case exceeding 30 feet in total aggregate width for each street line upon which a lot abuts.
 - (b) Such drives shall be at least 60 feet distant, measured along the street line from the point of intersection of two intersecting street lines or from a bend in the street line of one street where the change in direction is 30° or greater.
- (2) Retail stores: one space for each 350 square feet of floor area.
- (3) Restaurants and casual restaurants : one space for every three seats plus one space for every two employees during the peak shift.
- (4) Professional offices: one space for each 250 square feet of floor area.
- (5) Medical office: one space for each 142 square feet of floor area.
- (6) Personal services: one space for each 200 square feet of floor area.
- (7) Instructional uses: one space for each 120 square feet of public area for uses with less than 5,000 square feet of public area. For uses with 5,000 or more square feet of public area, the parking requirement shall be determined based on maximum fire occupancy.
- (8) A 10-foot-wide buffer area shall be provided along all property lines a parking area faces. Evergreen trees shall be planted within the buffer area and installed at a minimum height of six feet.

D.E. Special or conditional parking and storage regulations.

- (1) Certain vehicles, boats, house trailers and other conveyances, as herein provided shall not be parked, stored or garaged unless it is the only commercial vehicle stored or garaged thereat and has a body, box or platform adapted for carrying goods or materials, with a registered gross vehicle weight of less than 5,000 pounds when loaded.
- (2) Storage exception. A commercial vehicle having a body, box or platform adapted for carrying goods or materials, with a registered gross vehicle weight of less than 5,000 pounds when loaded, shall only be permitted in a residential district on the condition that said vehicle is stored in a garage at all times.
- (3) The following vehicles shall not be parked, stored or garaged in a residential district:

- (a) Commercial vehicles with a registered gross vehicle weight of 5,000 pounds or more when loaded.
 - (b) Any other truck, trailer or vehicle with a registered gross vehicle weight of 5,000 pounds or more when loaded.
 - (c) Any unregistered vehicles.
 - (d) Motorboats, sailboats or other watercrafts 20 feet or more in length.
 - (e) House trailers, housing units, mobile homes and self-propelled housing units.
 - (f) Collapsible housing units, whether assembled or disassembled.
 - (g) Animal conveyances, either trailer or self-propelled.
- (4) Non applicability. This section shall not be applicable to or curtail the use of commercial vehicles making deliveries to or performing services at premises in a residential district.
- (5) Temporary storage containers.
- (a) Permit required. No temporary storage container shall be allowed at any site in the Borough of Demarest unless a storage container zoning permit is issued prior to the placement of such a unit for the length of time as provided herein:
 - 1. The owner or occupant of the site where the unit is to be placed shall apply for a storage container zoning permit to the Zoning Officer or his designee. The applicant shall pay, upon application for the storage container permit, a required fee of \$50.
 - 2. The storage container zoning permit shall be valid for 90 days. Upon the request of the owner or occupant of the site to renew such permit, the Zoning Officer or his designee shall inspect the site where the temporary storage container is located to determine whether such zoning permit should be extended. Such zoning permit may be extended up to two additional ninety-day period(s) upon the approval of the Zoning Officer or his designee. A renewal fee of \$25 for each 90-day period shall be paid upon request for the extension of.
 - 3. No such zoning permit for each ninety-day additional period. In no event shall a container be placed on any lot in the Borough of Demarest for more than 270 days.
 - 4. No such zoning permit shall be issued to any user who is in violation of any ordinance of the Borough of Demarest.
 - 5. No such zoning permit shall be issued to the same owner of any property who has been issued a similar zoning permit that has expired less than one year prior to the requested issuance date.
 - (b) Violations and penalties. Any person who allows, keeps, places and/or maintains a temporary storage container on a site within the Borough of Demarest without obtaining a storage container permit pursuant to Subsection C(6)(c) of this section

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Commented [MG26]: Some residents complained about this rule, is this still something we want?

shall be in violation of this chapter.

(c) Regulations.

1. Location. A temporary storage container shall be placed only in the driveway, allotted parking spaces, or unimproved portion of the property. The following provisions shall also apply:
 - i. No temporary storage container shall be placed in public or utility rights-of-way, nor shall it obstruct the sidewalk.
 - ii. No portion of a temporary storage container shall be placed within five feet of a property line.
 - iii. No portion of a temporary storage container shall encroach the required setback of at least 15 feet from the principal building.
 - iv. No temporary storage container shall occupy an area greater than 10% of the area of the front, side, or rear yard at which it is located.
 - v. A temporary storage container shall not obstruct circulation for vehicles, particularly emergency vehicles.
 - vi. A temporary storage container shall not be placed in an area where its placement may reduce parking to a level inconsistent with the Code of the Borough of Demarest and the Residential Site Improvement Standards (RSIS).
2. Size and number. No tax lot within the Borough shall contain more than one outdoor temporary storage container. No temporary storage container shall exceed 8 feet in height, 8 feet in width and 16 feet in length.
3. Use. A temporary storage container shall only be utilized on private property, only for a limited purpose of temporarily storing common household items such as furniture, clothing or other household belongings, coming from or to a structure on the property that is being renovated or sold.
 - i. The following items are expressly prohibited from being stored or kept within a temporary storage container: hazardous substances, including chemical, flammable or explosive materials, firearms, ammunition, prescription drugs or narcotics, any material or contraband the possession of which is unlawful, food, other than as packaged for sale in cans, jars or bottles, or trash.
 - ii. In no event shall a temporary storage container be used for the temporary habitation of humans or animals.
4. Signage. All temporary storage containers shall comply with the following:
 - i. A temporary storage container shall have no signage other than the name, address and telephone number of the person or entity engaged in the business of renting or otherwise placing the unit.
 - ii. The sign shall be permanently adhered to, or painted on, a temporary storage container, and the container shall have no more than one sign attached to a side, and no more than two signs total.

- iii. A sign attached to a temporary storage container shall be no larger than 15% of the area on the side to where it is attached.
5. Lighting. There shall be no lighting fixtures attached to a temporary storage container, nor shall any lighting fixture be solely utilized to light a container.
6. Maintenance. A temporary storage container shall be in good condition, free from evidence of deterioration, weathering, discoloration, rust, ripping, tearing, or other holes or breaks. When not in use, the container shall be locked at all times.

§ 175-42. Nonconforming lots, buildings and uses.

- A. Any lot existing heretofore as a legal, separate parcel and not complying with the minimum lot frontage, lot depth or lot area at the time of passage of this chapter may, notwithstanding such fact, be improved with a building, provided that the other regulations of its zone are adhered to and provided that the owner owns no other adjacent land which may be included as part of the lot in question.
- B. Any building or use of a building, legal heretofore but not complying with the terms of this chapter at the time of passage, may, notwithstanding such fact, be continued as a nonconforming structure or use.
- C. When a nonconforming use is changed to a use permitted in the district in which it is located, it shall not be thereafter changed from said conforming use to a nonconforming use.
- D. A nonconforming use or structure shall not be modified, extended or expanded.
- E. A nonconforming use or structure may be restored or repaired in the event of partial destruction thereof by fire or other causes.
- F. Whenever a nonconforming use or structure has been abandoned, such use or structure shall not thereafter be reestablished, and any subsequent use or structure shall be in conformity with the provisions of this chapter.
- G. Notwithstanding Subsection D hereof, a residential structure in a one-family zone that is nonconforming due to encroachment in the front, rear or side yard dimensions, as provided in the Limiting Schedule, may be expanded, provided that said expansion does not take place in the area of front, side or rear yard encroachment, either by an intensification of use or an expansion of existing use, does not further or increase the encroachment in any dimension and provided further that the structure, as expanded, complies in all respects with the Limiting Schedule, except as to the nonconformity existing prior to said expansion. The purpose of this section is to permit the expansion of nonconforming structures as delineated herein in areas of the lot which are not nonconforming. It is not the intention of the section to permit any change by way of expansion into an area that does, in fact, constitute an encroachment into the front, rear or side yard dimensions.

§ 175-43. Transition requirements.

- A. Lot divided by district boundary. Where a lot is divided by a district boundary, such lot shall be regulated by all of the area and bulk and use regulations of the more restricted district.
- B. Transition at district boundaries. Where a lot in the Community Business District abuts a lot

in a residence district, there shall be provided along such boundary line in the Community Business District I an unencumbered yard space as required by the Limiting Schedule for the abutting residence district. This requirement shall take precedence over the provisions of Note C of the Limiting Schedule. Within the required transition area, an evergreen buffer that is at least six feet tall and four feet wide shall be provided.

§ 175-44. Lighting.

Any exterior lighting in connection with any use in all districts shall be so arranged and shielded as 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 following standards shall apply to lighting in all districts:

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A. Any exterior lighting in connection with any use in all districts shall be so arranged and shielded as 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 following standards shall apply to lighting in all districts:

- (1) All parking areas and walkways thereto and appurtenant passageways and driveways serving commercial, public, office, industrial, apartment or other similar uses having common off-street parking and/or loading areas and building complexes requiring area lighting shall be adequately illuminated for security and safety purposes. The lighting plan in and around the parking areas shall provide for nonglare, color-corrected lights focused downward.
- (2) Stairways and sloping or rising paths, building entrances and exits shall be illuminated.
- (3) The maximum height of freestanding lights shall be no more than 25 feet or the height of the building, whichever is less, measured from the ground level to the center line of the light source, spaced a distance not to exceed five times the mounting height. However, freestanding lights within 100 feet of a residential use shall be no more than 15 feet tall.
- (4) Any other outdoor lighting, such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow determination of the effects to adjacent properties, traffic safety and overhead sky glow. The objective of these specifications is to minimize undesirable off-premises effects.
- (5) Where lights along property lines would be visible to adjacent residents, the lights shall be appropriately shielded. Site lighting, other than that needed for security purposes, shall be set on a timer system that shuts off all but security lighting of the site by 11:00 p.m.
- (6) The following intensity of footcandles shall be provided:
 - (a) Parking lots: a minimum average of 1.0 footcandle throughout.
 - (b) Intersections: a minimum 3.0 footcandles.
 - (c) Maximum at property lines: 1.0 footcandle where non-residential uses abut and 0.5 footcandle where non-residential uses abut residential uses. The maximum footcandles at the property line shall exclude driveways and intersections.
 - (d) In residential districts: a minimum average of 0.5 footcandle, with a maximum average of 1.0 footcandle.

B. Lighting for accessory residential sports courts, including but not limited to, tennis courts, volley

ball courts, basketball courts, and the like, shall comply with the following requirements:

- (1) Lighting fixtures must be a minimum of 25 feet from the rear and side lot lines. No lighting shall be permitted in any front yard.
- (2) At all times the lighting intensity at the property lines shall be a maximum of 0.5 footcandle. This measurement shall be conducted in accordance with generally accepted engineering standards, and the measurement shall include and be the sum of the combined illumination of the sports court lighting, other lighting on the property and lighting from any natural light sources.
- (3) Lighting on sports courts shall not be permitted after 10 PM.
- (4) Fixtures shall be of a type and shall be mounted and shielded in such a manner as to prevent the light source from being visible off the property. Such lighting shall further be of a type and located and positioned in such a manner as not to illuminate adjacent properties.
- (5) The mounting height of lighting fixtures shall not exceed 15 feet.

§ 175-. Swimming Pools

Please discuss this area, we should set more strict swimming pool standards. I think it would be a good idea to have swimming pools be required to be set back from buildings and possibly greater setbacks from lot lines.

- A. All ladders or steps leading up to an above ground swimming pool from the exterior grounds shall be removed from the swimming pool when the swimming pool is unguarded and unattended.
- B. No person shall construct, install or maintain a swimming pool in the Borough of Demarest without first submitting a plot plan and specifications for the same to the Zoning Official of the Borough of Demarest, who shall issue a permit if the plan and specifications comply with the ordinances of the Borough.

§ 175-45. Satellite earth stations.

- A. Any property owner or person or entity in possession of property shall submit to the Zoning Official, prior to placement of a satellite earth station (dish), in excess of one meter in diameter if the property is located in Single Residence District A, BB, B, C or D or in excess of two meters in diameter if the property is located in the CB-I Commercial Business I District a plot plan and specifications showing the size of the dish, the proposed location of same on the subject premises and such other information as may be required herein. [Amended 12-16-1996 by Ord. No. 782]
- B. The Zoning Official shall review said plan and render a decision within 20 days of the submission of said plan or within such further time as may be consented to by the property owner or person in possession of the property.
- C. The plan shall be drawn on a map to a scale not smaller than one inch equals 40 feet and not larger than one inch equals 10 feet and shall include and show the following information:
 - (1) The name and address of the applicant and the owner, and the name, address and the title of the person or entity preparing the plan and accompanying data, the date of preparation and the dates of each revision where applicable.

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- (2) An appropriate place for the signature of the Zoning Official.
- (3) The lot(s) and block number of the lot(s) from the Borough Tax Map, and the length and bearings of the lot lines of the proposed project.
- (4) The location, names and pavement and right-of-way widths of all existing and proposed streets abutting the lot or lots in question, the property lines of all abutting properties, together with the names and addresses as disclosed on the Borough Tax Map and the tax rolls as of the date of the application, and the location of existing buildings within 200 feet of the site in question.
- (5) All existing buildings and structures and all accessory buildings and structures and all accessory buildings on the lot, if any, with dimensions showing present and finished grade elevations at all corners.
- (6) All existing and proposed setback dimensions and landscape areas.
- (7) Existing and proposed plantings to provide screening as required by this section.
- (8) Any and all other information necessary to meet any of the requirements of this section not listed above.

D. Dimensions. [Amended 12-16-1996 by Ord. No. 782]

- (1) The satellite earth station antennas (dish) shall be in conformance with the following maximum dimensions:

District	Maximum Diameter (meters)	Maximum Overall Height (feet)
Residence R-A	2.4	9
Residence R-BB	2.4	9
Residence R-B	1.8	7
Residence R-C	1.2	5
Residence R-D	1.2	5
Community Business I	2.4	9

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- (2) Maximum height as used herein measures the actual height of the dish from its bottom to its top.

- E. No satellite earth station shall be closer than 35 feet from any side property line and no closer than 20 feet from any rear property line.
- F. In all zoning districts the dish shall be erected on a secure ground-mounted foundation. Maximum height indicated in the above schedule will be from ground level at the location of the dish foundation.
- G. The dish should be in an unobtrusive location. It shall be effectively screened by a special planting screen or fence, as approved by the Zoning Official, which shall be maintained in good condition, so that the dish shall not be readily visible from any adjacent property or

public street. Provision shall be made to minimize noise impact on adjacent properties.

- H. Power control and signal cables from or to the dish shall be underground and installed in accordance with the appropriate building code, if required.
- I. The application fee for a permit to install a dish shall be \$25. In addition, the applicant shall deposit the sum of \$100 to cover the cost of review sources deemed necessary by the Zoning Official and/or Construction Official, such as the Borough Engineer, Borough Attorney or other Borough personnel. The Treasurer shall place the deposit in a trust account and shall charge all disbursements for said review services. Any unused portion of the deposit shall be returned to the applicant. If the cost of review services exceeds the amount of the deposit, sufficient additional funds shall be deposited before any permit shall be issued.
- J. Section 175-23E, F, G, H and I shall not be applicable to a dish one meter or less in diameter if the dish is to be placed, located or installed on property in Single Residence District A, BB, B, C or D or a dish two meters or less in diameter if the dish is to be placed, located or installed on property in the CB-I Commercial Business I District. **[Added 12-16-1996 by Ord. No. 782]**
- K. Notwithstanding Subsections E, F, G, H and I, if an applicant presents credible evidence to the Zoning Officer that satellite signals cannot be obtained or that said signal reception will be impaired by strict compliance with the regulations of Subsections E, F, G, H and I, or any of them, then the Zoning Officer may grant waivers from the strict application of those regulations so as to not unnecessarily burden access to satellite reception while promoting fair and effective competition among competing communication services providers. "Credible evidence," as used herein, shall mean a certification or affidavit from a qualified expert either that the satellite earth station will not have the look angle from azimuth alignment and elevation alignment needed to receive signals in a substantially unobstructed manner unless one or more of the regulations, specifying which one or ones, are waived in whole or part; or that to comply with the regulations and obtain substantially unobstructed signal reception would impose the expenditure of a sum of money, including costs required to screen, polemount or otherwise specially install the antenna, greater than the aggregate purchase or total lease cost of the equipment as normally installed. **[Added 12-16-1996 by Ord. No. 782]**
- L. The regulations of this section are enacted to protect and preserve the aesthetic ambiance of the Borough of Demarest, a residential community wherein 99.4% of the parcels are residential or vacant land. **[Added 12-16-1996 by Ord. No. 782]**

§ 175-46. Prohibited Uses

A. Sale of Animals

(1) Restrictions on the sale of animals.

- (a) No retail establishment shall sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of cats or dogs. Nothing in this section shall prohibit a retail establishment from collaborating with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs or cats provided the retail establishment shall not have any ownership interest in the animals offered for adoption and shall not receive a fee for providing space for the adoption of any of these animals.

(2) Penalty.

- (a) A retail establishment that violates this section shall be subject to a civil penalty of \$500, and each dog or cat offered for sale in violation of this section shall constitute a separate violation.

B. Marijuana.

- (1) The cultivation, manufacture, warehousing, distribution and sale of marijuana and/or the paraphernalia that facilitates the use of such marijuana, whether for medicinal purposes or recreational use, is prohibited in all Zones established in the Borough. This does not include the delivery of marijuana and marijuana products offered for sale and delivery from outside of the Borough to residential locations.

ARTICLE IX
Affordable Housing District
[Added 8-20-2001 by Ord. No. 840]

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§ 175-35. Affordable housing district designation.

The 8.44 acres shown on a plan entitled "Preliminary Site Plan - 48 units Alpine Country Club Condominiums" prepared by Michael J. Hubschman, P.E., P.P., dated December 12, 2000, a copy of which is on file in the Borough Clerk's office is designated as Affordable Housing District (AH District).

§ 175-36. Permitted uses in AH District; definitions.

In the AH District, the following are permitted of right.

- A. Residential townhouses, attached single-family dwelling units and apartment flats.
- B. For purposes of this article:
 - (1) A "townhouse" is a one-family dwelling unit in a row of at least two such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire resistant walls.
 - (2) An "attached single-family dwelling unit" is a one-family dwelling unit attached to one or more one-family dwellings by common vertical walls.
 - (3) An "apartment flat" is a one-family dwelling unit on one floor of a building containing three or more such flats.

§ 175-37. Density.

The density in the AH District shall be a total of 48 dwelling units.

§ 175-38. Low- and moderate-income housing.

Four of the 48 units shall be age-restricted low- and moderate-income dwelling units. "Age restricted" shall mean housing for older persons as used and defined in 42 U.S.C. § 3607. Low-income housing means housing affordable according to Federal Department of Housing and Urban Development occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the Northeast housing region and which is subject to affordability controls promulgated by the Council on Affordable Housing. Moderate-income housing means housing affordable according to Federal Department of Housing and Urban Development occupied or reserved for occupancy by households with a gross household income in excess of 50% but less than 80% of the median gross household income for households of the same size within the Northeast housing region and which is subject to affordability controls promulgated by the Council on affordable housing.

§ 175-39. Bedroom distribution.

The age-restricted dwelling units required by § 175-38 shall utilize bedroom distribution in accordance with N.J.A.C. 5:93-7.3(b).

§ 175-40. Rent and sale prices.

The maximum rent and/or sale prices of the age-restricted dwelling units required by § 175-38 shall be determined pursuant to N.J.A.C. 5:93-7.4.

§ 175-41. Distribution of low- and moderate-income units.

At least two of the four age-restricted units shall be affordable to low-income households.

§ 175-42. Setbacks.

- A. All units in the AH District shall be set back not less than 45 feet from any residential property, excepting that the setback from the rear property line of any residential property fronting on Hardenburgh Avenue shall be not less than 70 feet.
- B. All improvements in the AH District shall be set back not less than 70 feet from the rear property line of any residential property fronting on Hardenburgh Avenue excepting:
 - (1) Hammerhead vehicle turnaround and driveway areas may be constructed within said setback but not less than 50 feet from the rear property line of any residential property fronting on Hardenburgh Avenue.
 - (2) Retaining wells, berms, and landscaping.

§ 175-43. Landscaping; berms.

In connection with any development in the AH District:

- A. Within 50 feet of the rear property lines of the residential properties fronting on Hardenburgh Avenue there shall be constructed a berm not less than three feet in height.
- B. Within 50 feet of the rear property lines of residential properties fronting on Hardenburgh Avenue and Anderson Avenue, there shall be planted evergreens and other landscaping not less than eight feet in height.

§ 175-44. Streetlighting.

In connection with any development in the AH District, there shall be installed low-level coverage lamp-type lighting so as to create a gas-light fixture effect.

§ 175-45. Height.

The dwelling units shall not exceed three stories and 30 feet in height from the average elevation of the proposed finished grade all around the dwelling units to the highest point of the roof measured to the horizontal line halfway between the eave and the ridge of the roof, but in no event shall the ridge of the roof exceed 35 feet in height.

§ 175-46. Affordable housing regulations. [Added 8-20-2001 by Ord. No. 847; amended 7-29-2019 by Ord. No. 1068-19]

A. Purpose. The purpose of this section is to provide for and regulate affordable housing in the Borough of Demarest.

B. Monitoring requirements.

- (1) On the first anniversary of the judgment of compliance and repose or the judicial equivalent of substantive certification, and every anniversary thereafter through the end of the repose period, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the sources and amounts of funds collected and the amount and purpose for which any funds have been expended.
- (2) On the first anniversary of the judgment of compliance and repose or the judicial equivalent of substantive certification, and every anniversary thereafter through the end of the repose period, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with a copy of such provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
- (3) For the midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
- (4) For the review of very-low-income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the judgment of compliance and repose or the judicial equivalent of substantive certification, and every third year thereafter, the Borough will post on its municipal website, with copies provided to FSHC, a status report as to its satisfaction of its very-low-income requirements, including the family very-low-income requirements referenced in the Settlement Agreement, dated January 23, 2018.

C. Definitions. The following terms when used in this section shall have the meanings given in this section:

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

ADAPTABLE — Constructed in compliance with the technical design standards of the

Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT — The entity designated by the Borough to administer affordable units in accordance with this section, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

AFFIRMATIVE MARKETING — A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE — The average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE — A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

AFFORDABLE HOUSING PROGRAM(S) — Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act and approved for crediting by the court and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT — A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80% of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

AGENCY — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

ALTERNATIVE LIVING ARRANGEMENTS — A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to, transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE — A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and

congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD — A household that has been certified by an administrative agent as a low-income household or moderate-income household.

COAH — The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), or any successor agency charged with the administration of the Act.

COURT — The Superior Court of New Jersey, Law Division, Bergen County.

DCA — The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT — A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEVELOPER — Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

INCLUSIONARY DEVELOPMENT — A development containing both affordable units and market-rate units. This term includes, but is not limited to, new construction, the conversion of a nonresidential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 50% or less of the regional median household income by household size.

LOW-INCOME UNIT — A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM — The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

MARKET-RATE UNIT — Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME — The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the court.

MODERATE-INCOME HOUSEHOLD — A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.

MODERATE-INCOME UNIT — A restricted unit that is affordable to a moderate-income household.

MULTIFAMILY UNIT — A structure containing five or more dwelling units.

NONEXEMPT SALE — Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS — A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT — The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION — The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT — The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT — A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

UHAC — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26 et seq.

VERY-LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 30% or less of the regional median household income by household size.

VERY-LOW-INCOME UNIT — A restricted unit that is affordable to a very-low-income household.

WEATHERIZATION — Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

D. Applicability.

(1) The provisions of this section shall apply to all affordable housing developments and

affordable housing units that currently exist and that are proposed to be created within the Borough of Demarest pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

- (2) Moreover, this section shall apply to all developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

E. Borough-wide set-aside.

- (1) Any property in the Borough of Demarest that receives a use variance, density variance increasing the permissible density at the site, a rezoning permitting multifamily residential housing where not previously permitted or a new redevelopment plan, to permit multifamily residential development, which would yield five or more additional units (over and above those already permitted as of right), that are developed at a density of six or more units per acre, shall provide a minimum affordable housing set-aside of:
 - (a) 15% if the affordable units will be for rent; or
 - (b) 20% set-aside if the affordable units will be for sale.
- (2) This requirement shall not apply to sites zoned for inclusionary residential development to meet the Realistic Development Potential or the overlay zones created to meet the unmet need as part of the Borough's Housing Element and Fair Share Plan, which shall comply with the applicable zoning or redevelopment plan requirements of providing affordable housing units.
- (3) This requirement does not and shall not be construed to grant any developer the right to any rezoning, variance, redevelopment designation or other relief or establish any obligations on the part of the municipality to grant such rezoning, variance, redevelopment designation or other relief.
- (4) A property shall not be permitted to be subdivided so as to avoid compliance with this requirement.
- (5) All affordable units created pursuant to this section shall be governed by the provisions of § 175-46, Affordable housing regulations.

F. Accessory apartments.

- (1) All accessory apartments shall meet the following conditions:
 - (a) Accessory apartments are permitted by this chapter for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units.
 - (b) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
 - (c) At the time of initial occupancy of the unit and for at least 10 years thereafter, the accessory apartment shall be rented only to a household which is either a low- or

moderate-income household.

- (d) Rents of accessory apartments shall be affordable to low- or moderate-income households as per the UHAC regulations.
 - (e) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
 - (f) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
 - (g) The Borough of Demarest accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
 - (h) No accessory apartment created as a result of this section or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
- (2) The maximum number of creditable accessory apartments shall be equal to no more than 10 (additional units may be approved by COAH or the court if the municipality has demonstrated successful completion of its accessory apartment program).
- (3) Demarest shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:
- (a) The administrative agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
 - (b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with the affordable housing requirements and/or the provisions of this section. All denials shall be in writing with the reasons clearly stated.
 - (c) In accordance with the executed Settlement Agreement, the Borough will provide at least \$20,000 per unit to subsidize the creation of each accessory apartment. The subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
- (4) Property owners wishing to apply to create an accessory apartment shall submit to the administrative agent:
- (a) A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another

structure;

- (b) Rough elevations showing the modifications of any exterior building facade to which changes are proposed; and
- (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

G. Alternate living arrangements.

- (1) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 - (a) Affirmative marketing (N.J.A.C. 5:80-26.15); provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by COAH or the court.
 - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- (2) With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by COAH or the court.
 - (a) The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

H. Inclusionary zoning.

- (1) To implement the Fair Share Plan in a manner consistent with the terms of the January 23, 2018, Settlement Agreement, ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning shall be permitted as outlined in the Borough's 2018 Housing Plan Element and Fair Share Plan.

I. Phasing schedule for inclusionary zoning.

- (1) In inclusionary developments, the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed	
25%	0%	Formatted: Font color: Text 2
25%+1	10%	Formatted: Font color: Text 2
50%	50%	Formatted: Font color: Text 2

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
75%	75%
90%	100%

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J. Fractional units and payments-in-lieu.

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- (1) Inclusionary developments that result in a fractional affordable housing obligation of 0.4 or less may round the number of affordable units down. The application shall make a prorated payment-in-lieu to cover the fraction.
- (2) If the required number of affordable units results in a fraction of 0.5 or greater, the applicant shall round up and provide the additional affordable unit.
- (3) The payment-in-lieu for Demarest shall be \$200,000 for 2019. The payment-in-lieu shall increase by 3% each year. To calculate the payment-in-lieu, the developer shall multiply the fraction by the payment. For example, a fraction of 0.4 triggered in 2020 would require a payment of \$82,400. The payment shall be made to the Borough's Affordable Housing Trust Fund.

K. New construction.

- (1) Low/moderate split and bedroom distribution of affordable housing units:
 - (a) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very-low-income units (affordable to a household earning 30% or less of median income). The very-low-income units shall be counted as part of the required number of low-income units within the development.
 - (b) At least 25% of the obligation shall be met through rental units, including at least 1/2 in rental units available to families.
 - (c) A maximum of 25% of the Borough's obligation may be met with age-restricted units. At least 1/2 of all affordable units in the Borough's Plan shall be nonrestricted.
 - (d) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
 - (e) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - [2] At least 30% of all low- and moderate-income units shall be two bedroom units;

- [3] At least 20% of all low- and moderate-income units shall be three bedroom units; and
 - [4] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
- (f) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. The Borough shall not be permitted to claim credit to satisfy its obligations under the Settlement Agreement for age-restricted units that exceed 25% of all units developed.
- (2) Accessibility requirements.
- (a) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
 - (b) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - [1] An adaptable toilet and bathing facility on the first floor; and
 - [2] An adaptable kitchen on the first floor; and
 - [3] An interior accessible route of travel on the first floor; and
 - [4] An adaptable room that can be used as a bedroom, with a door or casing for the installation of a door, on the first floor; and
 - [5] If not all of the foregoing requirements in Subsection K(2)(b)[1] through [4] can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of Subsection K(2)(b)[1] through [4] above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - [6] An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that Demarest has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [a] Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [b] To this end, the builder of restricted units shall deposit funds within the Borough of Demarest's Affordable Housing Trust Fund sufficient to

install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

- [c] The funds deposited under Subsection K(2)(b)[6][b] above shall be used by the Borough of Demarest for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- [d] The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Demarest for the conversion of adaptable to accessible entrances.
- [e] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- [f] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

(3) Design.

- (a) In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- (b) In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

(4) Maximum rents and sales prices.

- (a) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and using the calculation set forth below. Income limits for all affordable units that are created in the Borough for which income limits are not already established through a federal program exempted from the UHAC pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by the Department of Housing and Urban Development (HUD) as follows:
 - [1] Regional income limits shall be established for the region within which the Borough is located based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the

HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. This is done for each county in the housing region and the resulting product for each county within the housing region is summed. The sum is then divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80% of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50% of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low-income unit for a household of four shall be 30% of the HUD determination of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- [2] The income limits are the result of applying the percentages set forth in Subsection K(4)(a)[1] above to HUD's determination of median income for the fiscal year 2017, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - [3] The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3) shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to Subsection K(4)(a)[1] above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- (b) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH or a successor entity.
 - (c) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.
 - (d) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very-low-income households, earning 30% or less of the regional median household income, with such very-low-income units counted the low-income housing requirement.
 - (e) The maximum sales price of restricted ownership units within each affordable

development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.

- (f) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - [3] A two-bedroom unit shall be affordable to a three-person household;
 - [4] A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
 - [5] A four-bedroom unit shall be affordable to a six-person household.
- (g) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one-and-one-half-person household; and
 - [3] A two-bedroom unit shall be affordable to a two-person household or two one-person households.
- (h) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (i) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

- (j) The price of owner-occupied low and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last-recorded purchase price.
- (k) The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

L. Utilities.

- (1) Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- (2) Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for its Section 8 program.

M. Occupancy standards.

- (1) In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
 - (a) Provide an occupant for each bedroom;
 - (b) Provide children of different sexes with separate bedrooms;
 - (c) Provide separate bedrooms for parents and children; and
 - (d) Prevent more than two persons from occupying a single bedroom.

N. Control periods for restricted ownership units and enforcement measures.

- (1) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this section for a period of at least 30 years, until Demarest takes action to release the unit from such requirements; prior to such action, a restricted ownership unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (3) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

- (4) At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the restrictions set forth in this section, an amount equal to the difference between the unit's nonrestricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (5) The affordability controls set forth in this section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (6) A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

O. Price restrictions for restricted ownership units, homeowner association fees and resale prices.

- (1) Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
 - (a) The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
 - (b) The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (c) The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
 - (d) The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Subsection R.

P. Buyer income eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- (2) Notwithstanding the foregoing, however, the administrative agent may, upon approval

by the Borough Council, and subject to the court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the administrative agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.

- (3) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (4) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's eligible monthly income.

Q. Limitations on indebtedness secured by ownership unit; subordination.

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the administrative agent for a determination, in writing, that the proposed indebtedness complies with the provisions of this section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness:
- (2) With the exception of first purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

R. Capital improvements to ownership units.

- (1) The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- (2) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made

a condition of the unit resale, provided the price, which shall be subject to ten-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

S. Control periods for restricted units.

- (1) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this section for a period of at least 30 years, until Demarest takes action to release the unit from such requirements. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- (2) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very-low-, low- or moderate-income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
- (3) A restricted rental unit shall remain subject to the affordability controls of this section despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale of other voluntary transfer of the ownership of the unit; or
 - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

T. Rent restrictions for rental units; leases.

- (1) A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
- (2) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- (3) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative

agent to be applied to the costs of administering the controls applicable to the unit as set forth in this section.

U. Tenant income eligibility.

- (1) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (a) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- (2) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection U(1)(a) through U(2)(e) above with the administrative agent, who shall counsel the household on budgeting.

§ 175-46.1. Municipal housing liaison. [Added 7-29-2019 by Ord. No. 1068-19]

- A. The Borough of Demarest shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting,

and, where applicable, supervising any contracted administrative agent. The Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee.

- B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Demarest, including the following responsibilities which may not be contracted out to the administrative agent:
- (1) Serving as Demarest's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - (2) Monitoring the status of all restricted units in Demarest's Fair Share Plan;
 - (3) Compiling, verifying and submitting annual monitoring reports as may be required by the court;
 - (4) Coordinating meetings with affordable housing providers and administrative agents, as needed; and
 - (5) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- C. Subject to the approval of the court, the Borough of Demarest shall designate one or more administrative agent(s) to administer newly constructed affordable units in accordance with UHAC. An operating manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The operating manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the administrative agent(s). The Municipal Housing Liaison shall supervise the contracting administrative agent(s).
- D. Compensation. Compensation shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.

§ 175-46.2. Administrative agent. [Added 7-29-2019 by Ord. No. 1068-19]

- A. The administrative agent shall be an independent entity serving under contract to and reporting to the municipality. For new sale and rental developments, all of the fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. For resales, single-family homeowners and condominium homeowners shall be required to pay 3% of the sales price for services provided by the administrative agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the administrative agent. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 5:80-26.16 and 5:80-26.18 thereof, which include:
- (1) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Demarest and the provisions of N.J.A.C. 5:80-26.15; and

- (2) Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

B. Household certification.

- (1) Soliciting, scheduling, conducting and following up on interviews with interested households;
- (2) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
- (3) Providing written notification to each applicant as to the determination of eligibility or noneligibility;
- (4) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
- (5) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
- (6) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Demarest when referring households for certification to affordable units.

C. Affordability controls.

- (1) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (2) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- (3) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Bergen County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
- (4) Communicating with lenders regarding foreclosures; and
- (5) Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

D. Sales and rentals.

- (1) Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
- (2) Instituting and maintaining an effective means of communicating information to low-

and moderate-income households regarding the availability of restricted units for resale or rental.

E. Processing requests from unit owners.

- (1) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this section;
- (2) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
- (3) Notifying the municipality of an owner's intent to sell a restricted unit; and
- (4) Making determinations on requests by owners of restricted units for hardship waivers.

F. Enforcement.

- (1) Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
- (2) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
- (3) The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
- (4) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
- (5) Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
- (6) Creating and publishing a written operating manual for each affordable housing program administered by the administrative agent, to be approved by the Borough Council and the court, setting forth procedures for administering the affordability controls.

G. Additional responsibilities.

- (1) The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- (2) The administrative agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the court.

- (3) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§ 175-46.3. Affirmative marketing requirements. [Added 7-29-2019 by Ord. No. 1068-19]

- A. The Borough of Demarest shall adopt by resolution an Affirmative Marketing Plan, subject to the approval of the court, that is compliant with N.J.A.C. 5:80-25.15, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Settlement Agreement, the Affirmative Marketing Plan shall require the notification of the Fair Share Housing Center, New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen County Urban League and Bergen County Housing Coalition of affordable housing opportunities. It is a continuing program that directs marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and rentals. The administrative agent designated by the Borough of Demarest shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- E. In implementing the Affirmative Marketing Plan, the administrative agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the administrative agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the Sussex County Main Library, Hudson County Administration Building, Passaic County Administration Building, Bergen County Administration Building, the Demarest Municipal Building and the developer's rental office. Preapplications may be

emailed to prospective applicants upon request. Otherwise, hard copies are available from the Municipal Housing Liaison.

- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§ 175-46.4. Enforcement; violations and penalties. [Added 7-29-2019 by Ord. No. 1068-19]

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense. In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Demarest Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (b) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - (2) The Borough may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit:
 - (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior

liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

§ 175-46.5. Appeals. [Added 7-29-2019 by Ord. No. 1068-19]

Appeals from all decisions of an administrative agent appointed pursuant to this article shall be filed in writing with the Executive Director of COAH or with the Superior Court, Bergen County Vicinage.

ARTICLE X
Affordable Housing Obligations
[Added 4-17-2010 by Ord. No. 973]

§ 175-47. Affordable housing obligation.

- A. This article is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This article shall apply except where inconsistent with applicable law.
- B. The Borough of Demarest Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Borough of Demarest shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element. The Housing Element and Fair Share Plan were certified by COAH on March 10, 2010, as requested in Demarest's petition.
- C. This article implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- D. The Borough of Demarest shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Borough of Demarest Municipal Building, Municipal Clerk's Office, 118 Serpentine Road, Demarest, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, www.nj.gov/dca/affiliates/coah.

§ 175-48. Definitions.

The following terms when used in this article shall have the meanings given in this section:

ACCESSORY APARTMENT — A self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

ADAPTABLE — Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT — The entity responsible for the administration of affordable units in accordance with this article, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

AFFIRMATIVE MARKETING — A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE — The average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE — A sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE DEVELOPMENT — A housing development all or a portion of which consists of restricted units.

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S) — Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an Affordable Housing Trust Fund.

AGE-RESTRICTED UNIT — A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

AGENCY — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

ASSISTED LIVING RESIDENCE — A facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD — A household that has been certified by an administrative agent as a low-income household or moderate-income household.

COAH — The Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

DCA — The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT — A housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEVELOPER — Any person, partnership, association, company or corporation that is the legal or

beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

INCLUSIONARY DEVELOPMENT — A development containing both affordable units and market-rate units. This term includes, but is not necessarily limited to, new construction, the conversion of a nonresidential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 50% or less of the median household income.

LOW-INCOME UNIT — A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM — The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

MARKET-RATE UNITS — Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME — The median income by household size for the applicable county, as adopted annually by COAH.

MODERATE-INCOME HOUSEHOLD — A household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

MODERATE-INCOME UNIT — A restricted unit that is affordable to a moderate-income household.

NONEXEMPT SALE — Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS — A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT — The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

REHABILITATION — The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT — The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT — A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

UHAC — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

VERY-LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 30% or less of the median household income.

VERY-LOW-INCOME UNIT — A restricted unit that is affordable to a very-low-income household.

WEATHERIZATION — Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

§ 175-49. Affordable housing programs.

The Borough of Demarest has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

A. A rehabilitation program.

- (1) The Borough of Demarest will first utilize the County of Bergen's Home Rehabilitation Program, which provides loans for repairs to qualified households. The program provides loans up to \$17,500 for a single-family home at a rate of 3%. A lien is placed on the home until it is sold. The contact is the Bergen County Division of Community Development, which can be contacted at (201) 336-7200. If the outstanding units cannot be completed through the County, then Demarest will create its own rehabilitation program.
- (2) Borough of Demarest's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- (3) Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
- (4) All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units the control period will be enforced with a lien and for renter-occupied units the control period will be enforced with a deed restriction.
- (5) The Borough of Demarest shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.

- (6) The Borough of Demarest shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Borough of Demarest.
- (7) The Borough of Demarest shall designate, subject to the approval of COAH, one or more administrative agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The administrative agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).
- (8) Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
 - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
 - (c) Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
 - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

B. An accessory apartment program.

- (1) All accessory apartments shall meet the following conditions:
 - (a) Accessory apartments are permitted by this chapter for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
 - (b) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
 - (c) At the time of initial occupancy of the unit and for at least 10 years thereafter, the accessory apartment shall be rented only to a household which is either a low-or moderate-income household.
 - (d) Rents of accessory apartments shall be affordable to low- or moderate-income

households as per COAH and UHAC regulations.

- (e) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
 - (f) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
 - (g) The Borough of Demarest accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
 - (h) No accessory apartment created as a result of this article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
- (2) The maximum number of creditable accessory apartments shall be equal to no more than 10 or an amount equal to 10% of the Borough of Demarest's fair share obligation, whichever is greater (additional units may be approved by COAH if the municipality has demonstrated successful completion of its accessory apartment program).
- (3) Borough of Demarest has designated the Housing Authority of Bergen County as the administrative entity to administer the accessory apartment program that shall have the following responsibilities:
- (a) The administrative agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
 - (b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/article. All denials shall be in writing with the reasons clearly stated.
 - (c) In accordance with COAH requirements, Borough of Demarest shall provide at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
- (4) Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
- (a) A sketch of floor plan(s) showing the location, size and relationship of both the

accessory apartment and the primary dwelling within the building or in another structure;

- (b) Rough elevations showing the modifications of any exterior building facade to which changes are proposed; and
- (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

C. A market to affordable program.

- (1) A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of Subsection C(2)(c) below, the market to affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units as per the Fair Share Plan).
- (2) The following provisions shall apply to market to affordable programs:
 - (a) At the time they are offered for sale or rental, eligible units may be new, preowned or vacant.
 - (b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed Building Inspector.
 - (c) The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize the each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
 - (d) The maximum number of creditable market to affordable units shall be equal to no more than 10 for sale units and 10 rental units or a combined total of 10% of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market to affordable program.)
- (3) The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
 - (a) Bedroom distribution [N.J.A.C. 5:80-26.3(b) and (c)];
 - (b) Low-/moderate-income split [N.J.A.C. 5:80-26.3(a)]; and
 - (c) Affordability average [N.J.A.C. 5:80-26.3(d) and (e)]; however:
 - [1] The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60% of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44% of median income; and

- [2] The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70% of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40% of median income.

D. Municipally sponsored and 100% affordable developments.

- (1) Municipally sponsored and 100% affordable developments include, but are not limited to:
 - (a) Developments in which all units are available to low- and moderate-income households;
 - (b) Units created through a municipal partnership with a nonprofit or other affordable housing provider; and
 - (c) Developments for which the municipality serves as the primary sponsor.
- (2) The following provisions shall apply to municipally sponsored and 100% affordable developments:
 - (a) All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.
 - (b) The municipality or developer/sponsor shall have control or the ability to control the site(s).
 - (c) The construction schedule shall provide for the construction to begin within two years of substantive certification or in accordance with the municipality's implementation schedule.
 - (d) The first floor of all townhouse dwellings units and of all other multistory dwelling units must comply with N.J.A.C. 5:97-3.14.

§ 175-50. New construction.

The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

A. Low/moderate split and bedroom distribution of affordable housing units:

- (1) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
- (2) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
- (3) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than

20% of the total low- and moderate-income units;

- (b) At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - (c) At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
- (4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility requirements.

- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
- (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the Borough of Demarest has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [2] To this end, the builder of restricted units shall deposit funds within the Borough of Demarest's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [3] The funds deposited under Subsection B(2)(f)[2] above shall be used by the

Borough of Demarest for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

- [4] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Demarest.
- [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Demarest's Affordable Housing Trust Fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- [6] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

C. Maximum rents and sales prices.

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - (a) At least 10% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- (5) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:

- (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person household;
and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
- (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last-recorded purchase price.
- (10) The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
- (11) Utilities. Tenant paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its

Section 8 program.

§ 175-51. Affirmative marketing requirements.

- A. Borough of Demarest shall adopt by resolution an Affirmative Marketing Plan, as submitted by its administrative agent, Housing Authority of Bergen County, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 and covers the period of deed restriction.
- C. The administrative agent designated by the Borough of Demarest shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- D. In implementing the Affirmative Marketing Plan, the administrative agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- E. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- F. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Borough of Demarest.

§ 175-52. Occupancy standards.

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
 - (1) Provide an occupant for each bedroom;
 - (2) Provide children of different sex with separate bedrooms; and
 - (3) Prevent more than two persons from occupying a single bedroom.
- B. Additional provisions related to occupancy standards (if any) shall be provided in the Municipal Operating Manual.

§ 175-53. Control periods for restricted ownership units and enforcement mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain

subject to the requirements of this article until the Borough of Demarest elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.

- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- D. At the time of the first sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the requirements of this article, an amount equal to the difference between the unit's nonrestricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- E. The affordability controls set forth in this article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- F. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§ 175-54. Price restrictions for restricted ownership units, homeowner association fees and resale prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
- B. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- D. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

§ 175-55. Buyer income eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- B. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

§ 175-56. Limitations on indebtedness secured by ownership unit; subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine, in writing, that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

§ 175-57. Control periods for restricted rental units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this article until the Borough of Demarest elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this article, despite the occurrence of any of the following events:
 - (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit; or
 - (3) The entry and enforcement of any judgment of foreclosure.

§ 175-58. Price restrictions for rental units; leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this article.

§ 175-59. Tenant income eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (1) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- B. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (3) The household is currently in substandard or overcrowded living conditions;
 - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents proposed third-party assistance from an outside source such

as a family member in a form acceptable to the administrative agent and the owner of the unit.

- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection B(1) through (5) above with the administrative agent, who shall counsel the household on budgeting.

§ 175-60. Administration.

- A. The position of Municipal Housing Liaison (MHL) for Borough of Demarest has been previously established by ordinance dated September 25, 2006. The Borough Council has made the actual appointment of the MHL by means of a resolution.
- B. The Borough of Demarest has designated, by resolution of the Borough Council, subject to the approval of COAH, the Housing Authority of Bergen County as its administrative agent to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC. A copy of the contract for administrative agency services is annexed hereto and incorporated herein by reference. In the event that the contract is not renewed or voided, the Borough shall appoint one or more replacement administrative agents, subject to the approval of COAH.
- C. An operating manual shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The operating manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).
- D. The administrative agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the operating manual, including those set forth in N.J.A.C. 5:80-26.14, 5:80-26.16 and 5:80-26.18 thereof, which includes:
 - (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
 - (2) Affirmative marketing;
 - (3) Household certification;
 - (4) Affordability controls;
 - (5) Records retention;
 - (6) Resale and rental;
 - (7) Processing requests from unit owners; and
 - (8) Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 - (9) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

§ 175-61. Enforcement; violations and penalties.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$1,000 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Demarest Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - (2) The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- and moderate-income unit.
- C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- D. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money

mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

- E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- F. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- G. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- H. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

§ 175-62. Appeals.

Appeals from all decisions of an administrative agent designated pursuant to this article shall be filed in writing with the Executive Director of COAH.

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I. TYPES OF VARIANCES

- A. C(1), also known as a "hardship variances" (N.J.S.A. 40:55D-70c(1)).
Can be proven if it can be shown that by reason of: (1) exceptional narrowness, (2) conditions, (3) shape of a piece of property, (4) by reason of exceptional topographical conditions, (5) physical features uniquely affecting a specific piece of property, (6) by reason of an extraordinary and exception situation uniquely affecting a specific piece of property, or (7) the structures lawfully existing thereon, the strict application of the ordinance would result in peculiar and exceptional practical difficulties to and/or hardship upon the applicant.
- B. C(2), also known as "flexible c" variances (N.J.S.A. 40:55D-70c(2)).
Is granted where an applicant proves that a specific piece of property deviates from the zoning ordinance and that the benefits of the deviation would substantially outweigh any detriment granting of the variance would cause.
- C. "D" variances, also known as "special reasons" variances (N.J.S.A. 40:55D-70d). The following are the six different types of "d" variances:
1. Use variances.
 2. Variances granting an expansion of a non-conforming use.
 3. Variances granting a deviation from a specification pertaining to a conditional use.
 4. Variances for an increase in floor area ratio.
 5. Variances for an increase in the permitted density. (FAR/Livable Floor Area)
 6. Variances for height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district.
- D. A bulk variance is a variance from a dimensional requirement of the zoning ordinance, while a use variance is a variance from the use the ordinance allows for a given property.
- E. The applicant always has the burden of proof to establish elements of a variance, expressed as the positive and negative criteria.
- F. The positive criteria differs for each type of variance, as described below.
- G. The negative criteria is the same for all variances. No variance may be granted unless the Board finds that it can be granted (a) without substantial detriment to the public good, and

(b) it will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

[T]he statutory mandate that the grant of the variance occur “without substantial detriment to the public good” focuses on the impact the variance will have on the specific adjacent properties affected by the permitted deviations from the ordinance. The requirement that the grant of the variance not “substantially impair the intent and the purpose of the zone plan and zoning ordinance” focuses on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate.

Lang v ZBA of the Borough of North Caldwell, 160 N.J. 41, 57 (1999).

II. PROOFS REQUIRED FOR C(1) HARDSHIP VARIANCES

A. Positive Criteria.

1. Where peculiar and exceptional practical difficulties, or exceptional and undue hardship exist, based on:
 - a. the exceptional narrowness, shallowness or shape of a specific piece of property,
 - b. exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
 - c. extraordinary and exceptional situations uniquely affecting a specific piece of property or the structures existing thereon, the Board may grant a variance to relieve the difficulties or hardship. (N.J.S.A. 40:55D-70c(1)).

B. Negative Criteria.

No variance may be granted unless the Board finds that it can be granted:

- a. Without substantial detriment to the public good.
- b. It will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

C. Legal Interpretation.

1. According to the New Jersey Supreme Court in Davis Enterprises v. Karpf, 105 N.J. 476, 493 (1987, Stein J. concurring):

[A] lot with unusual topography may provide a basis for a variance from restrictions as to maximum height. A narrow lot may in some instances justify a side yard variance. The existence of a non-conforming structure may justify a variance from maximum land-coverage requirements. The availability of public parking on adjacent property may be a factor that would support a variance from parking requirements. In each of these examples, the claimed hardship need not result in the inability to make any use of the property. Typically, the contention is that the strict enforcement of the zoning ordinance, in view of that property's unique characteristics imposes a hardship which may inhibit the extent to which the property can be used. (Emphasis added.)

III. PROOFS REQUIRED FOR C(2), OR FLEXIBLE C VARIANCES

A. Positive Criteria.

1. A “flexible c” variance may be granted when the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. (N.J.S.A. 40:55D-70c(2)).

B. Negative Criteria.

1. No variance may be granted unless the Board finds that it can be granted:
 - a. Without substantial detriment to the public good.
 - b. It will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

C. Legal Interpretation.

1. Introduced in 1984, the c(2) variance was intended to liberalize the Board's power to grant c variances. The applicant must prove that the purposes of the MLUL will be advanced by the proposed deviation from the zoning ordinances, and that the benefits of the deviation substantially outweigh any detriment. The purposes of the MLUL are found at N.J.S.A. 40:55D-2. The most commonly cited purposes of the MLUL are that:
 - a. the application *enhances the safety or general welfare* of the municipality (N.J.S.A. 40:55D-2a).
 - b. the application *provides adequate light, air and open space* (N.J.S.A. 40:55D-2c).
 - c. the application *promotes the establishment of appropriate population densities and concentrations* (N.J.S.A. 40:55D-2e).
 - d. the application would *provide sufficient space in appropriate locations* for a variety of residential or recreational uses in order to meet the needs of all New Jersey citizens (N.J.S.A. 40:55D-2g).
 - e. the application *promotes a desirable visual environment (aesthetics)* (N.J.S.A. 40:55D-2i).
2. According to the New Jersey Superior Court in Kaufman v. Planning Board, 110 N.J. 551, 563 (1988):

By definition, then, no c(2) variances should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning opportunity for the property. The

focus of a c(2) case, then, will not be on the characteristics of the land that, in light of current zoning requirements, create a “hardship” on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

IV. PROOFS FOR SPECIAL REASONS OR "D" VARIANCES

- A. Positive Criteria.
1. In particular cases and for special reasons, the Board may grant a variance to permit a use or structure in a district which restricts such uses or structures; to permit expansion of a non-conforming use; to change a conditional use standard; and to permit an increase in floor area ratio, density or height (N.J.S.A. 40:55D- 70d). "Special reasons" are generally described as the purposes of zoning set forth in the Municipal Land Use Law. Just as with a c2 variance, the Board should identify which of the purposes of zoning are promoted by the application.
- B. Negative Criteria.
1. No variance may be granted unless the Board finds that it can be granted:
 - a. Without substantial detriment to the public good.
 - b. It will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
- C. Special requirement: all "d" variances require five affirmative votes.
- D. Use Variances (N.J.S.A. 40:55D-70d(1)).
1. In the context of a use variance application, court decisions emphasize that the "promotion of the general welfare" is the zoning purpose which most clearly amplifies the meaning of special reasons.
 2. Hardship can be considered a special reason when the applicant's land cannot reasonably be developed with a conforming use.
 3. The New Jersey Supreme Court has said,
 - a. [I]f the use for which a variance is sought is not one that inherently serves the public good, the applicant must prove and the board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use. Medici v. BPR Co., 107 N.J. 14 (1987). (Emphasis added.)
 - b. For a use variance, the requirement that the variance will not substantially impair the intent and purpose of the zone plan and the zoning ordinance must be proven with an "enhanced quality of proof."
 - c. For a use variance, the Board must make clear and specific findings that the relief sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance.

E. Variance to Permit Expansion of a Non-Conforming Use (N.J.S.A. 40:55D-70d(2)).

1. Existing uses which predate new zoning ordinances are called “non-conforming uses” and are grandfathered. Non-conforming uses run with the land, not with the landowner. The goal of the MLUL is to eventually bring non-conforming uses into compliance with the Master Plan, without overriding property rights and due process.
2. As a result, non-conforming uses may not be expanded or extended without a variance, and new uses may only be allowed if they are the same as or substantially similar to the existing non-conforming use. Any expansion of a nonconforming use requires a d(2) variance. The Supreme Court has explained the law regarding non-conforming uses as follows:

[O]ur courts have held that an existing non-conforming use will be permitted to continue only if it is a continuance of substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance. *[Citations omitted.]* In that regard, non-conforming uses may not be enlarged as of right except where the change is so negligible or insubstantial that it does not warrant judicial or administrative interference. *[Citations omitted]* Where there is doubt as to whether an enlargement is substantial rather than insubstantial, the courts have consistently declared that it is to be resolved against the enlargement or change. *[Citations omitted]* [Emphasis added.]

Belleville v. Perrillo's, 83 N.J. 309, 316 (1980).

F. Variance to Change a Conditional Use Standard (N.J.S.A. 40:55D-70d(3)).

1. Conditional uses are uses that are allowed in the zone as long as the applicant meets certain specified conditions. If the applicant can meet the conditions, he or she applies to the Planning Board. If not, (the application must be to the Zoning Board for a d(3) variance. Because a conditional use is not a prohibited use, the applicant need not meet the stringent standards required for a use variance. The focus should be on the condition and the need for the condition, rather than on the use. According to the Supreme Court,
 - a. Proof of special reasons involves proof that the site proposed for the conditional use, in the context of the applicant's proposed site plan, continues to be an appropriate site for the conditional use notwithstanding the deviations from one or more conditions imposed by the ordinance. The Board must be persuaded that the non-compliance with conditions does not affect the suitability of the site for the conditional use.
 - b. To satisfy the first prong of the negative criteria, the Board must determine whether the deviation from the condition causes such damage to the character of the neighborhood as to constitute substantial detriment to the public good.

- c. To satisfy the second prong of the negative criteria, the Board must determine whether the variance is reconcilable with the municipality's legislative determination that the condition should be imposed on all conditional uses in that zoning district.

Coventry Square v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285, 298-299 (1994).

G. Density and Height Variances. (N.J.S.A. 40:55D-70d(4), N.J.S.A. 40:55D-70d(5), N.J.S.A. 40:55D-70d(6)).

1. Applicants are required to demonstrate that the site will accommodate problems associated with a proposed use with greater density or height than permitted. Price v. Himeji, LLC, 214 N.J. 263, 296-297 (2013).

H. Variances Involving Inherently Beneficial Uses.

1. The positive criteria for a "d" variance is automatically fulfilled when the proposed use is inherently beneficial to the community, such as a school, medical facility or nursing home. Inherently beneficial uses require a special analysis. The Board must weigh the proposed use against the positive and negative criteria. According to the New Jersey Supreme Court, this balancing will make it more difficult for municipalities to exclude inherently beneficial uses, but permit such exclusion when the negative impact of the use is significant. The weighing process involves four steps:
 - a. First, the Board should identify the public interest at stake (i.e. identify the beneficial use).
 - b. Second, the Board should identify the detrimental effect that will ensue from the grant of the variance (i.e. identify the facts underlying the negative criteria).
 - c. Third, in some situations, the local Board may reduce the detrimental effect by imposing reasonable conditions on the use.
 - d. Fourth, the Board should weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152,165-166 (1992).

2. Because courts and boards were consistently ignoring the negative criteria when deciding cases involving inherently beneficial uses, the Legislature amended the MLUL in 1997 to explicitly require that the negative criteria be considered in such cases.

I. Legal Standards for Granting Waivers for Applications:

1. The standard for waivers is as follows, as stated by Judge Feinberg in Vardakis v. Washington Township Zoning Bd. of Adj., Docket No. MER-L-I 154-07, page 2527. The court stated that in order to grant a design waiver, the Board must understand that a waiver is no more than an acknowledgment by it that a condition of the property is satisfactory and meets the requirements of the local ordinance. The right of the Board to grant an exception from the provisions of a site plan or subdivision approval can be found at N.J.S.A. 40:55D-51(a) and (b), which provides, in part, that:

The planning board when acting upon an application for preliminary or minor subdivision approval shall have the power to grant such exceptions from the requirements for subdivision (site plan) approval as may be reasonable within the general purposes and intent of the provisions for subdivision (site plan) review and approval of an ordinance adopted pursuant to this article, **if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of particular conditions pertaining to the land in question.**

The court went on to state that whenever a waiver is sought, the board must consider the request and make findings and conclusions with respect thereto.

V. HEARING PROCEDURES FOR LAND USE BOARDS

- A. Meetings must comply with the Open Public Meetings Act (or Sunshine Law) (N.J.S.A. 10:4-1, et seq.), which requires that meetings be advertised and open to the public. The Board may hold “closed” or “executive” sessions in limited situations to discuss personnel, privileged matters falling within the attorney-client privilege, or pending or anticipated litigation.
- B. Board members must make their decisions based on evidence in the record before them. If board members make decisions based on personal knowledge of the site, they must put their observations on the record during the public hearing so that the applicant may have an opportunity to rebut them.
- C. If a board member misses a portion of a hearing, they must certify in writing that they have listened to tapes, or reviewed a complete transcript of the hearing to be eligible to vote. In the alternative, an alternate member can be assigned to vote on the application.

VI. TIME FOR BOARD REVIEW PROCESS

- A. Time for Board decision after being deemed complete..
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. Reasonable extensions may be requested by the Board, which should be in writing or confirmed on the record.
 8. Approval can be granted by the Court if action is not taken by the Board within the required time.

CORE QUESTIONS TO ASK REGARDING C(1) "HARDSHIP" VARIANCES

Has the Applicant presented testimony that demonstrates:

- 1) They cannot meet the requirements of the Borough Zoning Ordinance because of unique physical features affecting this specific piece of property (i.e. size of property, narrowness, shape, steep slopes, wetlands, etc.)?

If YES - move to Question 2 (this does not mean that Applicant is entitled to a c(1) hardship variance)

If NO - the Applicant is not entitled to a c(1) hardship variance.

- 2) They will suffer a hardship if the Planning Board does not grant them "relief" from the Borough Zoning Ordinance's requirements.

If YES - move to Question 3 (this does not mean that Applicant is entitled to a c(1) hardship variance)

If NO - the Applicant is not entitled to a c(1) hardship variance.

Note:

- *Efforts made to purchase additional land in order to bring the property into grater conformance, where no additional land is available, may help prove hardship.*
- *An Applicant is not entitled to a variance for self-created hardships (situations created by themselves or prior owners) or for construction mistakes.*
- *An Applicant is not entitled to a hardship for a personal or financial hardship.*
- *The hardship standard does not require that the applicant prove that without the variance the property would be zoned into inutility; courts have held Applicants are entitled to build a house "comparable to surrounding houses" in the area.*
- *The Applicant need only demonstrate that the specific property's unique characteristics inhibit "the extent" to which the property can be used.*

- 3) The benefits of granting the variance substantially outweigh any detriment granting of the variance would cause to the public good?

If YES - move to Question 4 (this does not mean that Applicant is entitled to a c(1) hardship variance)

If NO - the Applicant is not entitled to a c(1) hardship variance.

- 4) The granting of the variance does not substantially impair the intent and purpose of the Borough Master Plan and Borough Zoning Ordinance?

If YES – the Applicant is entitled to a c(1) hardship variance.

If NO - the Applicant is not entitled to a c(1) hardship variance.

CORE QUESTIONS TO ASK REGARDING C(2) "FLEXIBLE" VARIANCES

Has the Applicant presented testimony that demonstrates:

- 1) That the granting of the requested c(2) variance will promote 1 or more goals of the Municipal Land Use Law (MLUL) (listed below)?

Goals of the MLUL (N.J.S.A. 40:55D-2):

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare.
- b. To secure safety from fire, flood, panic and other natural and man-made disasters.
- c. To provide adequate light, air and open space.
- d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole.
- e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.
- f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight.
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement.
- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land.
- k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site.

- l. To encourage senior citizen community housing construction.
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land.
- n. To promote utilization of renewable energy resources.
- o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.
- p. To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites.
- q. To ensure that the development of individual municipalities does not unnecessarily encroach upon military facilities or negatively impact the operation of military facilities, and to those ends, to encourage municipalities to collaborate with military facility commanders in planning and implementing appropriate land use controls, thereby improving the vitality of military facilities and protecting against their loss through the Base Realignment and Closure process or mission loss.

If YES - move to Question 2 (this does not mean that Applicant is entitled to a c(2) flexible variance)

If NO - the Applicant is not entitled to a c(2) flexible variance.

- 2) **The benefits of granting the variance substantially outweigh any detriment granting of the variance would cause to the public good?**

If YES - move to Question 3 (this does not mean that Applicant is entitled to a c(2) flexible variance)

If NO - the Applicant is not entitled to a c(2) flexible variance.

Note: The Applicant does not need to demonstrate hardship.

- 3) **The granting of the variance do not substantially impair the intent and purpose of the Borough Master Plan and Borough Zoning Ordinance?**

If YES – the Applicant is entitled to a c(2) flexible variance.

If NO - the Applicant is not entitled to a c(2) flexible variance.