

**BOROUGH OF DEMAREST
STATE OF NEW JERSEY
ORDINANCE NO. 1155-25
AN ORDINANCE ESTABLISHING A
A JOINT PLANNING BOARD AND AMENDING
CHAPTER 27 ENTITLED "LAND USE PROCEDURES" OF
THE REVISED GENERAL ORDINANCES OF DEMAREST,
COUNTY OF BERGEN
AND STATE OF NEW JERSEY**

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Demarest, County of Bergen, State of New Jersey, that Chapter 27 entitled "Land Use Procedures" of the Demarest Borough Code, is hereby amended so as to consolidate all of the powers, duties, authority and jurisdiction of the Zoning Joint Planning Board of the Borough of Demarest with those of the Planning Board of the Borough of Demarest and granting the same to the latter pursuant to and in accordance with N.J.S.A. 40:55D-25 in order that it act as the sole municipal Joint Planning Board of the Borough and further amending and supplementing related provisions of the code to effectuate the said transition and that those portions of the aforesaid set forth below are hereby amended as follows and that those portions of the Ordinance not set forth below shall remain unchanged:

WHEREAS, N.J.S.A. 40:55D-25(c) authorizes municipalities having a population of 15,000 or less to establish by Ordinance, a single nine-member Planning Board to exercise all the powers of the Planning Board and Zoning Joint Planning Board; and

WHEREAS, the Mayor and Council, upon review and recommendation of the Ordinance Committee of the Governing Body, find that the Borough of Demarest has a population of less than 15,000 and that the adoption of an Ordinance establishing a Joint Planning Board is in the best interest of the Borough; and

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Demarest in the County of Bergen and State of New Jersey that nothing in this chapter shall be construed to affect the term of any of the present Planning Board members, all of whom shall continue in office until completion of the term for which they were appointed.

NOW, THEREFORE, BE IT FURTHER ORDAINED, by the Mayor and Council of the Borough of Demarest in the County of Bergen and State of New Jersey that Chapter 27 is hereby repealed and replaced in its entirety as follows:

Chapter 27

LAND USE PROCEDURES

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Joint Planning Board

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- § 27-3. Vacancies, Removal from Office**
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- § 27-19. Variance Application Checklist**
- § 27-20. Appeals to the Governing Body**

ARTICLE I
Joint Planning Board

§ 27-1. Establishment; membership.

A. There is hereby created in the Borough of Demarest, pursuant to N.J.S.A. 40:55D-25c, as amended, a Joint Planning Board of nine members which Board shall have the combined powers and duties of the municipal planning board and zoning Joint Planning Board, and consisting of the following four classes of members:

(1) Class I: the Mayor or the Mayor's designee in the absence of the Mayor.

(2) Class II: one of the officials of the Borough of the municipality other than a member of the governing body, to be appointed by the Mayor, provided that if there be an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board.

(3) Class III: a member of the governing body to be appointed by it.

(4) Class IV: six other citizens of the Borough, to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position or employment, except that so long as the Board is comprised of nine members, one such member may be a member of the Historic Preservation Commission, and one Class IV member may be a member of the Board of Education. If there be a municipal environmental commission, the member of the environmental commission who is also a member of the Joint Planning Board, as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be a Class IV Joint Planning Board member, unless there be among the Class IV or alternate members of the Joint Planning Board both a member of the historic preservation commission and a member of the board of education, in which case the member common to the Joint Planning Board and Municipal Environmental Commission shall be deemed a Class II member of the Joint Planning Board. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.

B. In addition to the foregoing, alternate members may be appointed to the Joint Planning Board as Class IV members, and such alternate members shall not exceed four. Alternate members shall be appointed by the Mayor for Class IV members and shall meet the qualifications of Class IV members of the nine-member Joint Planning Boards. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3" and "Alternate No. 4."

§27-2 Terms of office.

A. The term of the member composing Class I shall correspond to the Mayor's official tenure, or, if the member is the Mayor's designee in the absence of the Mayor, the designee shall serve at the pleasure of the Mayor during the Mayor's official term.

B. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first, except for a Class II member who is also a member of the Environmental Commission. The term of a Class II or Class IV member who is also a member of the Environmental Commission shall be for three years or terminate at the completion of his/her term of office as a member of the Environmental Commission, whichever occurs first.

C. The term of a Class IV member who is also a member of the Board of Education shall terminate whenever he/she is no longer a member of such other body or at the completion of his/her Class IV term, whichever occurs first. The terms of all Class IV members first appointed shall be so determined

that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four years after their appointments; provided that the initial Class IV term of no member shall exceed four years. Thereafter, the Class IV term of each such member shall be four years.

D. Alternate members.

(1) The terms of the alternate members shall be for two years, except that the terms of the alternate members shall be such that the term of not more than two alternate members shall expire in any one year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two years.

(2) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

§ 27-3. Vacancies, removal from office

A. If a vacancy in any class shall occur other than by expiration of the members' Joint Planning Board term, it shall be filled by appointment, as above provided, for the unexpired term.

B. A vacancy of an alternate member which occurs otherwise than by expiration of term shall be filled, by appointment as stated in §27-2, for the unexpired term.

C. Any member other than a Class I member, after a public hearing if he or she requests one, may be removed by the governing body for cause.

§ 27-4. Organization.

The Joint Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV and select a Secretary, who may be either a member of the Joint Planning Board or a municipal employee designated by it.

§ 27-5. Joint Planning Board Attorney.

There is hereby created the office of Joint Planning Board Attorney. The Joint Planning Board may annually appoint, fix the compensation of or agree upon the rate of compensation of the Joint Planning Board Attorney, who shall be an attorney other than the Municipal Attorney. The Joint Planning Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

§ 27-6. Experts and staff.

The Joint Planning Board may employ or contract for the services of experts and other staff and services as it may deem necessary. The Joint Planning Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

§ 27-7. General powers and duties.

The Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall apply. Copies of all such rules and regulations and any amendments thereto shall be filed in the office of the Borough Clerk and shall be made available to any person upon request and payment of the fee for such copy. It shall also have the following powers and duties:

- A. To prepare and, after public hearing, adopt or amend a Master Plan or component parts thereof, to guide the use of lands within the Borough in a manner which protects public health and safety and promotes the general welfare, in accordance with the provisions of N.J.S.A.

40:55D-28.

- B. To administer provisions of all development regulations of the municipality, including subdivision control and site plan review, in accordance with the provisions of said regulations and the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq., as amended.
- C. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- D. To assemble data on a continuing basis as part of a continuous planning process.
- E. To consider and make report and recommendations to the governing body within 35 days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also pass upon other matters specifically referred to the Joint Planning Board by the governing body, pursuant to the provisions of N.J.S.A. 40:55D-26b.
- F. Pursuant to N.J.S.A. 40:55D-25(c), the Joint Planning Board shall exercise, to the same extent and subject to the same restriction, all powers of a Zoning Joint Planning Board, including but not limited to those powers and duties prescribed by law to a Zoning Joint Planning Board pursuant to N.J.S.A. 40:55D-70 and N.J.S.A. 40:55D-776. In exercising the powers of the Zoning Joint Planning Board, the Class I and Class III members of Joint Planning Board shall not participate in the consideration of applications for development which involve relief pursuant to Subsection d of Section 57 of P.L. 19775, c. 291 (N.J.S.A. 40:55D-70, as amended). Removal of the Class I and Class III members reduces a nine-member board to seven voting members, allowing it to function as all other boards of adjustment. This reduction in voting membership preserves the statutory scheme of N.J.S. 40:55D-70 requiring the affirmative vote of five members of the statutory seven-member board to grant a d variance.
- G. To perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies and officers of the municipality.

§ 27-8. Applications; procedure for filing.

Applications for development within the jurisdiction of the Joint Planning Board pursuant to the Municipal Land Use Law, as amended and supplemented, shall be filed with the Secretary of the Joint Planning Board. The applicant shall obtain all necessary forms, including any applicable checklist, from the Secretary of the Joint Planning Board as prescribed in 27-23. The Secretary of the Joint Planning Board shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board.

§ 27-9. Citizens Advisory Committee.

The Mayor may appoint one or more persons as a Citizens Advisory Committee to assist or collaborate with the Joint Planning Board in its duties, but such person or persons shall have no power to vote or take other action required of the Board. Such person or persons shall serve at the pleasure of the Mayor.

ARTICLE II
Administrative Provisions

§ 27-10 Compensation; membership on other boards; terms.

All members of the Joint Planning Board shall serve without compensation, and the members of Class IV shall hold no other municipal office, except that one of such members may be a member of the Board of Education and one of such members may be a member of the Environmental Commission.

§ 27-11. Conflicts of interest.

No member of the Joint Planning Board shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or personal financial interest. Whenever any such member shall disqualify himself or herself from acting on a particular matter, he or she shall not continue to sit with the Board on the hearing of such matter nor participate in any discussion or decision relating thereto. This would include voting on a memorializing resolution relating to such matter and the decision thereon.

§ 27-12. Meetings

A. Meetings of the Joint Planning Board shall be scheduled no less often than once a month and any meeting so scheduled shall be held as scheduled unless canceled for lack business, including but not limited to a lack of applications for development to process, or appeals to be heard and decided.

B. Special meetings may be provided for at the call of the Chairman or on the request of any two Board members, which shall be held on notice to the Board's members and the public in accordance with all applicable legal requirements.

C. No action shall be taken at any meeting without a quorum present.

D. All actions shall be taken by majority vote of the members present at the meeting except as otherwise required by any provisions of N.J.S.A. 40:55D-1 et seq. Failure of a motion to receive the number of votes required to approve an application for development or appeal pursuant to the exceptional vote requirements of N.J.S.A. 40:55D-34 and 40:55D-67d shall be deemed an action denying the application.

E. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Act (N.J.S.A. 40:4-6 et seq.). An executive session for the purpose of discussion and studying matters to come before the Joint Planning Board shall not be deemed regular or special meetings in accordance with the provisions of N.J.S.A. 40:55D-9.

§ 27-13. Hearings.

A. Oaths. The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the County and Municipal Investigations Law (N.J.S.A. 2A:67A-1 et seq.) shall apply.

B. Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitation as to time and number of witnesses.

C. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.

D. Records. Each municipal agency shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The municipal agency shall not be required to permit

any interested party to listen to its recording, but the municipal agency shall furnish a transcript, or duplicate recording in lieu thereof, on request, to an interested party at his expense. The municipal agency in furnishing a transcript shall not charge more than the maximum permitted by N.J.S.A. 2B:7-4. Each transcript shall be certified in writing by the transcriber to be accurate.

§ 27-14. Notice requirements for hearing.

Whenever a hearing is required on an application for development pursuant to the Municipal Land Use Law, as amended or supplemented, or pursuant to the determination of the municipal agency in question, the application shall give notice in accordance with the provisions of N.J.S.A. 40:55D.

§ 27-15. List of property owners furnished.

Upon the written request of an applicant, the Tax Assessor shall, within seven days, make and certify a list from the current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to § 27-28 of this chapter. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding. A fee may be charged consistently with the current fee schedule adopted by the governing body for such list.

§ 27-16. Publication of decision.

A brief notice of every final decision shall be published in the official newspaper of the municipality or as otherwise permitted by law. Such publication shall be arranged by the Secretary of the Joint Planning Board with separate charge to the applicant. Said notice shall be sent to the official newspaper for publication within 10 days of the date of any such decision.

§ 27-17. Payment of taxes.

Pursuant to the provisions of N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-65, every application for development submitted to the Joint Planning Board shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application; or, if it is shown that taxes or assessments are delinquent on said property, any approvals or other relief granted by the Board shall be conditioned upon either prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner acceptable to the municipality at the municipality's sole discretion.

§27-18. Appeals to the Joint Planning Board.

Appeals to the Joint Planning Board may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the Zoning Ordinance or Official Map. Such appeals shall be taken within 20 days of said decision by filing a notice of appeal with the officer from whom the appeal is taken, specifying the grounds of such appeal. Said officer shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

§27-19. Variance Application Checklist

The Borough shall utilize a checklist to determine application completeness when an applicant submits an application for a variance. The Checklist shall be made available to any applicants by the Board Secretary.

§27-20. Appeals to the Governing Body

A. Any interested party may appeal to the governing body of the Borough of Demarest any final decision of the Joint Planning Board approving an application for development pursuant to Subsection (d) of Section 57 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-70). Such appeal shall be made within 10 days of the date of publication of such final decision pursuant to Subsection (i) of Section 6 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-10). The appeal to the governing body shall be made by serving the Municipal Clerk in person or by certified mail with a notice of appeal, specifying the grounds thereof and the name and address of the appellant and the name and address of his attorney, if represented. Such appeal shall be decided by the governing body only upon the record established before the Joint Planning Board.

B.

Notice of the meeting to review the record below shall be given by the governing body of the Borough of Demarest by personal service or certified mail to the appellant, to those entitled to notice of a decision pursuant to Subsection (h) of Section 6 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-10) and to the Joint Planning Board at least 10 days prior to the date of the meeting. The parties may submit oral and written argument on the record at such meeting, and the governing body of the Borough of Demarest shall provide for verbatim recording and transcripts of such meeting pursuant to Subsection (f) of Section 6 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-10).

C.

The appellant shall, within five days of service of the notice of appeal pursuant to Subsection A hereof, arrange for a transcript pursuant to Subsection (f) of Section 6 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-10) for use by the governing body of the Borough of Demarest and pay a deposit of \$50 or the estimated cost of such transcript, whichever is less, or, within 35 days of service of the notice of appeal, submit a transcript as otherwise arranged to the Municipal Clerk; otherwise, the appeal may be dismissed for failure to prosecute. The governing body of the Borough of Demarest shall conclude a review of the record below not later than 95 days from the date of publication of notice of the decision below pursuant to Subsection (i) of Section 6 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-10), unless the applicant consents in writing to an extension of such period. Failure of the governing body of the Borough of Demarest to hold a hearing and conclude a review of the record below and to render a decision within such specified period shall constitute a decision affirming the action of the Joint Planning Board.

D.

The governing body of the Borough of Demarest may reverse, remand, or affirm with or without the imposition of conditions the final decision of the Joint Planning Board approving a variance pursuant to Subsection (d) of Section 57 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-70). The review shall be made on the record made before the Joint Planning Board.

E.

The affirmative vote of a majority of the full authorized membership of the governing body of the Borough of Demarest shall be necessary to reverse or remand to the Joint Planning Board or to impose conditions on or alter conditions to any final action of the Joint Planning Board. Otherwise, the final action of the Joint Planning Board shall be deemed to be affirmed; a tie vote of the governing body of the Borough of Demarest shall constitute affirmance of the decision of the Joint Planning Board.

F.

An appeal to the governing body of the Borough of Demarest shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made, unless the Joint Planning Board certifies to the governing body of the Borough of Demarest, after the notice of appeal shall have been filed with the Joint Planning Board, that by reason of facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by order of the Superior Court on application upon notice to the Joint Planning Board and on good cause shown.

G.

The governing body of the Borough of Demarest shall mail a copy of the decision to the appellant or, if represented, then to his attorney, without separate charge, and for a reasonable charge to any interested party who has requested it, not later than 10 days after the date of the decision. A brief notice of the decision shall be published in the official newspaper of the Borough of Demarest, if there be one, or in a newspaper of general circulation in the Borough of Demarest. Such publication shall be arranged by the applicant unless a particular municipal officer is so designated by ordinance, provided that nothing contained herein shall be construed as preventing the applicant from arranging such publication if he so desires. The governing body of the Borough of

Demarest may make a reasonable charge for its publication. The period of time in which an appeal to a court of competent jurisdiction may be made shall run from the first publication, whether arranged by Borough of Demarest or the applicant.

H.


Nothing in this section shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

BE IT FURTHER ORDAINED, if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudicated, and the reminder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

Attest:


Julie Falkenstern
Acting Borough Clerk

Approved:


Brian Bernstein, Mayor

Introduction: March 10, 2025

Adoption: 3/24/25