

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

RESOLUTION JPB-005-25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Examples.

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

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

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

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

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

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

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

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

CONCLUSIONS AND DETERMINATIONS

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

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

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

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

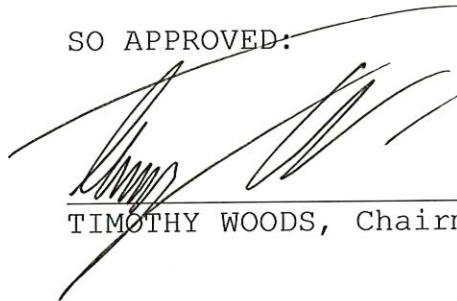
A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:



MICHAEL GRECO, Secretary

SO APPROVED:



TIMOTHY WOODS, Chairman

BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTING

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

Date of Adoption: May 7, 2025